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**EXPOSURE DRAFT**

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**GST TREATMENT OF CROSS-BORDER TRANSPORT**

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**EXPLANATORY MATERIAL**

(Circulated by the authority of the  
Treasurer, the Hon Wayne Swan MP)



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# **Chapter 1**

## ***GST treatment of cross-border transport***

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### **Outline of chapter**

1.1 This exposure draft proposes amendments to the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) so that:

- the transport of goods by subcontractors within Australia that forms part of the international transport of those goods by another entity *from* Australia is taxable. However, the supplies are made GST free where they are made to a non-resident that is not in Australia;
- the transport of goods by subcontractors within Australia that forms part of the international transport of those goods by another entity *to* Australia is taxable. However, the supplies are made GST free where they are made to a non-resident that is not in Australia. The liability for paying GST on the domestic transport of imported goods is shifted from transport suppliers to the importer of the goods. This is achieved by adding the cost of domestic transport to the ‘value of the taxable importation’ used to calculate the GST liability on importation, whilst removing the GST liability on the supply of domestic transport services made to and also services provided by a non-resident that is not in Australia. This eases compliance costs for domestic transporters and affected non-resident transporters; and
- the scope of GST free international transport supplies is extended to the point of collection prior to containerisation for exports and the place of delivery of goods for importations for the supplier that transports the goods *to* or *from* Australia.

### **Context of amendments**

1.2 The GST law generally imposes GST on entities (including non-residents) that supply the Australian leg of international transport. If non-residents do not register for GST then any GST included in the price of their acquisitions will be embedded in the cost of their goods and services, resulting in the cascading of the GST. The international

transport of goods is generally supplied by a prime contractor that contracts to provide the whole of the international transport, including the Australian leg. In many cases, the Australian leg of the international transport is subcontracted out by the prime contractor to an Australian transporter.

### **GST treatment of the inbound transportation of goods**

1.3 The supply of transport services from overseas to Australia by prime transport providers transporting goods is GST free to the place of consignment. In contrast where the Australia leg of the inbound transport of goods is undertaken by a subcontractor then that leg is taxable.

1.4 The GST law currently provides that the place of consignment differs between postal and non-postal goods. For postal goods GST free treatment applies for international transport services up to the point where the goods are addressed in Australia. In contrast, for non-postal goods GST free treatment for such transport services applies up to the port or airport of the final destination in Australia (item 5 of section 38-355 of the GST Act).

1.5 The different treatment between postal and non-postal items results in distortions between the two forms of supplies. It also creates inefficiencies as non-resident transporters without a presence in Australia that transport non-postal goods are drawn into the GST system. As outlined in paragraph 1.2, if non-residents do not register for GST then any GST included in the price of their acquisitions will be embedded in the cost of their goods and services, resulting in the cascading of the GST.

### **GST treatment of the outbound transportation of goods**

1.6 For the prime transport supplier, the international and domestic transport legs of an export transport service from the place of containerisation of the goods is generally GST free where it undertakes both legs of transport (item 5 of section 38-355 of the GST Act). In contrast, that part of the transport service from the exporter's address to the point where the goods are packed in a shipping container (containerisation) is taxable, except in specific circumstances. For example, an alternative GST treatment applies where the subcontracted transport supplier knows that the Australian leg of transport forms part of the international transport of the goods performed by another entity for a client overseas. In these circumstances the Commissioner of Taxation treats the Australian leg of the transport of the goods from their place of origin in Australia to their last place in Australia before export as GST free. This reflects the operation of item 3 of subsection 38-190(1) and the application of subsection 38-190(4) of the GST Act.

1.7 This results in compliance costs for domestic transport suppliers that have to apportion their transport supplies between taxable and GST free parts where they carry mixed loads of goods for domestic and international destinations. Furthermore subcontractors may not know that the final destination of the goods being shipped is overseas. It also causes compliance costs for prime transport providers because of the need to treat the Australian transport leg as taxable for transport provided prior to containerisation in Australia.

1.8 In the 2009-10 Budget, the Government announced that it would amend the GST law to reduce GST compliance costs for businesses involved in the domestic transport of exported and imported goods, with effect from 1 July 2010.

1.9 The purpose of these amendments is to provide certainty for industry and reduce the number of non-resident entities without a presence in Australia being liable for GST or incurring GST on their acquisitions that are likely to cascade through the supply of any goods or services they make.

## **Summary of new law**

1.10 This exposure draft proposes amendments to the GST law to make the transport of goods by subcontractors within Australia that forms part of the international transport of those goods by another entity from Australia taxable. However, the supplies are made GST free where they are made to a non-resident that is not in Australia.

1.11 This exposure draft also proposes amendments to the GST law to make the transport of goods by transport subcontractors within Australia that forms part of the international transport of those goods by another entity to Australia GST free in limited circumstances. The supplies are made GST free where they are made to a non-resident that is not in Australia. The liability for paying GST on the domestic transport of imported goods is shifted from transport service suppliers to the importer of the goods. The cost of domestic transport is consequently added to the 'value of the taxable importation' used to calculate GST liability on importation, whilst removing the GST liability on the supply of domestic transport services made to, and also services provided by, a non-resident that is not in Australia. This reduces compliance costs for domestic transporters and affected non-resident transporters.

1.12 This exposure draft proposes amendments to the GST law to expand the scope of international transport supplies that can be GST free. This is done by:

- for exported goods, extending GST free treatment to the point of collection of goods prior to containerisation ('place of export'); and
- for imported non-postal goods, extending GST free treatment for transport to the place of delivery of those goods ('place of consignment').

1.13 The amendment provides that GST free treatment of international transport extends to directly related port services such as loading and handling that are ancillary to the supply of transport services.

### **Comparison of key features of the new law and current law**

<i>New law</i>	<i>Current law</i>
<p><b>GST treatment of the domestic transport supply leg of an importation</b></p> <p>The transport of goods by the supplier that brings the goods to Australia (including loading and handling that forms part of that transport) is a GST free supply up to the place that the supplier delivers the goods in Australia.</p> <p>The transport of goods by transport subcontractors (including loading and handling) within Australia that forms part of the international transport of goods by another entity to Australia is taxable, unless made to a non-resident that is not in Australia.</p> <p>The value of the international transport supply to the place of delivery in Australia is included in the VOTI calculation for the purposes of working out the value of taxable importations.</p>	<p><b>GST treatment of the domestic transport supply leg of an importation</b></p> <p>The transport of goods by the supplier that brings the goods to Australia (excluding loading and handling that forms part of that transport) is GST free up to the port or airport for non-postal goods and to the place the goods are addressed for postal goods. The part of the supply within Australia beyond the port or airport by that supplier is taxable even when supplied by a non-resident transporter.</p> <p>The transport of goods made by transport subcontractors within Australia that forms part of the international transport of goods by another entity to Australia is taxable (irrespective of whether supplies are made to a non-resident that is not in Australia).</p>

<i>New law</i>	<i>Current law</i>
	<p>The value of the international transport supply to the port or airport in Australia is included in the VOTI calculation for the purposes of working out the value of taxable importations.</p>
<p><b>GST treatment of the domestic transport supply leg of an export</b></p> <p>The transport of containerised goods out of Australia by the prime transport supplier is GST free from the place the goods are collected prior to containerisation until the place of delivery overseas.</p> <p>The transport of goods made by transport subcontractors within Australia that forms part of the international transport of those goods by another entity from Australia is taxable. However, the supplies are made GST free from the point of collection prior to containerisation where they are made to a non-resident that is not in Australia.</p>	<p><b>GST treatment of the domestic transport supply leg of an export</b></p> <p>For the prime transport provider, the international and domestic transport legs of an export transport service from the place of containerisation of the goods is generally GST free where it undertakes both legs of transport (item 5 of section 38-355 of the GST Act).</p> <p>In contrast, that part of the transport service from the address of the exporter to the point where the goods are containerised is taxable, except in specific circumstances. For example where the subcontracted transport supplier knows that the Australian leg of transport forms part of the international transport of the goods then the Commissioner of Taxation treats the Australian leg or legs of the transport of the goods from their place of origin in Australia before export as GST free (item 3 of subsection 38-190(1) because of the application of subsection 38-190(4) of the GST Act).</p>

<i>New law</i>	<i>Current law</i>
<p><b>‘Place of consignment’ of goods</b></p> <p>The place of consignment is the place in Australia to which the goods are delivered.</p>	<p><b>‘Place of consignment’ of goods</b></p> <p>The place of consignment for postal goods is the address for delivery of the goods. For non-postal items, the place of consignment is the port or airport of final destination.</p>
<p><b>Loading and handling costs</b></p> <p>Loading and handling charges in Australia associated with the international transport of goods are GST free when supplied to a non-resident not in Australia or by the primary contractor that takes the goods to or from Australia.</p>	<p><b>Loading and handling costs</b></p> <p>Loading and handling charges in Australia associated with the international transport of goods to Australia are taxable.</p>

## Detailed explanation of new law

### Domestic transport supply leg of an importation

1.14 The transport of goods made by transport subcontractors within Australia that forms part of the international transport of those goods by another entity to Australia is taxable unless made to a non-resident that is not in Australia.

1.15 The cost of the domestic transport supply and related ancillary services is included in the VOTI calculation by the following means:

- the definition of ‘international transport’ in section 195-1 of the GST Act is amended to include the directly related port services ancillary to the supply of the transport service [*Schedule 4, item 5, section 195-1*]; and
- the ‘place of consignment’ for non-postal items is extended to the place to which the goods are delivered [*Schedule 4, item 6, section 195-1*].

1.16 The cost of the domestic transport supply from the port to the place of delivery in Australia is now also included in the VOTI and is therefore taxable as part of the taxable importation payable by the client having their goods transported.

1.17 The key advantage of this shift onto the VOTI is that the GST on the domestic transport of imported goods is collected at a single point at the border, rather than at multiple points in a chain of supplies which potentially involve both resident and non-resident transport entities. The effect of this is that non-resident transport entities would not be required to lodge business activity statements as they would not be making or receiving taxable supplies. Removing the liability from some non-residents to pay GST will help to prevent embedded tax for prime transport providers because if non-residents do not register for GST it is likely that the tax will be embedded in their charges.

1.18 The amendments also ensure that loading and handling of goods in Australia and similar services can qualify for GST free treatment [*Schedule 4, item 5, section 195-1*]. Loading and handling services that are part of the international transport of goods are GST free for inbound and outbound movement of goods when supplied by the transporter that brings the goods to or from Australia or when they are made to a non-resident that is not in Australia. This reflects the intention that GST free treatment should extend to not only international transport but also necessary related services.

#### **Example 1.1**

Robyn is a customs broker. In the course of providing customs clearance services to a non-resident international transport company, an importation of household furniture must be fumigated to satisfy Australian Quarantine and Inspection Service requirements.

The supply by Robyn of custom clearance services and fumigation to the non-resident is GST free where the non-resident is not in Australia when Robyn's services are performed. This is because her services form part of the international transport of goods, of which, loading and handling services are included.

The supply of international transport services (including the cost of the fumigation and customs clearance services) by the non-resident company to its client is GST free. The fumigation is considered to be a necessary process in the handling of the goods in order to transport them to the delivery address in Australia.

### **Domestic transport leg of an export transport supply**

1.19 The transport of goods made by transport subcontractors within Australia that forms part of the international transport of those goods by another entity from Australia is taxable. However, the supplies are made GST free where they are made to a non-resident that is not in Australia. [*Schedule 4, item 4, subsection 38-355(2)*]

1.20 The amendments ensure that section 38-355 of the GST Act is the exclusive provision that makes supplies of international transport GST free. This is achieved by amending section 38-190 of the GST Act to ensure that subsection 38-190(4) of the GST Act has no application to supplies of transport of goods within Australia that is part of, or is connected with, the international transport of the goods. This includes all transport from the point of origin in Australia to the point at which goods depart from Australia and also the insuring and arranging transport of those goods. *[Schedule 4, item 1, subsection 38-190(5)]*

1.21 Where transport suppliers provide both the domestic and international legs of international transport then the transport supply continues to be GST free. *[Schedule 4, item 4, subsection 38-355(2)]*

1.22 Treating the Australian leg of domestic transport as taxable for subcontractors reduces compliance costs for GST registered sub-contractor transport entities by allowing them to apply the same GST treatment to all transported goods, regardless of whether the goods are for a domestic delivery or export. This is important because transport subcontractors may carry a range of goods that are for final delivery both in Australia and overseas and they may not be aware of the final destination of some goods.

1.23 The tax treatment of the pre-containerisation leg of a non-postal export supply is broadly aligned with the treatment of a postal export supply. This ensures consistent tax treatment of the pre and post-containerisation legs of a non-postal supply as both are GST free where they form part of a single international transport supply. *[Schedule 4, item 7, section 195-1 and Schedule 4, item 1, subsection 38-190(5)]*

1.24 For non-postal goods the 'place of export' definition is amended to ensure that the last leg in which the goods are delivered to or collected from prior to being packed in a freight container is GST free for certain suppliers *[Schedule 4, item 7, section 195-1]*. This reflects that goods will usually be collected from an earlier location for packing in a freight container. If the goods have been manufactured at the place of packing (that is, at a factory), then transport from this location continues to be GST free for certain suppliers.

### **Example 1.2**

Stan is registered for GST and operates an international removalist company which undertakes both the Australian and international legs of international removals.

In some cases, Stan cannot position his shipping container at an exact street address (due to space constraints). However GST

free treatment applies to all parts of the international removal including moving goods from a client's residence into the container (located at the end of the street).

Stan does not need to apportion costs or to provide a tax invoice for this minor segment of the international transport export supply.

## **Application and transitional provisions**

1.25 The amendments apply on and from 1 July 2010.

## **Consequential amendments**

1.26 The GST free treatment that applies to insuring the international transport of goods from Australia is extended to the leg of transport in which the goods are delivered to the place for packing in a freight container for export. This is achieved by amending the definition of 'place of export' in section 195-1 of the GST Act so that it covers the pre-containerisation transport leg. [*Schedule 4, item 7, section 195-1*]

1.27 The GST free treatment for arranging the international transport of goods from Australia is also extended to the transport leg in which the goods are delivered to the place for packing in a freight container. This is achieved by the change to the definition of 'place of export' in section 195-1 of the GST Act to extend it to include the pre-containerisation transport leg [*Schedule 4, item 7, section 195-1*]. Also, the GST free treatment for arranging transport of non-postal goods to Australia is extended to the place of delivery. This is achieved by the change to the definition of 'place of consignment'. [*Schedule 4, item 6, section 195-1*]