

## GST Exemptions and GST Free Goods

The Goods and Services Tax (GST) is a broad-based tax of 10% on most importations into Australia and supplies of goods and services consumed in Australia, but it does not apply to all supplies. Some transactions are outside the scope of GST altogether because, for example, they are gifts, or made by unregistered people, or have no connection with Australia. Others are "GST-free" which means that the supplier does not charge GST but can claim credits for the GST on its own acquisitions. The main GST-free items are exports, health, food, education, international travel and certain charitable activities.

A small range of items are "input taxed". This means that the supplier does not charge GST and cannot claim credits for the GST on its own acquisitions. The main input taxed items are financial services and residential rent. This article does not discuss input taxed supplies.

GST is payable on all "taxable importations" into Australia (s.7-1(1)) unless they would be GST free or input taxed if they were supplied in Australia and is paid to ABF at the same time and place and in the same manner that customs duty is paid (unless the importer is approved to defer GST). Section 33-15(1)(a) refers.

GST is not charged on GST free supplies or GST free importations, but care needs to be taken in making this determination. My understanding is that ABF have conducted a number of audits to check GST exemption claims. Mistakes may not only incur penalties, but the GST shortpaid will then be called up. For an importer registered for GST this has no financial impact as the GST payable is then claimed on the next Business Activity Statement (BAS) as an input tax credit (ITC), but penalties may be imposed. Perhaps the lesson here is if in doubt do not claim an exemption, especially if the client is registered for GST deferral.

Goods are GST free on importation if they would be GST free in Australia. Division 38-1 of the GST Act contains a list of the exemptions. Examples of the types of goods and services that may include GST free supplies or importations include:

- Food
- Medical aid and appliances
- Disability support articles
- Goods sold for export within 60 days
- Some precious metals

The following information on exemptions is based upon legislation that provides the basis for the exemption. This description of exemptions listed is only a summary. Reference to the legislation must always be undertaken to determine whether a specific commodity is taxable or exempt. Goods that do not fit the terms of the relevant legislation are not exempt.

It should be noted that if an entity makes GST free supplies, it can still claim back GST input tax credits (refunds) on the purchase of any goods and services acquired so that it could make that GST free supply.

## GST exemptions for food

Note that not all food is GST free. Refer Schedule 1 of the A New Tax System (Goods and Services Tax) Act 1999 (“the Act”) for a full listing. Examples of food that is not GST free include:

- (a) food for consumption on the premises from which it is supplied
- (b) take away food including prepared meals that require refrigeration or freezing for its storage
- (c) confectionary including muesli bars and crystallised fruit
- (d) savoury snacks including popcorn, chips, salted nuts and seeds.
- (e) caviar
- (f) bakery products including cakes, sweet buns, scones, pies and pastizzi and whether cooked or uncooked and fresh or frozen
- (g) Biscuits, including crackers, pretzels, cones and wafers
- (h) ice cream, including ice blocks and frozen yoghurt

A list of GST free beverages is at Schedule 2 of the GST Act. Examples include

- (a) milk, but not flavoured milk,
- (b) tea and coffee and substitutes therefore (but not take away cups)
- (c) fruit and vegetable juice and concentrate thereof
- (d) water, but not carbonated water or water with any additives.
- (e) Baby formula
- (i) a \*beverage (or an ingredient for a beverage), other than a beverage (or ingredient) of a kind specified in the third column of the table in clause 1 of Schedule 2; or
- (j) food of a kind specified in regulations made for the purposes of this subsection.

Food. A useful tool for determining the GST treatment of food is available at <https://www.ato.gov.au/Calculators-and-tools/GST-food-and-beverage-search-tool/>

The “Detailed Food List” at the following reference is an extensive alphabetical index of different foods and the GST rate applicable to them. This is a pdf document and can be downloaded. Note however that it may occasionally be updated.

<https://www.ato.gov.au/law/view/document?DocID=GII/GSTIIFL1/NAT/ATO/00001>

## GST Exemptions for medical aids and appliances

Refer Schedule 3 of the Act for a list of the exemptions. Please also note that section 38 – 45 of the Act provides that parts of these goods are also GST free.

Imported pharmaceuticals such as antibiotics are not GST free on importation. The exemption only applies when the goods are prescribed by a medical practitioner to a patient in the course of supplying a GST-free medical service. When imported, these goods pay GST and the importer would then be entitled to an input tax credit provided they are registered for GST.

## Exemptions for 4<sup>th</sup> Schedule Items

There are additional exemptions for imported goods that qualify for entry under some items of the 4<sup>th</sup> Schedule to the Customs Tariff Act 1995. Conditions generally apply; however, the items broadly include:

- (a) Item 15 – personal effects;
- (b) Items 18 – warranty and safety recall goods
- (c) Item 21A - goods temporarily imported for repair, alteration or industrial processing and to be exported;
- (d) Items 23 - bequeathed goods
- (e) Items 25 - trophies, medals, etc. won or awarded overseas
- (f) Item 26 – goods of insubstantial value
- (g) Item 27 – Samples of negligible value

This partial list of exemptions is based upon legislation that provides the basis for the exemption and is only a summary. Reference to the legislation must always be undertaken to determine whether a specific commodity is taxable or exempt. Goods that do not fit the terms of the relevant legislation are not exempt.

You may have noted that Item 17 and 17A of the 4<sup>th</sup> Schedule, covering goods exported from Australia and returned in an unaltered condition did not appear in the list above. That is because such goods must meet the terms of s.42-10 of the Act. Before claiming this exemption it is strongly suggested that the broker first confirm that the goods meet the terms of s.42-10 of the GST Act.

Section 42-5 “(2) of the Act provides that *To avoid doubt, a reference to goods that are covered by an item in Schedule 4 to the Customs Tariff Act 1995 includes a reference to goods to which that item would apply apart from the operation of subsection 18(1) of that Act.* As you know, if goods are duty free under the 3<sup>rd</sup> Schedule you cannot claim a 4<sup>th</sup> Schedule item. The intent of this Section is therefore to allow the 4<sup>th</sup> Schedule exemption even though the goods are entered under their substantive 3<sup>rd</sup> Schedule tariff classification.

It should always be remembered that if a registered entity makes GST free supplies, it can claim back the GST paid as GST input tax credits on the BAS.

## Precious metals

Section 38-385 of the Act provides that in nominated circumstances the supply of precious metal is GST free. Precious metal is defined in the GST Act as

- (a) gold (in an investment form) of at least 99.5% fineness; or
- (b) silver (in an investment form) of at least 99.9% fineness; or
- (c) platinum (in an investment form) of at least 99% fineness; or
- (d) any other substance (in an investment form) specified in the regulations of a particular fineness specified in the regulations, however, no such substances are currently specified.

The terms “gold”, “silver” and “platinum” are not defined in the GST Act. They are also not defined in the Acts Interpretation Act 1901

Customs brokers will be aware Note to Chapter 71 in the Customs Act provides that Note 4 (A0 and (B) provides:

- (A) *"Precious metal" means silver, gold and platinum.*
- (B) *"Platinum" means platinum, iridium, osmium, palladium, rhodium and ruthenium.*

The definition of “platinum” in the Customs Tariff Act does NOT apply to the GST Act. Iridium, osmium, palladium, rhodium and ruthenium are not GST exempt under this section. This matter has been audited by ABF.

## GST exemption codes in the ICS

This link provides a list of the GST exemption codes.

<https://www.abf.gov.au/importing-exporting-and-manufacturing/importing/cost-of-importing-goods/gst-and-other-taxes/gst-exemptions>