



---

## Explanatory Statement

# Goods and Services Tax: Foreign Currency (Customs Value of Low Value Goods) Determination 2018

---

### General Outline of determination

1. This determination is made under subsection 84-79(5) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).
2. This determination provides a method for converting an amount expressed in foreign currency to Australian currency, when working out the customs value of goods under subsection 84-79(4) of the GST Act, to determine if there is a supply of low value goods.
3. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.
4. This determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

### Date of effect

5. This determination commences on 1 July 2018.

### What is this determination about

6. The purpose of this determination is to provide a method for converting an amount expressed in foreign currency to Australian currency, when working out the customs value of goods under subsection 84-79(4) of the GST Act. The goods are low value goods if the customs value is AUD1,000 or less.
7. This determination will be relevant to a supplier, an electronic distribution platform operator or a redeliverer in determining whether there is a supply of low value goods. One of the criteria for low value goods is that the customs value of the goods is AUD1,000 or less in accordance with subsection 84-79(3) of the GST Act. When working out the customs value of the goods under subsection 84-79(4) of the GST Act, an amount is converted to Australian currency at the time that consideration is first agreed for the supply.
8. This determination does not affect how the customs value of goods is calculated when determining whether taxes apply on the importation of goods

into the indirect tax zone (Australia). The *Customs Act 1901* provides the methods that can be used for these purposes.

9. This determination does not set out how to convert to Australian currency when calculating the GST payable on a supply.

### **What is the effect of this determination**

10. In accordance with paragraph 84-79(4)(e), you can use the method prescribed in this determination as an alternative to the method in section 161J of the *Customs Act 1901*. In working out the customs value of goods, you can convert foreign currency to Australian currency using this formula:

$$\text{amount expressed in a foreign currency} \times \frac{1}{\text{your particular exchange rate at the conversion time}}$$

11. Compliance Cost Impact: Minor – there will be no or minimal impact for both implementation and ongoing compliance costs. The change is minor or machinery in nature.

### **Background**

12. One of the requirements for a supply to be connected with the indirect tax zone under Subdivision 84-C of the GST Act, is that there is a supply of low value goods. Under section 84-79 of the GST Act, a supply of goods is a supply of low value goods to the extent that the customs value of one or more of the goods making up the supply would have been AUD1,000 or less at the time when the consideration for the supply was first agreed. Alcoholic beverages, tobacco and tobacco products are excluded from the definition of low value goods.
13. This determination provides additional options for suppliers, electronic distribution platform operators and redeliverers who are required to convert amounts expressed in a foreign currency to Australian currency when working out the customs value of goods under section 84-79 of the GST Act.
14. The method in this determination allows you to choose your particular exchange rate from three options and the rate chosen must be used consistently. These options allow you to select from freely available publications of exchange rates at no cost such as the Reserve Bank of Australia's website, or alternatively, on a subscription basis. This flexibility in choice minimises your compliance costs by accommodating your business practices.
15. Your particular exchange rate is:

- (a) the RBA (Reserve Bank of Australia) rate, or a reference rate published by another central bank, or
  - (b) an exchange rate that is consistently higher than the RBA rate in terms of units of foreign currency per Australian dollar provided by a foreign exchange organisation, or
  - (c) a mid-market rate of a foreign exchange organisation or a foreign exchange data vendor.
16. The first option is the RBA rate or a reference rate published by another central bank.
17. The RBA rate is used by the Department of Home Affairs as the source of the rates prescribed under section 161J of the *Customs Act 1901*. These are used to determine whether GST applies when goods are imported.
18. The term 'another central bank' means a central bank or monetary authority outside the indirect tax zone (Australia) that exercises functions that correspond with, or are similar to, the RBA. This would include organisations, such as the European Central Bank.
19. Alternatively, the second option is to choose an exchange rate that is consistently higher than the RBA rate in terms of units of foreign currency per Australian dollar (such as an exchange rate offered to buy Australian dollars) provided by a foreign exchange organisation. A foreign exchange organisation means an organisation that provides exchange rates publicly.
20. The final option is a mid-market rate provided by a foreign exchange organisation or a foreign exchange data vendor. A mid-point rate is a rate based on the mid-point between the bid and ask rates for the Australian dollar. This includes mid-point rates between the Australian dollar and a foreign currency that are computed by reference to a third currency, such as the United States dollar.
21. This final option was included to accommodate pre-existing business practices in sourcing exchange rates, whether or not this is done on a subscription basis. It is included to help mitigate compliance costs that would otherwise occur in updating systems to adopt a different exchange rate source.
22. The conversion time is the time when the consideration for the supply was first agreed. This is in accordance with section 84-79 of the GST Act.
23. Exchange rate means the unit of foreign currency per Australian dollar, which has been published within 7 calendar days of the conversion time. If a rate other than the most recently published rate is used, the practice for sourcing the rate must be consistent.
24. While the exchange rate selected needs to have been published by the conversion time, this determination allows a practice of updating your business systems with your particular rate from the published source data

according to a schedule set by you. This schedule must be consistent in terms of the frequency and time of setting the rate, and align with your usual business practices. The maximum period permitted under such a schedule is 7 calendar days. A practice where the supplier tests and selects a more favourable exchange rate at other times (either randomly or by reference to opportunity), or makes a decision not to accept the published rate at the scheduled time of setting, is not valid under this determination.

25. The exchange rate chosen by you must be used consistently. This includes where you use different exchange rates for distinct parts of your business, as long as the exchange rate you choose is used consistently within each part of your business.
26. The exchange rate may be changed only if you have sound commercial reasons for doing so. If you change the exchange rates you choose with a view to affecting whether goods are a taxable supply, you will not have used the rates consistently and will not have followed the manner stated in this determination and accordingly, your choice is not valid under this determination.

### **Rationale for the rates allowed**

27. The exchange rates options for your particular exchange rate under this determination have been chosen in order to prevent a gap in GST collection due to the exchange rates that are available. This can occur if goods are not a taxable supply (because their customs value is over AUD1,000 when consideration is first agreed with the recipient), and are also not a taxable importation (because their customs value is AUD1,000 or less on the day of export).
28. For example, if you are selling an item with a customs value of USD750 and the RBA rate for the day that the consideration is first agreed with the buyer is \$0.76 USD per AUD, the customs value in Australian dollars using this rate will be AUD986.84. The supply will be a supply of low value goods under section 84-79 of the GST Act.
29. Alternatively, you could use a rate that is consistently higher than the RBA rate, such as a commercial exchange rate to buy Australian dollars. For example, if you converted the same amount to Australian dollars using a rate to buy AUD for \$0.80 USD, the item would have a customs value of AUD937.50.
30. You also have the option to use a mid-market rate provided by a foreign exchange organisation or a foreign exchange data vendor, or a rate which is similar to the RBA rate in that it is a reference rate published by another central bank. These rates will provide similar outcomes to the RBA rate over time.
31. However, under this determination, you must not use an exchange rate to sell Australian dollars, as this rate would not be consistently higher than the RBA

rate. For example, if you converted the same amount to Australian dollars using a rate to sell AUD in exchange for US\$0.71, the item would have a customs value of AUD1,056.34. If this rate was used, the goods would not be subject to GST when they are supplied. As there is a consistent difference between this rate and the rate used for conversion on the day of exportation, the goods may also not be a taxable importation.

## **Consultation**

32. Subsection 17(1) of the *Legislation Act 2003* requires, before the making of a determination, that the rule-maker is satisfied that appropriate and reasonably practicable consultation has been undertaken.
33. Broad consultation has occurred. Consultation was conducted through the ATO's Let's Talk site and through targeted consultation with key stakeholders. This initial consultation led to the provision of the three options for exchange rates as outlined in paragraph 15 of this Explanatory Statement.
34. The draft determination and draft explanatory statement were published on the ATO Legal Database at [www.ato.gov.au](http://www.ato.gov.au) on 29 June 2016 seeking feedback and comments for a period of three weeks. The ATO Legal Database sends emails and news feeds to direct subscribers such as tax professionals and other industry stakeholders. Consultation on the draft determination and draft explanatory statement was also announced on "What we are consulting about" at [ato.gov.au](http://ato.gov.au). In addition the draft determination and draft explanatory statement was sent to key stakeholders. Only one comment was received which was favourable to the products.

### *Legislative references:*

*A New Tax System (Goods and Services Tax) Act 1999*  
*Acts Interpretation Act 1901*  
*Customs Act 1901*  
*Human Rights (Parliamentary Scrutiny) Act 2011*  
*Legislation Act 2003*  
*Reserve Bank Act 1959*

## **Statement of Compatibility with Human Rights**

Prepared in accordance with *Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Goods and Services Tax: Foreign Currency (Customs Value of Low Value Goods) Determination 2018**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

This Legislative Instrument provides a method for converting an amount expressed in foreign currency to Australian currency, when working out the customs value of goods under subsection 84-79(4) of the GST Act, to determine if there is a supply of low value goods.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms as it is considered to be minor or machinery in nature and does not substantially change the law.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.