

21 December 2009

## **Notice to Australian Suppliers – Australian GST Lihir Island Operations and MOPU Project**

The purpose of this document is to provide guidance to Lihir Gold Limited's (LGL's) Australian-based suppliers on the application of Australian Goods and Services Tax (GST) on supplies made to LGL's Lihir Island operation and Million Ounce Plant Upgrade (MOPU) project. This document does not cover supplies made to LGL's operations in Australia or Côte d'Ivoire (please refer to separate guidance for Côte d'Ivoire).

This document is intended to provide generic guidance only and should not be seen as providing definitive advice. Accordingly, LGL will not accept liability should reliance be placed on this guidance without due consideration to the precise circumstances of any particular transaction entered into.

We recommend that each supplier seek independent professional advice in order to confirm the appropriate GST classification of their supplies made.

### **Background**

LGL is a company incorporated in Papua New Guinea and is a registered foreign corporation in Australia pursuant to Australian corporations law.

LGL, as a non-resident company from an Australian perspective, has voluntarily registered for Australian GST pursuant to the *A New Tax System (Goods and Services Tax) Act 1999* (the GST law). As a GST-registered company, certain supplies made to LGL by Australian GST-registered suppliers are likely to be subject to GST.

### **Executive Summary**

All goods and service contracts and invoices are to be made out to LGL as the recipient of the supply.

The following summary table should be read in conjunction with the comments in the body of this document.

<b>Type of Supply</b>	<b>When to Charge GST</b>	<b>When Not to Charge GST</b>
Supply of goods	Supplies made on the following terms: <ul style="list-style-type: none"> <li>• Ex-works (EXW);</li> <li>• FIS;</li> <li>• FCA (where delivery obligation is within Australia or to a freight forwarder within Australia).</li> </ul>	Supplies made on the following terms: <ul style="list-style-type: none"> <li>• FCA (where delivery obligation is to an international shipping or airfreight carrier but not a freight forwarder);</li> <li>• FOB;</li> <li>• CIF;</li> <li>• DDP;</li> <li>• DDU;</li> <li>• All other terms specified in Appendix 1</li> </ul>
Supply of services	Where the service relates to goods or real property located in Australia at the time of the service being performed.	<ul style="list-style-type: none"> <li>• Where the service is performed wholly in PNG or any other country outside of Australia;</li> <li>• Where the service is provided partly in Australia but where the service relates to goods or real property located outside of Australia at the time of the service being performed.</li> </ul>

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## **Supplies of Goods to LGL**

Ordinarily, a supply of goods by an Australian supplier to a non-resident recipient for use in that non-resident's offshore business operations will not be subject to GST on the basis that the supply ought to constitute a GST-free export of goods. However, where the non-resident is registered for Australian GST, in order to constitute a GST-free export, it must be the supplier that is deemed to be the exporter of the goods. In addition, the goods must be exported within 60 days of the earlier of payment being made for the supply or an invoice being issued for the supply.

The Australian Taxation Office (ATO) in *GSTR 2002/6*<sup>1</sup> has outlined its views as to which party is deemed to be the exporter of the goods in various export transactions. In the ATO's view, the exporter of the goods in a particular transaction is that party to the transaction that is most responsible for facilitating the export of the goods based on the precise obligations that each of the supplier and the recipient has under the terms of the contract.

Generally, obligations under contracts for the supply of goods in international trade are based on a standard set of terms as designed and published by the International Chamber of Commerce. These terms are referred to as Incoterms. The most recent published Incoterms are referred to as Incoterms (2000). A description of each of the specific standard terms within Incoterms is attached at Appendix 1.

Ordinarily, LGL will request that all supplies made by Australian suppliers be delivered via LGL's freight forwarder Kuehne + Nagel (K&N) located in Brisbane. Where this is the case, as LGL's agent, K&N will receipt, check, store, pack and arrange for the goods to be loaded on to the shipping vessel. K&N will also facilitate the clearing of the goods for export by lodging all export documentation with Australian Customs (in some cases, the supplier may prepare the export documentation but K&N will arrange for the lodgement of the documentation).

Two particular Incoterms are used on LGL purchase orders for the vast majority of supplies of goods to LGL by Australian suppliers. The first being 'Ex-works' which, as can be seen from the description at Appendix 1, involves the supplier being obligated to make available the goods to LGL, via K&N, at the supplier's business premises. In this case, K&N will arrange for a freight company to collect the goods at the supplier's premises. In this situation, the supplier's delivery obligation in respect of the supply to LGL is fulfilled at the supplier's address (i.e. prior to the goods being exported).

The other commonly used Incoterm in LGL purchase orders is FCA (Free Carrier) or FIS (Free Into Store). While not a recognised Incoterm, 'FIS' is commonly used in international trade. In the context of supplies made to LGL, FIS and FCA are used to denote the circumstance whereby the obligation of the supplier is to deliver to LGL via K&N's depot at Banyo in Brisbane (or other K&N depot). The supplier is responsible for arranging the domestic freight of the goods to Banyo and incurring the cost of this domestic freight. However, the supplier's delivery obligations end there (i.e. prior to the goods being exported). K&N is then responsible for loading the goods onto the shipping vessel and facilitating the export of the goods.

Applying the ATO's views in *GSTR 2002/6*, it is likely that the ATO would deem LGL to be the exporter of the goods (i.e. through LGL's agent in K&N) in the above circumstances. This is because LGL is responsible for loading the goods onto the shipping vessel, clearing the goods for export and contracting with an international carrier for the transportation of the goods to a destination outside Australia. In the ATO's view, as the supplier is only responsible for delivery of the goods at a place inside Australia and not to a person that is an international ship operator, the supplier is not considered to be the exporter and the ATO would look to recover Australian GST on such supplies.

We would therefore recommend that suppliers consider adding GST to supplies of goods made to LGL on these precise terms. In this case, LGL will require that the supplier issue LGL with a valid tax invoice relating to such a supply. Please note that LGL will reserve its right to withhold payment until such time as a valid tax invoice is issued by the supplier or an agent of the supplier.

Where the supplier's responsibility involves facilitating the export of the goods (such as in supplies on FOB or CIF terms), it is more likely that the ATO would consider the supplier to be the exporter of the goods. In this case, the supply should constitute a GST-free export for Australian GST purposes. LGL will likely challenge the charging of GST on supplies of goods made to LGL on terms FOB, CIF or those listed after these terms in Appendix 1.

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<sup>1</sup> Goods and Services Tax: Exports of goods, items 1 to 4 of the table in subsection 38-185(1) of the A New Tax System (Goods and Services Tax) Act 1999

## **Supplies of Services to LGL**

Most services provided to LGL by Australian service-providers should be treated as a GST-free export for Australian GST purposes. The circumstances in which the service would be taxable for Australian GST purposes is where the services relate to goods or real property that are located in Australia at the time the service is provided. Accordingly, where the services provided are performed wholly in Papua New Guinea or performed in Australia but do not relate to property located in Australia (e.g. the drafting of design documentation relating to a an item of plant that is (or will be) located at LGL's mine site in Papua New Guinea), the service should be treated as GST-free.

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Should you require further clarification of the above issues to your precise circumstances, we recommend that you contact your professional taxation advisor.

## Appendix 1

### Extract from GSTR 2002/6

#### 'TERMS OF TRADE' OR 'INCOTERMS'

##### Introduction

- (i) Terms of trade or 'Incoterms' are a set of uniform rules codifying the interpretation of trade terms used in international trade. Incoterms are drafted by the International Chamber of Commerce and on 1 January 2000 a new set of rules were published as Incoterms 2000. A brief summary of each term is provided in the table below.
- (ii) The Incoterms only deal with the relation between sellers and buyers under the contract of sale. The scope of the Incoterms is limited to matters relating to the rights and obligations of the seller and buyer with respect to delivery of goods sold. The terms 'are designed to arrange for the transfer of risk from Seller to Buyer at an unambiguous convenient place where goods can be inspected.'<sup>63</sup> Incoterms do not cover, amongst other matters, transfer of ownership - that is, they do not relate to when or where title changes.
- (iii) You will note that the seller's obligations increase as we go down the table.
- (iv) Note that the terms are divided into 4 categories.
  - 1 The '*E-term*' is where the seller's obligation is at its minimum. The seller usually places the goods at the buyer's disposal at the seller's own premises. In practice, the seller frequently assists the buyer to load the goods on the collecting vehicle.
  - 2 The '*F-terms*' requires the seller to deliver goods for carriage as instructed by the buyer.
  - 3 The '*C-terms*' requires the seller to contract for carriage. As with the "F"-terms, the seller fulfils the contract in the country of shipment or dispatch (i.e., contracts of sale are *departure or shipment contracts*). However, the division of costs (between seller and buyer) is fixed at a point in the country of destination.
  - 4 The '*D-terms*' is different in nature from the 'C'-terms. The seller is responsible for the arrival of goods within the country of import (i.e., contracts are arrival contracts).

## INCOTERMS 2000

<b>EXW</b>	<b>Ex works</b>  <i>The seller places the goods at the disposal of the buyer at the seller's premises.</i>
<b>FCA</b>	<b>Free Carrier</b>  <i>The seller delivers the goods to the carrier nominated by the buyer. The seller also clears the goods for export.</i>
<b>FAS</b>	<b>Free Alongside Ship</b>  <i>The seller places the goods alongside the vessel nominated by the buyer. The seller also clears the goods for export.</i>
<b>FOB</b>	<b>Free On Board</b>  <i>The seller delivers the goods over the ship's rail at the port of shipment. The seller also clears the goods for export.</i>
<b>CFR</b>	<b>Cost and Freight</b>  <i>The seller delivers goods over the ship's rail and pays costs and freight to bring the goods to the port of destination. The seller also clears the goods for export. However, the buyer is responsible for loss or damage to the goods.</i>
<b>CIF</b>	<b>Cost Insurance and Freight</b>  <i>The seller delivers goods over the ship's rail and pays costs and freight to bring the goods to the port of destination. The seller also clears the goods for export and obtains marine insurance against the buyer's loss or damage to the goods during the carriage.</i>
<b>CPT</b>	<b>Carriage Paid To</b>  <i>The seller delivers the goods to the carrier nominated by him and pays the cost of carriage to bring the goods to the named destination.</i>
<b>CIP</b>	<b>Carriage and Insurance Paid To</b>  <i>The seller delivers the goods to the carrier nominated by himself, and pays the cost of carriage to bring the goods to the named destination, and procures insurance against the buyer's loss or damage to the goods during the carriage.</i>
<b>DAF</b>	<b>Delivered at Frontier</b>  <i>The seller places the goods at the disposal of the buyer at a named frontier (e.g., country of export). The goods are not unloaded and are before the Customs border of the adjoining country. (This is used when there are land frontiers).</i>
<b>DES</b>	<b>Delivered Ex Ship</b>  <i>The seller places the goods at the disposal of the buyer at a named port of destination. The goods are not unloaded. (This is used when the goods are delivered by sea or inland waterway).</i>
<b>DEQ</b>	<b>Delivered Ex Quay</b>  <i>The seller places the goods at the disposal of the buyer on the quay (wharf) at a named port of destination. The goods are discharged on the quay (wharf). The buyer clears the goods for import.</i>
<b>DDU</b>	<b>Delivered Duty Unpaid</b>  <i>The seller delivers the goods to a named place of destination. The goods are not unloaded. The buyer pays any duty (including taxes).</i>
<b>DDP</b>	<b>Delivered Duty Paid</b>  <i>The seller delivers the goods to a named place of destination. The goods are not unloaded. The seller also pays any duty (including taxes).</i>

### References

*Incoterms 2000*, The International Chamber of Commerce official rules for the interpretation of trade terms.