



GSTD 2011/D5 - Goods and services tax: Are acquisitions related to an entity's retail foreign currency exchange transactions with customers in Australia made solely for a creditable purpose under section 11-15 of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act)?

 This cover sheet is provided for information only. It does not form part of *GSTD 2011/D5 - Goods and services tax: Are acquisitions related to an entity's retail foreign currency exchange transactions with customers in Australia made solely for a creditable purpose under section 11-15 of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act)?*

This document has been finalised by GSTD 2012/5.

 This Ruling contains references to provisions of the *A New Tax System (Goods and Services Tax) Regulations 1999*, which have been replaced by the *A New Tax System (Goods and Services Tax) Regulations 2019*. This Ruling continues to have effect in relation to the remade Regulations.

Paragraph 32 of TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed and rewritten.

A comparison table which provides the replacement provisions in the *A New Tax System (Goods and Services Tax) Regulations 2019* for regulations which are referenced in this Ruling is available.



Draft Goods and Services Tax Determination

Goods and services tax: Are acquisitions related to an entity's retail foreign currency exchange transactions with customers in Australia made solely for a creditable purpose under section 11-15 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act)?



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❗ This publication provides you with the following level of protection:

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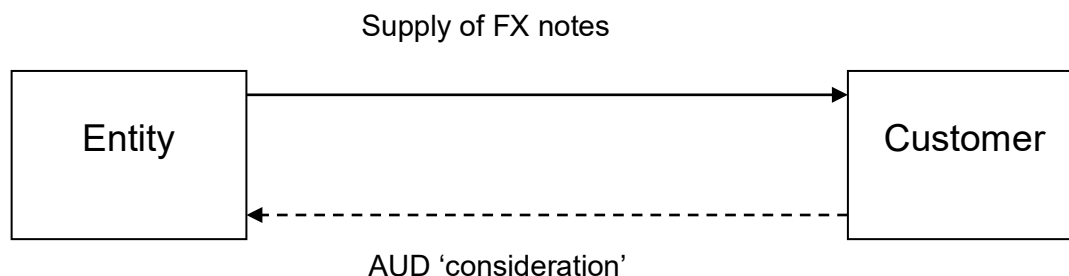
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Ruling

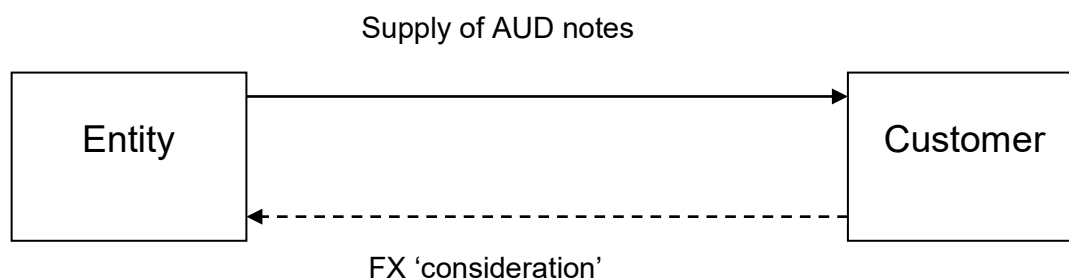
1. No. The acquisitions are made only partly for a creditable purpose.

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2. As part of a retail foreign exchange business conducted in Australia, a currency exchange company ('the entity') may supply foreign currency banknotes (FX) to customers intending to use the FX outside Australia, for which the customers provide Australian currency banknotes (AUD) as consideration. In this draft Determination, these are referred to as outbound transactions, as illustrated by the following diagram:



3. The entity may also supply AUD to customers in Australia, for which the customers provide FX as consideration. In this draft Determination, these are referred to as inbound transactions.

**Outbound transactions**

4. The entity's supply of FX is a financial supply, and is also a supply that is made in relation to rights. Hence, the supply is GST-free where the customer's intention is to use the FX outside Australia.¹

5. When the entity supplies FX in exchange for AUD, it also makes an input taxed financial supply (an acquisition-supply) of the interest in the AUD. The acquisition-supply is also a supply that is made in relation to rights, but is not GST-free as the rights are for use in Australia.

6. To the extent that acquisitions made by the entity relate to outbound transactions, they relate equally to the GST-free supply and the input taxed acquisition-supply. Consequently these acquisitions are made only partly for a creditable purpose.

Inbound transaction

7. The entity's supply of AUD is an input taxed financial supply. It is also a supply made in relation to rights, but the rights are intended for use in Australia.

¹ Paragraph (a) of Item 4 in the table in subsection 38-190(1)

8. When the entity supplies AUD in exchange for FX, it also makes a financial supply (an acquisition-supply) of the interest in the FX. The acquisition-supply is also a supply that is made in relation to rights. The rights are for use in Australia where the entity's intention is to re-sell the FX in Australia and to that extent the acquisition-supply is input taxed and not GST-free.

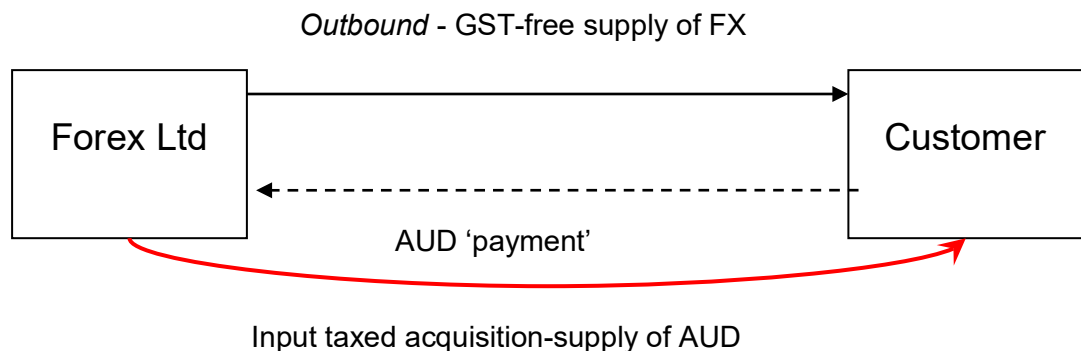
9. To the extent that acquisitions made by the entity relate to inbound transactions, they relate equally to the input taxed supply of the AUD and the input taxed acquisition-supply of the FX. Consequently these acquisitions are not made for a creditable purpose.

Example

10. Forex Ltd (Forex) operates a retail foreign currency exchange enterprise through a service counter at an Australian airport, catering for both outbound and inbound customers. Forex supplies foreign currency to customers leaving Australia, and AUD to those arriving from overseas. Forex acquires the AUD as payment for the supply of FX and acquires the FX as payment for the AUD. Each is provided as consideration for the supply of the other.

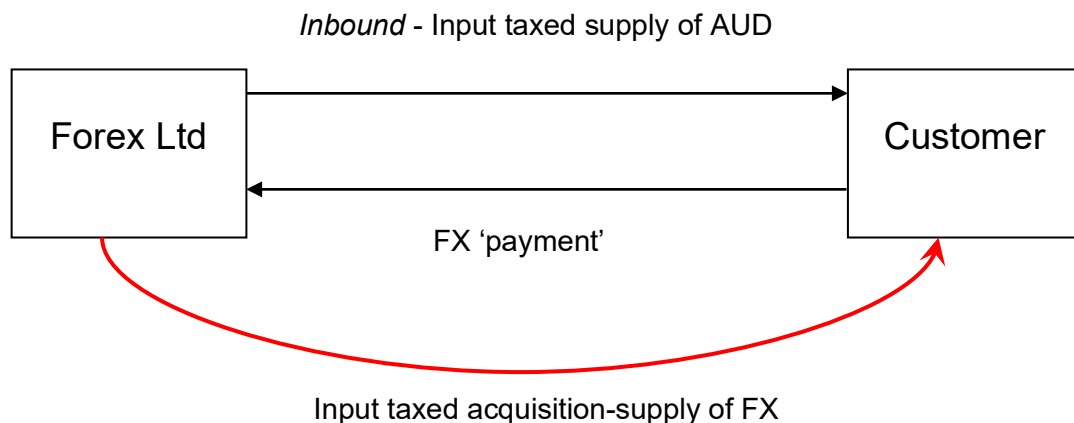
11. Forex subsequently re-sells the FX it acquires in these transactions to another entity in Australia.

12. Forex's supply of the FX (outbound) is GST-free. Its acquisition of the AUD (outbound) is an input taxed financial supply (acquisition-supply) made by Forex.



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13. Forex's supply of the AUD (inbound) is an input taxed financial supply. It's acquisition of the FX (inbound) is also an input taxed financial supply (acquisition-supply) made by Forex.



14. Forex needs to determine the extent to which its acquisitions relate to outbound and inbound transactions using a fair and reasonable apportionment methodology.² To the extent that Forex's acquisitions relate to its outbound transactions, they relate equally to the supplies and acquisition-supplies arising out of those transactions.³ The same applies to its inbound transactions.

Date of effect

15. When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 75 to 76 of Taxation Ruling TR 2006/10).

Commissioner of Taxation

21 December 2011

² GSTR 2006/3: determining the extent of creditable purpose for providers of financial supplies, provides guidance on fair and reasonable apportionment methodologies.

³ However, particular comment is invited on whether specific types of acquisitions may relate solely to the GST-free supplies. Refer to paragraph 70 in Appendix 3.

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's preliminary view has been reached. It does not form part of the proposed binding public ruling.*

Explanation

Background

16. The High Court found, in *Travelex Ltd v Commissioner of Taxation* [2010] HCA 33; 2010 ATC 20-214; 76 ATR 329 (*Travelex*), that the supply of foreign currency banknotes (FX) by an entity to a customer whose intention was to use the banknotes outside Australia is a GST-free supply. The matter at issue in *Travelex* involved a supply of foreign currency banknotes on an outbound exchange transaction. The Court made no observations in relation to inbound transactions.

17. The Court observed that:

It is necessary to ask whether the supply is 'GST-free' because Travelex submitted that, if the supply is GST-free, it could claim associated input tax credits which it could not claim if the supply is input taxed. (The validity of this submission was not in issue in the appeal).⁴

18. The ATO decision impact statement (DIS) for the High Court decision in *Travelex* outlined the ATO response to the High Court decision. Though entitlement to input tax credits was not in issue in *Travelex*, the DIS gave some consideration to this question.

19. The DIS states:

The Commissioner notes that when supplying foreign currency in a currency conversion transaction in Australia, the supplier of the foreign currency also makes an acquisition of an interest in Australian currency. This acquisition will be a financial supply that is input taxed where the acquisition is made for consideration. Input tax credits are not available to the extent that acquisitions relate to making that acquisition-supply.

20. This draft Determination provides guidance on the creditable purpose of acquisitions relating to currency exchange transactions. The guidance is provided on the basis that the entity is carrying on an enterprise of foreign exchange services in Australia and is registered for GST.

21. The guidance is also provided on the assumption that the customer acquiring FX on an outbound transaction intends to use the FX outside Australia, and a customer acquiring AUD on an inbound transaction intends to use the AUD in Australia. Whether this is so in a particular case depends on the facts in that case.

Supply of money

22. Subsection 9-10(4) of the GST Act provides that a supply does not include a supply of money unless the money is provided as consideration for a supply that is a supply of money.

23. Where an entity supplies foreign currency to a customer in the course of its enterprise, in exchange for Australian currency (or vice versa), each payment is consideration for the other. Hence, the entity and its customer are each making supplies of money to the other.

⁴ *Travelex* at [2].

Financial supplies of currency

24. A financial supply is input taxed, and ‘financial supply’ has the meaning given by the A New Tax System (Goods and Services Tax) Regulations 1999 (all further references to regulations are to these Regulations).⁵

25. A financial supply arises where the requirements of subregulation 40-5.09(1) are satisfied in relation to a provision, acquisition or disposal of an interest mentioned in the table in subregulation 40-5.09(3) (financial interest).⁶

26. Item 9 of the table in subregulation 40-5.09(3) refers to an interest in or under Australian currency, the currency of a foreign country, or an agreement to buy or sell currency of either kind. This includes foreign currency in cash form.⁷

27. An entity supplying either FX or AUD to a customer is the ‘financial supply provider’ in relation to that supply.⁸

28. A GST registered entity, supplying FX or AUD (as the financial supply provider) for consideration as part of an enterprise it carries on in Australia, satisfies the requirements of subregulation 40-5.09(1) in relation to that supply and is therefore making a financial supply.

Acquisition-supplies

29. An acquisition of a thing is not a supply according to ordinary concepts. However, an acquisition of a financial interest, that satisfies the requirements of subregulation 40-5.09(1), is a financial supply under section 40-5 of the GST Act, and is therefore a ‘supply’ in accordance with paragraph 9-10(2)(f) of the GST Act.

30. Goods and Services Tax Ruling GSTR 2002/2 uses the term ‘acquisition-supply’⁹ to describe the supply constituted by the acquisition of a financial interest.¹⁰

31. The requirement of subregulation 40-5.09(1) that the supplier be a ‘financial supply provider’ is satisfied in relation to an acquirer of a financial interest by virtue of subregulation 40-5.06(2), which extends the meaning of ‘financial supply provider’ where an interest is supplied, to apply also to the acquirer of that interest.

32. Subregulation 40-5.09(1) is applied independently to both the provision and the acquisition. For example, the entity is making an acquisition-supply of AUD even if the customer from whom the AUD are acquired is not registered for GST and is therefore not making a financial supply. However, the requirements of subregulation 40-5.09(1) need to be independently applied to the acquisition-supply for it to be a financial supply.

33. It follows that a GST registered entity *acquiring* currency banknotes for consideration as part of an enterprise it carries on in Australia is making a separate financial supply to the financial supply of the currency banknotes it supplies in exchange.

34. In this draft Determination, ‘supply’ refers to the provision of banknotes, and ‘acquisition-supply’ refers to a supply that is the acquisition of banknotes.¹¹

⁵ Section 40-5 of the GST Act.

⁶ GSTR 2002/2: GST treatment of financial supplies and related supplies and acquisitions, provides a detailed explanation of the Commissioner’s view of GST treatment of financial supplies.

⁷ Item 1 of Part 7 of Schedule 7 of the GST Regulations.

⁸ Subregulation 40-5.06(1) of the GST Regulations.

⁹ Paragraph 26 of GSTR 2002/2: GST treatment of financial supplies and related supplies and acquisitions.

¹⁰ Acquisition-supplies are discussed in more detail at paragraphs 110-116 of GSTR 2002/2.

¹¹ Paragraph 26, GSTR 2002/2.

GST-free supplies of currency

35. Subsection 9-30(3) of the GST Act contemplates that a supply may be both GST-free and input taxed, and to the extent that a supply would otherwise have the character of both, subsection 9-30(3) provides that the supply is to that extent GST-free and not input taxed.¹²

36. The effect of the decision of the High Court in *Travellex* is that the supply of foreign currency banknotes in Australia to a customer whose intention is to use the banknotes outside Australia is a GST-free supply.

37. The High Court found in *Travellex* that the supply of the foreign currency banknotes (FX) was a 'supply that is made in relation to rights' for the purposes of Item 4 of the table in subsection 38-190(1) of the GST Act (Item 4). The rights in relation to which the supply is made are the rights attaching to the FX.

38. Consistent with the High Court's decision, a supply of AUD is also a supply that is made in relation to the rights attaching to the AUD.

39. The Commissioner considers that an acquisition-supply of banknotes is also a supply that is made in relation to rights, with the rights being those attached to the banknotes acquired.

40. GSTR 2003/8, which is about the supply of rights for use outside Australia, states, at paragraph 108A:

A supply does not fall within item 4 simply on the basis that the essential characteristics of the rights demonstrate that they may be used outside Australia. It is the intended use of those rights that determines if the supply that is made in relation to the rights falls within item 4. The extent to which the supply is taxable or GST-free is not affected by the actual use of the rights, other than as potential evidence of the intended use.

41. The High Court observed that where it is evident that the currency is to be used overseas, the rights that attach to the currency are for use outside Australia.¹³ The Court's decision made additional references to the recipient's intention in regard to paragraph (a) of Item 4 – whether the rights are for use outside Australia.¹⁴ Such a supply is GST-free.

42. The Commissioner considers that where an entity makes a supply of AUD to a customer in Australia, it will usually be evident that the AUD are to be used in Australia. This supply is input taxed.

43. The Commissioner also considers that where an entity makes an acquisition-supply of AUD in an outbound exchange transaction, it will usually be evident that the AUD are to be used in Australia. The acquisition-supply is input taxed.

44. Where an entity makes an acquisition-supply of FX in an inbound exchange transaction, the Commissioner considers the business practices of the entity will evidence the intended usage of the FX. For example, if the business practice of the entity is to sell the FX to another entity in Australia, that would evidence intended use of the FX in Australia. In that event, the acquisition-supply of the FX is input taxed.

¹² Unless the provision under which it is input taxed requires the supplier to have chosen for its supplies of that kind to be input taxed.

¹³ *Travellex* at [35].

¹⁴ *Travellex* at [36] & [56].

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Creditable purpose

45. Section 11-15 of the GST Act is about creditable purpose. Paragraph 11-15(2)(a) provides that a thing acquired in carrying on your enterprise is not acquired for a creditable purpose to the extent that the acquisition relates to making supplies that would be input taxed.

46. The exchange transactions discussed in this draft Determination give rise to the entity making four financial supplies; these being:

- For outbound transactions: the supply of the FX which is a GST-free supply, and the acquisition-supply of the AUD which is an input taxed supply; and
- For inbound transactions: the supply of AUD, which is an input taxed supply, and the acquisition-supply of FX, which is an input taxed supply where the entity's intention is to use the FX in Australia.

47. Some things acquired in carrying on the entity's enterprise may relate solely to an outbound transaction, or solely to an inbound transaction, or partly to both. As a matter of normal business practice, an entity may (for example) make more outbound than inbound transactions. In this event, acquisitions that relate to both outbound and inbound transactions may relate more to supplies and acquisition-supplies arising out of its outbound transactions than its inbound transactions.

48. However, to the extent the entity's acquisitions relate to its outbound transactions, they relate equally to the supplies and acquisition-supplies arising out of those transactions. The same applies to its inbound transactions.

49. While it may be argued that acquisitions relate more directly to the supply than the acquisition-supply (on the basis that the acquisition-supply is merely the means of payment or that this is the purpose from the customer's point of view), the Commissioner considers the better view to be that the relationship to the acquisition-supply needs to be recognised for determining creditable purpose in these foreign exchange transactions. The acquisition of AUD in outbound transactions (and FX in inbound transactions) is an essential aspect of the reciprocal transaction and no less an end in itself than the supply.

50. Acquisition-supplies, in the context of creditable purpose of acquisitions, are discussed at paragraphs 131 to 135 of GSTR 2008/1.¹⁵ In particular, if an acquisition is for the purpose of making a financial supply of this special kind, that is, an acquisition-supply, the acquisition relates to making a supply that is input taxed.¹⁶

51. Thus a relationship between an acquisition and a supply that would be input taxed, should not be disregarded merely because the input taxed supply is an acquisition-supply.

52. It follows that to the extent that acquisitions relate to these transactions, the creditable purpose of the acquisitions needs to be apportioned on a basis that is fair and reasonable.

¹⁵ GSTR 2008/1: when do you acquire anything or import goods solely or partly for a creditable purpose.

¹⁶ Paragraph 132 of GSTR 2008/1.

Appendix 2 – Alternative views

❶ *This Appendix sets out alternative views and explains why they are not supported by the Commissioner. It does not form part of the proposed binding public ruling.*

Alternative view 1 – There is no acquisition-supply

53. The first alternative view is that there should be transactional ‘symmetry’ in the sense that an acquisition-supply should not arise unless there is also a related ‘provision’ financial supply. That is, if there is no financial supply by the customer (for example, because the customer is not registered for GST) there can and should be no stand alone acquisition-supply. It is argued that this view is consistent with the policy underpinning the acquisition-supply, and that this interpretation is supported by the inclusion of the word ‘also’ in subregulation 40-5.06(2).

Commissioner’s view

54. This alternative view is not preferred because regulation 40-5.06 gives an acquirer of a financial interest the status of a financial supply provider. Importantly, the GST Regulations and the Explanatory Statement¹⁷ state that the requirement is that there is an acquisition of an *interest* not the acquisition of a (provision) financial supply. In the Commissioner’s view, the inclusion of the word ‘also’ in subregulation 40-5.06(2) merely emphasises that the acquirer, as well as the provider, can be the financial supply provider of the interest.

55. This is consistent with the Commissioner’s view that an acquisition-supply does not depend upon the relevant counterparty having made a financial supply.¹⁸ This means that the acquirer (the entity) needs to assess if it meets the requirements of subregulation 40-5.09(1).¹⁹ In the circumstances in question, these requirements are met.

Alternative view 2 – The acquisition-supply is part of a composite supply.

56. Another alternative view is that if there is an acquisition-supply of AUD, it is incidental to the supply of the FX and does not have an end in itself. On this view the transaction is driven by the customer’s need to acquire FX, and that any acquisition-supply of AUD is, from the customer’s perspective, incidental. Consequently, it is argued that the acquisition-supply should not be treated as a separate supply, but as incidental to the dominant GST-free supply of FX.

Commissioner’s view

57. This alternative view is not preferred. While a customer’s viewpoint may be important for service providers, it is not the basis for characterising supplies for GST purposes. The acquisition of AUD in outbound transactions (and FX in inbound transactions) is an essential aspect of the reciprocal exchange transaction and no less an end in itself than the supply.

¹⁷ Explanatory Statement to A New Tax System (Goods and Services Tax) Amendment Regulations (No. 2).

¹⁸ Paragraph 31 of GSTR 2002/2.

¹⁹ The exception is that the acquirer doesn’t need to identify separate consideration for its acquisition-supply. See paragraph 35 of GSTR 2002/2 and *AXA Asia Pacific Holdings v Commissioner of Taxation* [2008] FCA 1834; (2008) 173 FCR 500 (‘AXA’), at [83]-[97].

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58. GSTR 2001/8 explains the Commissioner's view in determining whether a supply comprising a number of elements is better characterised as several supplies, a single composite supply in which one element is dominant and others incidental, or a mixed supply recognising separate identifiable parts. Paragraph 59 of GSTR 2001/8 summarises the factors considered relevant to determining that a supply is incidental or integral to a composite supply.

59. In the Commissioner's view, the application of the factors in paragraph 59 of GSTR 2001/8 does not support the conclusion that the acquisition-supply should be regarded as incidental or ancillary. For example, it cannot be said that the value of the provision supply relative to the acquisition-supply supports the view that either is dominant. On the contrary, the fact that the GST Regulations specifically provide for the concept of the acquisition-supply supports the view that it should be duly recognised as a separate supply.

60. The Commissioner considers the better view to be that the acquisition-supply of AUD is not an incidental part of a single composite supply of which the supply of FX by the entity is the dominant part.

Alternative view 3 – The acquisition-supply is a supply in relation to the rights attaching to the FX and hence is GST-free.

61. There is a further alternative view that if there is an acquisition-supply of AUD, it is a supply in relation to the rights attaching to the related supply of the FX for the purposes of Item 4. As a result it too is GST-free under Item 4.

62. On this view it is argued that the AUD have a very close connection with the FX and hence the rights in the FX, by virtue of the fact that it is consideration for the supply of the FX. This view is said to be supported by the approach taken to interpreting Item 4 in GSTR 2003/8. This ruling explains the scope of supplies made in relation to rights, which includes supplies of services that have a relevant connection with rights.²⁰

63. For example, consideration is essential for the existence of the supply of the FX, and is argued to have a closer connection than other supplies recognised by the Commissioner as satisfying the test in Item 4 (for example, share brokerage). It is then argued that the relationship between the acquisition-supply of the AUD and consideration is within the scope of Item 4.

Commissioner's view

64. While it is acknowledged that by nature these two supplies are inter-related, the relevant relationship for the acquisition-supply of AUD is to those rights that attach to the AUD, as explained in paragraph 39.

65. Acquisition-supplies were not considered at all in *Travel*^{ex}. However, the Court's finding that the supply of FX was a supply that was made in relation to the rights attaching to the FX, suggests the acquisition-supply of AUD is made in relation to the rights attaching to the AUD, and not the more remote rights attached to the FX.

²⁰ Paragraph 75 of GSTR 2003/8.

Alternative view 4 – The supply of FX is always a supply in relation to rights ‘for use outside Australia’

66. The final alternative view maintains that foreign currency bank notes have a special character such that the rights attached to those notes can only be used in the country in which the notes are legal tender, and therefore the notes always have the character of a supply in relation to rights ‘for use outside Australia’. It follows under this view that the supply of foreign currency bank notes within Australia is still a supply that satisfies paragraph (a) of Item 4 as the rights are ultimately ‘for use’ outside Australia. One result of this view would be that on the inbound transaction, the subsequent on-supply by the entity of the FX received from the customer would be GST-free.

Commissioner’s view

67. The Commissioner does not accept this interpretation of paragraph (a) of Item 4. As stated in paragraph 108A of GSTR 2003/8:

108A. A supply does not fall within item 4 simply on the basis that the essential characteristics of the rights demonstrate that they may be used outside Australia. It is the intended use of those rights that determines if the supply that is made in relation to the rights falls within item 4. The extent to which the supply is taxable or GST-free is not affected by the actual use of the rights, other than as potential evidence of the intended use.

68. Specifically, in the context of foreign bank notes, paragraph 116A of GSTR 2003/8 states:

116A. In *Travellex* French CJ and Hayne J noted that ‘where it is evident that the currency is to be used overseas, the rights that attach to the currency are for use outside Australia.’^{48A} Heydon J pointed to the intention of the purchaser of the currency being relevant in determining if the rights were for use outside Australia. Specifically, his Honour noted that ‘Mr Urquhart acquired the currency with the intention of spending it in Fiji, and that intention was confirmed by the fact that he did spend it there.’^{48B} We consider that the intention of the purchaser of currency is relevant in determining if the rights attached to that currency are for use outside Australia. A supply in Australia of foreign currency from a foreign currency exchange company to a bank in Australia is not a supply made in relation to rights that are ‘for use outside Australia’ where the bank intends to sell the currency in Australia. The supply by the bank may satisfy the test of ‘for use outside Australia’ if it is the purchaser’s intention to use the currency outside Australia

^{48A} [2010] HCA 33 at 35

^{48B} [2010] HCA33 at 56

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Appendix 3 – Your comments

69. You are invited to comment on this draft Determination. Please forward your comments to the contact officer by the due date.

70. In particular, comments are invited on the issue of whether, within an outbound transaction, there are specific types of acquisitions that can be said to relate only to the GST-free supply of FX and not to the acquisition-supply of the AUD. For example, business overheads would be seen as relating to both the GST-free supply and input-taxed acquisition-supply in the outbound transaction.

71. A compendium of comments is prepared for the consideration of the relevant Rulings Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments; and
- be published on the Australian Taxation Office website at www.ato.gov.au

Please advise if you do not want your comments included in the edited version of the compendium.

Due date: 17 February 2012

Contact officer details have been removed as the comments period has ended.

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10; GSTR 2001/8; GSTR 2002/2;
GSTR 2003/8; GSTR 2006/3; GSTR 2008/1

Subject references:

- GST acquisition-supply
- GST creditable purpose
- GST foreign exchange transactions
- GST-free supplies
- GST input taxed supplies

Legislative references:

- ANTS(GST)A 1999 9-10(2)(f)
- ANTS(GST)A 1999 9-10(4)
- ANTS(GST)A 1999 9-30(3)
- ANTS(GST)A 1999 11-15
- ANTS(GST)A 1999 11-15(2)(a)

- ANTS(GST)A 1999 38-190(1)
- ANTS(GST)A 1999 40-5
- ANTS(GST)R 1999 40-5.06(1)
- ANTS(GST)R 1999 40-5.06(2)
- ANTS(GST)R 1999 40-5.09(1)
- ANTS(GST)R 1999 40-5.09(3)
- ANTS(GST)R 1999 Part 7 Schedule 7

Case references:

- *AXA Asia Pacific Holdings v Commissioner of Taxation* [2008] FCA 1834; (2008) 173 FCR 500
- *Travellex Ltd v Commissioner of Taxation* [2010] HCA 33; 2010 ATC 20-214; 76 ATR 329

Other references:

- Explanatory Statement to A New Tax System (Goods and Services Tax) Amendment Regulations (No. 2)

ATO references

NO: 1-3MR9DEQ

ISSN: 1443-5179

ATOlaw topic: Goods and Services Tax ~~ Financial supplies ~~ creditable purpose
Goods and Services Tax ~~ Financial supplies ~~ financial supplies and
acquisitions