GSTR 2000/D20 - Goods and services tax: agency relationships and the application of the GST law

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Draft Goods and Services Tax Ruling
Goods and services tax: agency relationships and the application of the GST law

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Preamble

This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered, views of the Australian Taxation Office. This draft may not be relied on by taxation officers, taxpayers and practitioners. When officially released it will be a public ruling for the purposes of section 37 of the ***Taxation Administration Act 1953*** *and may be relied upon by any person to whom it applies.*

What this Ruling is about

1. This Ruling describes what is meant by principal/agent relationships ('agency relationships') and explains the operation of Subdivisions 153-A and 153-B (Agents and insurance brokers), Division 57 (Resident agents acting for non-residents) and Division 111 (Reimbursement of employees, agents, etc.) of the *A New Tax System (Goods and Services Tax) Act 1999* ('GST Act').

2. Both Subdivision 153-A and Subdivision 153-B apply to entities that are registered or required to be registered for GST, and that make a taxable supply or creditable acquisition through an agent (or an insurance broker in the case of Subdivision 153-A).

3. First, this Ruling explains the special rules that apply under Subdivision 153-A to agents and insurance brokers who have *not* entered into an arrangement where they are treated as separate suppliers or acquirers under Subdivision 153-B. In particular, the Ruling explains:

- to which tax periods input tax credits are attributable where a principal makes creditable acquisitions through an agent;
- to which tax periods decreasing adjustments are attributable where supplies are made by a principal through an agent;
- the rules for agents when issuing tax invoices and adjustment notes;
- the effect of making a supply of an insurance policy through an insurance broker; and

- how to treat disbursements.

4. Secondly, this Ruling explains the special rules under Subdivision 153-B that apply to agents who have entered into an arrangement where they are treated as separate suppliers or acquirers. In particular, the Ruling explains:

- the requirements for these arrangements;
- the effects these arrangements have on supplies and acquisitions;
- how the Commissioner may determine in writing the application of the arrangements to specified supplies or acquisitions in certain industries;
- the options an agent has in calculating annual turnover;
- the record keeping requirements for these arrangements; and
- how a commission or similar payment to the agent is treated under these arrangements.

5. Thirdly, the Ruling explains the special rules in Division 57 that apply to resident agents acting for non-residents that make taxable supplies and creditable acquisitions in Australia. In particular, the Ruling explains:

- who is liable for the GST payable on a taxable supply or taxable importation made by a non-resident through a resident agent;
- who is entitled to the input tax credits for a creditable acquisition or creditable importation made by a non-resident through a resident agent;
- the treatment of any adjustment that a non-resident has relating to a supply, acquisition or importation made through a resident agent;
- the registration requirements for a resident agent acting for a non-resident;
- the requirements regarding cancellation of registration of a resident agent acting for a non-resident;
- the notification requirements of a resident agent upon cessation of the agency relationship with a non-resident;
- the tax periods applicable to a resident agent acting for a non-resident; and

- the GST return requirements for non-residents and their resident agents.

6. Finally, the Ruling explains a principal's entitlement under Division 111 to an input tax credit for reimbursing an agent for expenses the agent incurs in connection with the carrying on of the principal's enterprise. It also outlines the tax invoice requirements for a reimbursement to agents.

7. Certain terms used in this Ruling are defined or explained in the Definitions section of this Ruling. These terms, when first mentioned elsewhere in the body of the Ruling, appear in **bold** type. Other terms used in this Ruling are defined or explained in section 195-1 of the GST Act.

8. Unless otherwise stated, all legislative references in this Ruling are to *A New Tax System (Goods and Services Tax) Act 1999* ('GST Act').

Date of effect

9. When finalised, this Ruling applies from 1 July 2000.

Context of agency relationships

General law and agency relationships

10. An intermediary may be authorised by another party to do something on that party's behalf. Generally, the intermediary is called an agent. The party who authorises the agent to act on their behalf is called the principal. For an insurance policy, the intermediary is often called an insurance broker. The party who authorises an insurance broker to act on their behalf is called the insured. Also, if appropriately authorised, an insurance broker could act as an agent on behalf of the insurer.

11. For commercial law purposes, an agent is a person who is authorised, either expressly or impliedly, by a principal to act for that principal so as to create or affect legal relations between the principal and third parties.[1]

12. The principal is bound by the acts of an agent as a result of the authority given to the agent. The relationship between a principal and an agent is a consensual one so that no party can claim to be a

[1] *International Harvester Company of Australia Proprietary Limited v. Carrigan's Hazeldene Pastoral Company* (1958) 100 CLR 644.

principal's agent unless both parties consent to the creation of the agency.[2]

13. Further, a principal may be bound by the acts of another person if the principal acts in a way that a third party believes that the other person is authorised to act as the principal's agent when this previously has not been the case. The authority for the agent to act for the principal in this circumstance is termed 'ostensible authority'. The principal will be liable for acts of the agent within the scope of the authority that the principal gives to the agent by virtue of his or her conduct and actions.

14. The characteristics of actual authority and ostensible authority were summarised in *Equiticorp Finance Ltd (in liquidation) v Bank of New Zealand* (1993) 32 NSWLR 50. As Clarke JA and Cripps JA stated at 132:

> 'An agent may have actual authority to bind a principal which is quite distinct from, but may overlap, ostensible authority. Actual authority may be express or implied. There is no evidence that Hawkins had express authority to commit the use of the liquidity reserve and the only question is whether implied actual authority or ostensible authority was established.
>
> Actual authority arises where a principal grants, and an agent accepts, authority for the agent to perform specific tasks on behalf of the principal – in short there must be a consensual agreement between the principal and agent. Notwithstanding the absence of an express agreement, the parties, that is, the principal and agent, may conduct themselves in such a way that it is proper to infer that the relevant authority has been conferred on the agent.
>
> Accordingly, where the question is whether the agent has implied authority to act in a particular way the court directs its attention to the conduct of the parties in order to decide whether the inference of authority should be drawn. Ostensible authority is quite different. The question then is whether the principal has held out the agent as having authority to act on its behalf. Obviously a principal may expressly hold out a person as its agent to act on his or her behalf in a specific transaction but usually where this occurs there will have been a grant of actual authority. On the other hand there may be no evidence of a grant of actual authority and yet the principal may have so acted as to hold out the agent as having the

[2] *Equiticorp Finance Ltd (in liquidation) v. Bank of New Zealand* (1993) 32 NSWLR 50, at 132; *Garnac Grain Co., Inc. v. HMF Faure & Fairclough, Ltd and Bunge Corporation* [1967] 2 All ER 353.

requisite authority. In many instances the circumstances which gave rise to ostensible authority may also provide a basis for inferring an actual grant of authority.'

15. When an agent uses his or her authority to act for a principal then any act done on behalf of that principal is an act of the principal. Also, a principal is not bound by acts that are not within the expressed, implied or ostensible authority conferred on the agent. However, the principal may ratify or confirm an unauthorised dealing.

16. Particular statutes may govern the creation of an agency relationship for different transactions. For example, the appointment of an agent by a deed is required where the agent must execute an instrument under seal on behalf of the principal.[3] Also, the appointment of an agent is required in writing where the agency is to last for a period exceeding one year.[4]

Special agents

17. Agents can be classified according to the extent of the authority conferred by the principal. Special agents have authority to act for some special occasion or purpose that is not within the ordinary course of business or a profession. For example, Mike appoints Graeme as his agent for the purposes of obtaining a motor vehicle. The only authority given to Graeme as an agent is to obtain the motor vehicle.

General agents

18. General agents have authority arising out of, and in the ordinary course of their business, to do some act or acts on behalf of their principals in relation to that business. The term 'general agents' also refers to an agent who is authorised to act on behalf of a principal, generally in transactions of a particular kind or incidental to a particular business. That is, the principal of a general agent is bound by any acts of the agent that are incidental to the ordinary conduct of the agent's business or effective performance of his duties, even if the principal has imposed limitations on the agent's authority. Share brokers, solicitors or property managers are examples of this type of agency relationship.

[3] State or Territory legislation dealing with interests in real property.
[4] State or Territory legislation that applies the Statute of Frauds.

Universal agents

19. Universal agents have authority to act for the principal in all matters. Usually, a universal agent is appointed by a power of attorney.

GST law and agency relationships

Attribution

20. Where a principal makes a creditable acquisition through an agent, the input tax credit to which the principal is entitled would be attributable according to the basic attribution rules set out in section 29-10 unless a special attribution rule applies. Similarly, the principal would attribute a decreasing adjustment according to the basic attribution rules set out in section 29-20 unless a special attribution rule applies.

21. However, to properly attribute any input tax credits or decreasing adjustments according to those basic rules, a principal may need to know information about when consideration is provided, when an invoice is issued or whether an adjustment is required. If a principal does not obtain this information until after the end of the relevant tax period in which attribution would normally occur, the application of the basic attribution rules may impose an unreasonable burden on the principal. Accordingly, the Commissioner has made a determination under section 29-25 to alter the attribution rules for principals who rely on an agent for information required to account for GST. A copy of that determination is attached to Goods and Services Tax Ruling GSTR 2000/29 as Schedule 4.

22. However, the particular attribution rule referred to in the previous paragraph does not alter the application of Division 153 or Division 57. In particular, Subdivision 153-A provides that a principal must attribute input tax credits or adjustments to the first tax period for which the principal gives the Commissioner a GST return when either the principal or the agent holds the relevant tax invoice or adjustment note.[5]

Documentary requirements

23. Under the general rules about tax invoices and adjustment notes, a tax invoice for a taxable supply or an adjustment note must be issued by a principal who makes supplies through an agent.[6] However, Subdivision 153-A provides that the principal's obligations are complied with if the agent issues tax invoices and adjustment

[5] Sections 153-5 and 153-10.
[6] Paragraphs 29-70(1)(a) and 29-75(1)(a).

notes on behalf of the principal for those supplies made by the principal through the agent.[7]

Agreements and determinations under Subdivision 153-B

24. Subdivision 153-B simplifies the way you can account for GST by allowing an option for entities to enter into an arrangement under which an agent is treated as a separate supplier and/or acquirer. The general effect of entering into these arrangements in respect of both supplies and acquisitions is that the principal and agent are treated as acting as between a principal and another principal.

25. These arrangements do not impact on other taxation laws except where specifically noted. Nor do the arrangements impact upon other laws or contractual arrangements between the parties. The option exists for GST purposes only and allows an alternative way for agents and principals to account for GST.

Resident agents and non-resident principals

26. A **non-resident** entity may make taxable supplies, taxable importations, creditable acquisitions or creditable importations through a **resident agent**. The resident agent is required to be registered if the non-resident is registered or required to be registered. The provisions of Division 57 treat any liabilities or entitlements of the non-resident as those of the resident agent.

Reimbursement of agent's expenses

27. You may make an acquisition through an agent for which the agent may incur extra expenses (for example, motor vehicle expenses) in acting on your behalf. If you reimburse the agent for expenses, you may be entitled to claim the input tax credits for those reimbursements under Division 111. These provisions [8] allow a principal to claim the input tax credits on reimbursements made to the agent for creditable acquisitions made by the agent while the agent was acting on the principal's behalf. Otherwise, the reimbursements are not creditable acquisitions of the principal under Division 11.[9]

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[7] Sections 153-15 and 153-20.
[8] Section 111-5.
[9] Subsection 111-5(4).

Ruling with explanations

Agency relationships

Factors that indicate an agency relationship

28. In most cases, any relevant documentation about the business relationship, the description used by the parties and the conduct of the parties establish the existence of an agency relationship. Therefore, the following factors may show that you are an agent under an agency relationship, although no single factor (by itself) is determinative:

- any description of you as an agent, having authority to act for another party, in an agreement (expressed or implied) between you and the other party;
- any exercise of the authority for you to enter into legal relations with a third party;
- whether you bear any significant commercial risk;
- whether you act in your own name;
- whether you are remunerated for your services by way of commissions and whether you are entitled to keep any part of your remuneration secret from another party; and
- whether another party decides the price of things that you might sell to third parties.

29. In some situations, these factors may be difficult to establish. For example, situations may arise where:

- the existence of a principal is disclosed but not named; or
- the existence of a principal is not disclosed to third parties.

However, documents used by the parties and the conduct of the parties may still indicate the existence of an agency relationship.

Business use of the term 'agent'

30. Many intermediaries in commercial transactions are often described as 'agents', 'distributing agents', 'selling agents', 'marketing agents', 'sole agents' or 'exclusive agents'. Depending upon the terms of the arrangements you have with your suppliers, you could be acting as a buyer and a reseller rather than as an agent.

31. The business use of the word 'agent' was discussed in *International Harvester Company of Australia Proprietary Limited v.*

Carrigan's Hazeldene Pastoral Company (1958) 100 CLR 644. The High Court stated at 652:

> 'Agency is a word used in law to connote an authority or capacity in one person to create legal relations between a person occupying the position of principal and third parties. But in the business world its significance is by no means thus restricted.'

Their Honours further stated at 653:

> 'No one supposes that the "distributing agent" or "exclusive agent" in a particular "territory" for a proprietary commodity or specific kind of article or machine is there to put a "consumer" into contractual relations with the manufacturer. In the case of any wide geographical distribution there is a general understanding of the practices of allotting territories, of zoning, of providing some regional superintendence of dealers or distributing "agents" as well as maintenance, and sometimes of the proper use, of the machine or article. None of this implies that the manufacturer or the head supplier contracts with the ultimate buyer or "consumer" as vendor.'

32. Consequently, the relationship between the parties is determined by an examination of the particular facts surrounding relevant transactions. However, should there be any doubt about the position of the parties in a transaction, an agreement may contain descriptions that clarify the relationship.

33. Nevertheless, an agency relationship can arise even where the contract governing a relationship specifically precludes it from being an agency. In the New Zealand case of *Case R43* (1994) 16 NZTC 6,190, which dealt with GST, the distributor of motor vehicles entered into an agreement that authorised a dealer to sell its vehicles. The agreement expressly stated that the dealer was not an agent of the distributor. When the dealer sold a motor vehicle it had to give the purchaser a repair warranty. It was held that the dealer gave the repair warranty to each customer as an agent for the distributor and that the agreement could not displace the agency relationship which clearly applied in practice.

34. A clause in an agreement which states that an agency relationship exists must be considered with all the other terms of the agreement. Such a clause cannot receive effect according to its terms if it contradicts the effect of the agreement as a whole; the parties to an agreement cannot alter the true substance of the relationship by simply giving it a different label (see *Potter & Anor v. Customs and*

Excise Comrs [1985] STC 45). As Gray J stated in *Re Porter; Re Transport Workers Union of Australia:*[10]

> 'Although the parties are free, as a matter of law, to choose the nature of the contract which they will make between themselves, their own characterisation of that contract will not be conclusive. A court will always look at all of the terms of the contract, to determine its true essence, and will not be bound by the express choice of the parties as to the label to be attached to it. As Mr Black put it in the present case, the parties cannot create something which has every feature of a rooster, but call it a duck and insist that everybody else recognise it as a duck.'

However, the parties may use such a clause to overcome any ambiguity as to the true nature of the relationship.[11]

Examples of the business use of the term 'agent'

Example 1

35. A *newsagent* acts as an agent for one publisher and as a buyer and reseller for another publisher depending upon each agreement the newsagent has with the individual publishers. By the use of the word 'agent', a customer may believe that the newsagent acts as an agent for all publishers. However, the newsagent can refer to the particular relationship with each publisher to determine the nature of each sale made to a customer. Therefore, the newsagent may not be an agent for all of the publications it sells to its customers.

Example 2

36. When a *real estate agent* acts as a marketer of a property, it does so in a limited capacity. That is, the real estate agent normally has no authority to sell the property but can act on behalf of the vendor in other ways when selling the property (for example, arranging inspections and advertising). Generally, instructions will be given by the vendor as to the price and an agreement will be reached between the parties as to how the property will be marketed. The agent will then solicit offers and transmit them to the vendor. The real estate agent cannot create or affect the vendor's legal relations with a purchaser.

37. As no interest in the property passes to the real estate agent, there is no taxable supply of property from the vendor to the real

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[10] (1989) 34 IR 179 at 184.

[11] *Australian Mutual Provident Society v. Chaplin and Anor* (1978) 18 ALR 385, at 389-390.

estate agent. However, there is a supply from the real estate agent to the vendor, being the provision of services by the real estate agent to the vendor. Accordingly, a commission may be payable.

38. However, a real estate agent may affect the legal relations of the vendor when, for example, the agent arranges additional advertising on behalf of the vendor. In relation to this transaction, the real estate agent is acting as an agent of the vendor.

Examples of agency relationships

Example 3

39. An auctioneer acts for a vendor to sell goods at an auction by providing auction services to the vendor and charging a commission. The vendor is the principal and the auctioneer is the agent. The auctioneer, on behalf of the vendor, is making a supply of goods to the purchaser. The auctioneer also is making a supply of auction services to the vendor.

Example 4

40. An entity is appointed as an agent to represent and organise a tour on behalf of an entertainer. The entity is the agent and the entertainer is the principal. The entity is making a supply to the entertainer by representing and organising the tour for the entertainer.

Example 5

41. A travel agent agrees with a hotel company to sell accommodation to a traveller on behalf of the hotel for a commission. The travel agent is an agent and the hotel company is a principal. The travel agent is making a supply by arranging the accommodation for the hotel.

Example 6

42. A real estate agent acts under a commercial property management agreement with a landlord to arrange a supply of premises by the landlord. The real estate agent is an agent for the landlord when it arranges leases with tenants.

Examples where there is no agency relationship or where agents act in their own right

Example 7

43. When a lessee enters into a lease agreement with the owner of the property (the lessor), an agency relationship is not created merely because of a reimbursement clause in the agreement, without the existence of the further factors mentioned in paragraph 28.

44. However, if the lessee is required under the terms of the lease agreement to pay expenses on behalf of the lessor as an agent, then a lessor and lessee may enter into a Subdivision 153-B arrangement. On this basis, the lessor and lessee both may act as a principal for GST purposes, as outlined in paragraphs 72 to 88.[12]

Example 8

45. A supply to the lessee for which the lessee is liable (such as electricity where the contract is between the utility and the lessee), will be a separate supply to that of the property. This supply does not involve an agency relationship.

Example 9

46. A travel agent purchases from a hotel company several nights accommodation that it later sells to a third party as part of a package. When the travel agent sells the accommodation, the travel agent does so as a principal and not as an agent of the hotel company. There are two separate supplies regarding the accommodation. The first is from the hotel company to the travel agent, and the second is from the travel agent to the third party.

Agency relationship and disbursements

47. Agents may incur expenses on a client matter both as an agent of the client and as a principal in the ordinary course of providing their services to the client. For example, in most cases, even though agreements between solicitors and clients may not use the term agent or agency, it is clear that the clients have authorised the solicitors to act on their behalf in the particular matter. When the solicitor acts as an agent for the client, the general law of agency applies so that the solicitor is 'standing in the shoes' of the client.

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[12] However, Subdivision 153-B arrangements cannot be entered into for Division 81 expenses that are subject to the *A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2000 (No. 2)* (See paragraph 72 of this Ruling).

48. If a disbursement is made by a solicitor and incurred in the solicitor's capacity as a paying agent for a particular client, then no GST is payable by the solicitor on the subsequent reimbursement by the client. This is because the goods or services to which the disbursement relates are supplied to the client, not to the solicitor, by a third party. Also, the reimbursement forms no part of the consideration payable by the client for the supply of services by the solicitor. However, if goods or services are supplied to the solicitor to enable the solicitor to perform services supplied to the client, GST is payable by the solicitor on any reimbursement by the client of expenses incurred on those goods or services, whether the reimbursement is separately itemised or included as part of the solicitor's overall fee. This is because the reimbursement is part of the consideration payable by the client for services supplied by the solicitor.[13]

49. The following are examples of common disbursements that, when paid for by a solicitor as a paying agent of the client, GST is not payable on the subsequent reimbursement by the client:

- application fees;
- registration fees;
- court fees;
- barrister's fees when the barrister is engaged by the client;
- incorporation fees;
- most fees in connection with registering and maintaining the status of particular legal relationships such as companies, partnerships, societies or associations;
- fines, penalties, stamp duty and taxes; and
- probate fees.

50. The following are examples of common disbursements that, depending upon the contractual arrangements between the client and the solicitor, are incurred by a solicitor and then reimbursed by a client as part of the consideration payable for legal services provided to the client by the solicitor. GST is payable on the subsequent reimbursement by the client for:

- search fees;
- municipal search fee (eg rates; zoning; permits);
- birth/death/marriage certificate fees;

[13] *Rowe and Maw v. Customs and Excise Commissioners* [1975] 2 All ER 444.

- barrister's fees when the barrister is engaged by the solicitor;
- witness fees;
- fees for recording court proceedings;
- service of document fees;
- fees for expert report or attendance in court; and
- fees to obtain court transcript.

51. The following are examples of costs that a solicitor may incur in providing a legal service to the client. GST is payable on any subsequent payment by the client for the supply of the legal service for:

- telephone expenses;
- postage expenses;
- photocopying expenses;
- courier expenses;
- word processing expenses; and
- travel expenses of the solicitor and staff.

Example 10

52. A law firm acting for a client charges the client for costs incurred in providing a legal service and receives a fee for its professional services. The firm acts as a paying agent for the client with respect to the outgoings which the client is legally obliged to pay (such as the payment of land taxes and court costs) for supplies made to it. However, an agency relationship generally does not apply to those circumstances where the law firm provides a legal service for a client, pays for taxable supplies on its own behalf and then charges the client for those expenses (such as photocopying and telephone calls).[14]

Special rules that apply to agents and insurance brokers under Subdivision 153-A

GST payable and input tax credits under agency relationships

53. If you are an agent at general law, you are an agent for GST purposes unless Subdivision 153-B applies. Accordingly, if you are an agent (where taxable supplies are made through you), the principal is liable for any GST payable on the supplies. Also, if you are an

[14] *Fact Sheet– Legal fees and charges* (NAT No. 3120-05.2000).

agent (where creditable acquisitions are made through you), the principal is entitled to any input tax credits.[15]

54. As noted earlier in paragraph 21, the Commissioner has made a determination[16] under section 29-25 , to alter the attribution rules for supplies and acquisitions made by an agent where the supplier or recipient has to rely on the agent for information to account for GST payable, input tax credits and adjustments for supplies and acquisitions made through the agent.

55. The particular attribution rule about principals relying on information from their agents for supplies and/or acquisitions made under an agency relationship requires that the principal becomes aware of the information. Whether the principal becomes aware of the required information is a question of fact in each case. It is based on the principal's actual knowledge of the information needed to account for any GST payable on the supply, any input tax credit arising from the acquisition or any related adjustment.[17] However, the determination does not alter the application of Subdivision 153-A about which party holds the tax invoice or adjustment note.

56. This particular attribution rule does not apply to GST payable and input tax credits under agency relationships made by a non-resident through a resident agent. Division 57 applies to these supplies and acquisitions.[18]

Attributing input tax credits for creditable acquisitions made through an agent

57. A principal or an agent might not hold a tax invoice for a creditable acquisition when the principal gives to the Commissioner a GST return for the relevant tax period. If so, the input tax credit (including any relevant part of the input tax credit) for the acquisition is not attributable to that tax period under section 153-5. It is attributable to the first tax period for which the principal gives to the Commissioner a GST return at a time when the principal or the agent holds that tax invoice.[19]

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[15] The rules attributing GST payable on taxable supplies made through agents are explained in Goods and Services Tax Ruling GSTR 2000/29.
[16] Schedule 4 of Goods and Services Tax Ruling GSTR 2000/29.
[17] Paragraphs 87 to 90 of Goods and Services Tax Ruling GSTR 2000/29.
[18] See Goods and Services Tax Ruling GSTR 2000/29.
[19] The rules for attributing input tax credits for creditable acquisitions made through an agent are explained in Goods and Services Tax Ruling GSTR 2000/29.

Attributing decreasing adjustments relating to taxable supplies made through an agent

58. A principal or an agent might not hold an adjustment note for a decreasing adjustment when the principal gives to the Commissioner a GST return for the relevant tax period. If so, the decreasing adjustment (including any relevant part of the adjustment) is not attributable to that tax period under section 153-10. It is attributable to the first tax period for which the principal gives to the Commissioner a GST return at a time when the principal or the agent holds that adjustment note.

Issuing tax invoices for taxable supplies made through an agent

59. Paragraph 29-70(1)(a) requires that the principal (as the supplier) must issue a tax invoice for a taxable supply. However, if a principal makes a taxable supply through an agent, section 153-15 allows either a principal or an agent, but not both, to issue the tax invoice. A principal may be liable to a penalty, under the *Taxation Administration Act 1953,* if the principal and agent both issue separate tax invoices for the same taxable supply.[20]

60. Subsection 29-70(2) requires that if the principal (as the supplier) has not issued a tax invoice and the recipient of the supply requests one, it must be issued within 28 days of that request. In agency relationships, this obligation arises when the recipient makes a request to either the principal or the agent, and is complied with if either the principal or the agent gives the recipient a tax invoice within 28 days after the request.[21]

61. Although, in agency relationships, Section 153-15 has effect despite section 29-70, the requirements for the information that must be contained in a tax invoice remain the same. That is, the tax invoice:

- must set out the ABN of the entity that issues it which can either be that of the principal or the agent (paragraph 29-70(1)(b)); and
- must set out the price of the supply (paragraph 29-70(1)(c)); and
- must contain such other information as regulation 29-70.01 of *A New Tax System (Goods and Services Tax) Regulations 1999* (the GST regulations) specifies (paragraph 29-70(1)(d)); and
- must be in the approved form (paragraph 29-70(1)(e)).

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[20] Section 288-50 of Schedule 1 to the *Tax Administration Act 1953.*
[21] Subsection 153-15(1).

62. There is an argument that subsection 153-15(1) only varies the requirements of subsection 29-70(2). However the Commissioner considers that the better view is that subsection 153-15(1) also varies the requirements set out in paragraphs 29-70(1)(b) and 29-70(1)(d).

63. Regulation 29-70.01 of the GST regulations states, inter alia, that the tax invoice must contain the name of the supplier.[22] However, as discussed in the previous paragraph, a document is a tax invoice that meets the requirements of subsection 29-70(1), if it sets out:[23]

- the principal's name and ABN without the agent's name and ABN as the issuer of the tax invoice; or
- the agent's name and ABN or address, instead of the principal's name and ABN as the supplier.

64. You may act as an agent for more than one principal in a single dealing with a customer. In addition to supplies you make as an agent on behalf of your principals, you may also make a separate supply on your own account. In these situations, you may issue the one tax invoice that shows details for all of the supplies that you make.

Issuing adjustment notes for taxable supplies made through an agent

65. Paragraph 29-75(1)(a) requires that the principal (as the supplier) must issue an adjustment note for an adjustment that arises from an adjustment event relating to a taxable supply. If the principal has not issued an adjustment note and the recipient of the supply requests one, it must be issued within 28 days of that request.[24]

66. An adjustment note for a decreasing adjustment relating to a taxable supply made through an agent can be issued by either the principal or its agent, but only one adjustment note can be issued for that adjustment.[25] The principal and the agent should not both issue separate adjustment notes for the one adjustment. A principal may be liable to a penalty, under the *Tax Administration Act 1953,* if both issue separate adjustment notes for the same adjustment event relating to a taxable supply.[26]

67. Although in agency relationships, section 153-20 has effect despite section 29-75, the requirements for the information that must

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[22] Paragraphs 29-70.01(2)(c) & (3)(c) of the GST regulations.
[23] Paragraph 36 of Goods and Services Tax Ruling GSTR 2000/17. Subsection 29-70(1) allows the Commissioner to treat a document as a tax invoice that does not satisfy all the requirements of this provision.
[24] Subsection 29-75(2) or such further period determined by the Commissioner.
[25] Section 153-20.
[26] Section 288-50 of Schedule to the *Tax Administration Act 1953.*

be contained in an adjustment note remain the same.[27] That is, the adjustment note:

- must set out the ABN of the entity that issues it, which can either be that of the principal or the agent (paragraph 29-75(1)(b)); and
- must contain such other information as the Commissioner determines in writing[28] (paragraph 29-75(1)(c)); and
- must be in the approved form (paragraph 29-75(1)(d)).

68. There is an argument that subsection 153-20(1) only varies the requirements of subsection 29-75(2). However, the Commissioner considers that the better view is that subsection 153-20(1) also varies the requirements set out in paragraphs 29-75(1)(b) and 29-75(1)(c).

69. The Commissioner's determination in Schedule 1 attached to Goods and Services Tax Ruling GSTR 2000/1 states, inter alia, that the adjustment note must contain the name of the principal (as the supplier) or the name of the agent of the principal (as the supplier).[29] A document is an adjustment note that meets the requirements of subsection 29-75(1), if it sets out:

- the principal's name and ABN without the agent's name and ABN as the issuer of the tax invoice; or
- the agent's name and ABN or address, instead of the principal's name and ABN as the supplier.

Insurance supplied through insurance brokers

70. When an insurance policy is supplied by an insurer through an insurance broker who is acting on behalf of the recipient of the supply, section 153-25 has effect as if the supply were made through the insurance broker acting as an agent of the insurer.[30] This means that the insurance broker may issue tax invoices or adjustment notes on behalf of the insurer. The Commissioner will treat a document that meets the requirements of Subdivision 29-C as a tax invoice or an adjustment note, if it shows the name and ABN of the insurance broker instead of the insurer.

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[27] Goods and Services Tax Ruling GSTR 2000/1.

[28] *A New Tax System (Goods and Services* Tax*) Adjustment Note Information Requirements Determination (No.1) 2000* in Schedule 1 of Goods and Services Tax Ruling GSTR 2000/1.

[29] *A New Tax System (Goods and Services* Tax*) Adjustment Note Information Requirements Determination (No.1) 2000*

[30] See GSTR 2000/5 for an explanation of GST for insurance agents and brokers.

Recipient created tax invoices

71. The Commissioner has determined classes of tax invoices that may be issued by a recipient of a taxable supply.[31] GST regulation 29-70.02 states the information that must be contained in such an invoice.[32] If an agent creates the recipient created tax invoice, then the requirements of the GST Act are satisfied where the agent's ABN is used instead of the principal's ABN.[33]

Principals and agents as separate suppliers and/or acquirers under Subdivision 153-B

72. Section 153-50 provides that entities may enter into an arrangement under which an agent will be treated as a separate supplier and/or acquirer. That is, the agent will be treated as a principal in its own right. However, an arrangement cannot be entered into when the supply of agency services to the principal is not a taxable supply of the agent under section 9-5 or when the acquisitions made through an agent are subject to the determination of the Treasurer under Division 81[34].

73. To enter this arrangement there must be a written agreement under which:

- the agent arranges to make supplies and/or acquisitions to or from third parties on behalf of the principal;[35]
- the kinds of supplies and/or acquisitions to which the arrangement applies are specified;[36]
- the agent is treated for the purposes of GST law as a principal in making supplies or acquisitions;[37]
- the agent will issue all tax invoices and adjustment notes relating to those supplies to third parties in the agent's name and the principal will not issue such documents;[38] and

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[31] See subsection 29-70(3) and Goods and Services Tax Ruling GSTR 2000/10.
[32] Goods and Services Tax Ruling GSTR 2000/10 explains the Recipient Created Tax Invoice requirements.
[33] See paragraphs 61 to 63 of this Ruling that also apply to recipient created tax invoices. See paragraph 27 of Goods and Services Tax Ruling GSTR 2000/1 that applies to recipient created adjustment notes.
[34] *A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2000 (No. 2).*
[35] Paragraph 153-50(a).
[36] Paragraph 153-50(b).
[37] Paragraph 153-50(c).
[38] Paragraph 153-50(d).

- both parties must be registered.[39]

The effects of the arrangements on supplies

74. The effect of entering into these arrangements is that the principal and the agent treat the supply of goods or services that the principal makes to third parties through the agent as two separate supplies, and that they are treated as acting between themselves as principal to principal for GST purposes.

75. A taxable supply made to a third party is taken to be a taxable supply made by the agent.[40] In addition, the principal is taken to have made a taxable supply to the agent.[41] The value of that second supply is determined by reference to the amount the agent is actually required to pay the principal.[42] This amount is the price charged and paid by the third party for the supply, less the amount the agent is permitted (under the contract with the principal) to keep as a commission or similar remuneration for the agency services. In these circumstances, the agent's supply of services is not a taxable supply so that the principal is not entitled to claim the input tax credits relating to this payment.

76. As the supply by the principal to the agent is a taxable supply under the arrangement, the principal is required to account for 1/11 of the price of the supply to the ATO. The agent will be able to claim 1/11 of the price as an input tax credit in accordance with ordinary GST principles applied to the treatment of the transaction under Subdivision 153-B.

77. In some cases, the agreement may require that the agent pay the principal the entire amount the third party is charged for the supply. Then, in a separate transaction, the principal pays the agent a commission or similar payment for the agency services. If this situation occurs, subsection 153-55(3) provides that the amount the agent has already been required to pay is reduced by the amount of the commission or similar payment for the agency services. In these circumstances, the agent's supply of services is not a taxable supply so that the principal is not entitled to claim the input tax credits relating to the payment of the commission or similar payment.

78. The meaning of 'a commission or similar payment' in subsection 153-55(3) cannot be read in isolation as these payments arise out of the principal's liability to pay the agent for the provision of the agent's services. That is, there is a direct relationship between the payments made by the principal and the services provided by the

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[39] Paragraph 153-50(e).
[40] Subsection 153-55(1).
[41] Subsection 153-55(2).
[42] Paragraph 153-55(2)(b).

agent. Hence, regardless of their description (for example, as management fees), they are made to the agent by the principal in respect of services rendered by the agent for making the taxable supplies, taxable importations, creditable acquisitions or creditable importations for which the agency relationship was created.

Example 11

79. The House of Robert (principal) supplies perfume at a price of $143 (GST inclusive) to Heather (third party) through Baxters (agent). Baxters is entitled to receive a commission of $33 (GST inclusive) from The House of Robert for the selling service. The House of Robert and Baxters have entered into a Subdivision 153-B arrangement.

80. The House of Robert is taken to have made a taxable supply to Baxters with the value of 10/11 of the amount payable to The House of Robert which equals the price to Heather less the commission to Baxters (i.e., value = 10/11 x ($143- 33) = $100). The House of Robert is liable to pay the GST of $10 on the taxable supply to Baxters (i.e., 10% of the $100). Baxters makes a taxable supply to Heather having a price of $143 including GST payable of $13 (1/11 x $143). Baxters is entitled to an input tax credit of $10 for the GST include in his acquisition from The House of Robert.

81. However, if the commission for agency services is paid after the end of the reporting period in which the relevant taxable supplies are made by the agent, this will be an adjustment event because the consideration for those supplies has changed. The price of each of those supplies made to the agent by the principal must be adjusted by a corresponding proportional amount of the commission. The principal must issue an adjustment note to the agent showing the change in consideration.

82. When the agent sells the goods to a third party, the supply is a taxable supply made by the agent and the agent is required to remit to the ATO 1/11 of the price it charged the third party.[43] The general attribution rules apply to the supply from the principal to the agent and from the agent to the third party.[44]

The effects of the arrangements on acquisitions

83. The effect of entering into these arrangements is that the principal and the agent treat acquisitions that the principal makes from third parties through the agent as two separate acquisitions and that they are treated as acting between themselves as principal to principal

[43] Subsection 153-55(1).
[44] Division 29 and Goods and Services Tax Ruling GSTR 2000/29.

for GST purposes. When an agent makes an acquisition from a third party on behalf of the principal it is taken to make an acquisition in its own right. The agent will be entitled to claim an input tax credit on that acquisition.[45]

84. The agent is taken to make a taxable supply to the principal.[46] The value of that acquisition is determined by reference to the amount that the principal is required to pay the agent.[47] Usually, this amount is the amount the third party charged for the supply, plus the amount the agent is permitted (under the contract with the principal) to charge as a commission or similar payment for the agency services. However, the agent's supply of services is not a taxable supply in its own right so that the principal is not entitled to claim the input tax credits relating to the payment of the commission or similar payment.

85. As the supply by the agent to the principal is a taxable supply under the arrangement, the agent is required to remit 1/11 of the price of the supply to the Commissioner. The principal can claim 1/11 of the price as an input tax credit (if they would have otherwise been making a creditable acquisition from the third party had Subdivision 153-B not applied) in accordance with ordinary GST principles applied to the treatment of the transaction under Subdivision 153-B.

86. In some cases, the principal pays the agent the entire amount that the third party charged for the supply. Then, in a separate transaction, the principal pays the agent a commission or similar payment for the agency services. If this situation occurs, subsection 153-60(3) provides that the amount the principal has already been required to pay is increased by the amount of the commission or similar payment for agency services. The agent's supply of services is then not considered to be a taxable supply in its own right so that the principal is not entitled to claim the input tax credits relating to the payment of the commission or similar payment. The general attribution rules apply to the supply from the third party to the agent and from the agent to the principal.[48]

Example 12

87. Elliott Party Supplies (principal) acquires stationery from Brizzy Stationery at a price of $550 (GST inclusive) through Dotty Services (agent). Dotty Services is entitled to receive a commission of $44 (GST inclusive) from Elliott Party Supplies for the purchasing service. Elliott Party Supplies and Dotty Services have entered into a Subdivision 153-B arrangement.

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[45] Subsection 153-60(1).
[46] Subsection 153-60(2).
[47] Paragraph 153-60(2)(b).
[48] Division 29 and Goods and Services Tax Ruling GSTR 2000/29.

88. Elliott Party Supplies is taken to have made a creditable acquisition from Dotty Services with the value of 10/11 of the amount payable to Dotty Services. This amount payable equals the amount payable to Brizzy Stationery plus the commission payable to Dotty Services (i.e., value = 10/11 x ($550+44) = $540). Elliott Party Supplies is entitled to an input tax credit of $54 (10% x $540). Dotty Services is liable to pay the GST of $54 on the taxable supply made to Elliott Party Supplies. Dotty Services is entitled to an input tax credit of $50 on the creditable acquisition it makes from Brizzy Stationery (1/11 of the $550).

Determinations that supplies or acquisitions are taken to be under these arrangements

89. Under subsection 153-65(1), the Commissioner may determine in writing that supplies or acquisitions of a specified kind are supplies or acquisitions to which the arrangements in section 153-50 apply. If the Commissioner makes a determination, principals and agents who are involved in making supplies or acquisitions of the specified kind are effectively taken to have agreed to adopt the arrangements referred to in section 153-50. However, one or both may notify the other in writing that supplies or acquisitions that the agent makes are not those to which the arrangements apply.

90. The Commissioner proposes to make a determination in relation to industries which have one or more of the following features:[49]

- a significant number of agents (for example, hair care industries);
- a significant number of principals (for example, sectors of the tourism industry with wholesale travel agents); or
- difficulties in obtaining written agreements (for example, industries in which the agents and principals involved are geographically isolated).

91. Industry associations, whose members are involved in agency relationships, can request that the Commissioner make a determination in respect of supplies or acquisitions of a specified kind. Your request for a determination should be made in writing or electronically and include the following information and documents:

- name of the industry association;

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[49] A determination was made on 3 July 2000 for multi-media products *(A New Tax System (GST) Application of Agency Arrangements to the Multi-Media Industry Determination (No. 1) 2000*).

- summary information about the group represented by the association;
- type of industry in which the agents operate;
- details of the supply and related transactions, including a description of the thing(s) supplied and current invoicing and payment practices;
- whether there is consensus amongst industry participants generally about the desirability of a determination; and
- an explanation as to why the determination is requested.

Your application should be addressed to:

GST General Technical Advice
PO Box 9935
in your capital city

or

E-mail to: gstmail@ato.gov.au

or

Facsimile: (02) 6058 7103

Turnover - supplies to which Subdivision 153-B applies

92. Section 188-24 allows an agent the option of calculating their turnover as if the arrangement was not entered into. If the agent chooses not to use this basis of calculation, their turnover is calculated by using the value of the supplies they are taken to make under the arrangement as per sections 153-55 and 153-60.

Record keeping

93. A principal involved in an arrangement by agreement is required to keep a record of the written agreement for at least five years after the agreement was made.[50] However, in the situation where a party opts out in writing of an arrangement that is covered by a Commissioner's determination made under subsection 153-65(1), both parties are required to keep records of that notice for at least five years after the notice was given.[51]

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[50] Subsection 70(1AA) of the *Taxation Administration Act 1953*.
[51] Subsection 70(1AB) of the *Taxation Administration Act 1953*.

Resident agents acting for non-residents under Division 57

GST liability

94. Under the general rules for GST, the supplier is liable for the GST on taxable supplies it makes and the entity making the taxable importation is liable for the GST on the importation.[52]

95. However, if you are a resident agent for a non-resident principal who is registered or required to be registered, and taxable supplies or taxable importations are made by your principal through you, then the GST payable on these transactions is payable by you and not the non-resident principal.[53]

Input tax credit entitlement

96. Under the general rules for GST, the entity making the creditable acquisition is entitled to the input tax credits for that acquisition. Also, the entity making the creditable importation is entitled to the input tax credits for that importation.[54]

97. However, if you are a resident agent for a non-resident principal who makes creditable acquisitions or creditable importations through you, then you are entitled to the input tax credit on the acquisitions or importations. The non-resident principal is not entitled to the input tax credit.[55]

Example 13

98. Woollen Rugs Co. is a New Zealand company that is registered for GST and imports rugs for sale in Australia. Woollen Rugs Co. is liable for the GST payable on the taxable importation and is entitled to the input tax credits for the creditable importation of rugs it makes. If Floor Coverings Co. sells the rugs as the resident agent for Woollen Rugs Co., then Floor Coverings Co. is liable for the GST on the taxable supply when the rugs are sold.

99. If the importation of the rugs is done through Floor Coverings Co as the resident agent of Woollen Rugs Co., Floor Coverings Co. is liable for the GST payable on the taxable importation and is also entitled to the input tax credits for the creditable importation. When the rugs are sold through Floor Coverings Co. as the resident agent, then it will be liable for the GST on those taxable supplies.

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[52] Sections 9-40 and 13-15.
[53] Section 57-5.
[54] Section 11-20 and 15-15.
[55] Section 57-10.

Adjustments

100. Any adjustments that a non-resident principal has relating to a supply, acquisition or importation made through a resident agent is treated as if the agent had the adjustment.[56] Section 17-10 (which is about the effect of adjustments on net amounts) does not apply to the non-resident principal in these situations.[57]

Resident agents are required to be registered

101. If you are a resident agent and your non-resident principal is registered or required to be registered for GST, then you are required to be registered. You will need to make reasonable enquiries to establish the non-resident's GST registration status or requirement to be registered for GST. Section 57-20 has effect despite section 23-5 which is about who is required to be registered.[58]

102. A resident agent with more than one non-resident principal who is registered or required to be registered for GST (several agency relationships) must have one registration for GST.

103. Where you have several agency relationships, you are not considered to be acting in different capacities. You are merely carrying on your enterprise and, therefore, only one registration is required.

Cancellation of registration of a resident agent

104. The Commissioner must cancel your registration if he is satisfied that you are not required to be registered and you must be notified of the cancellation. Sections 25-50 and 25-55 (which provide general rules on cancellation of registration) do not apply to the cancellation of your registration if you are a resident agent acting for non-residents.[59]

Notice of cessation of agency

105. If you cease to act as an agent for your non-resident principal or for any of your non-resident principals, you must notify the Commissioner in the approved form[60] within 14 days of the cessation.[61]

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[56] Section 57-15.
[57] Subsection 57-15(2).
[58] Subsection 57-20(2).
[59] Section 57-25.
[60] Section 995-1 of the *Income Tax Assessment Act 1997*.
[61] Section 57-30.

106. The notification will be in the approved form if it contains the following details:

- for individuals – your legal name;
- for entities that are not individuals – your trading name and contact details;
- your Australian Business Number;
- the name of the non-resident for whom you acted as resident agent;
- the date you ceased to be a resident agent for the non-resident;
- brief reason(s) for cessation of your agency relationship with the non-resident;
- whether you are a resident agent for any other non-resident;
- whether you are continuing to carry on an enterprise for which you need to be registered;
- a statement certifying that the information given is to the best of your knowledge, true, correct and complete; and
- your signature and date.

Your notice of cessation of agency should be addressed to:

Business Registration Service
Australian Taxation Office
PO Box 1198
Newcastle
2300

Tax periods of resident agents

107. If you are a resident agent who is acting as agent for a non-resident, the Commissioner must determine under section 57-35(1)[62] that monthly tax periods apply to you if the Commissioner is satisfied that any of your individual non-resident principal's annual turnover meets the tax period turnover threshold. Your determination takes effect on either 1 January, 1 April, 1 July or 1 October.[63] You will need to make reasonable enquiries to establish whether each individual non-resident's annual turnover exceeds the threshold of $20 million dollars or more. The Commissioner takes into account that a person exercising reasonable care about those enquiries may make an

[62] A Determination is to be made for individual cases.
[63] Subsection 57-35(2).

honest mistake about the non-resident's annual turnover based on reasonable grounds.

108. Any determination made under subsection 57-35(2) has effect in addition to Division 27, which refers to 'How to work out the tax periods that apply to you'. Your own annual turnover does not include the annual turnover of the non-resident for whom you are a resident agent. Annual turnover relates to supplies made in connection with an enterprise that you carry on.[64] As you are acting as an agent for the non-resident, the supplies made through you are not in connection with an enterprise that you carry on.

GST returns for non-residents

109. A non-resident is not required to give a GST return for a tax period if:

- the non-resident's net amount for the tax period is zero; or
- the only taxable supplies or taxable importations that the non-resident made (that are attributable to the tax period) are made through a resident agent.[65]

GST returns lodged by resident agents

110. If you are a resident agent acting for a non-resident and your net amount for a tax period is zero, you must lodge a return if your non-resident made taxable, GST-free or input taxed supplies or creditable acquisitions through you. Accordingly, as an agent you must lodge a return in the way you would if your net amount had not been zero, despite subsection 31-15(2), which is about 'The form and contents of GST returns'. [66]

Non-residents that belong to GST groups

111. If your non-resident principal or any of your non-resident principals is a member of a GST group then the Division 57 requirements do not apply for:[67]

- GST liability;
- input tax credit entitlements;
- adjustment requirements;

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[64] Subsection 188-15(1).
[65] Section 57-40.
[66] Section 57-45.
[67] Section 57-50

- resident agents registration requirements;
- resident agent cancellation of registration requirements;
- notice of cessation of agency requirements;
- resident agent tax period requirements;
- non-resident GST return requirements; and
- resident agent giving GST returns.

The grouping provisions in Division 48 would apply in determining the requirements under the GST law for the non-resident member.

Resident Agents that belong to a GST group

112. If you are a resident agent and a member of a GST group but not the representative member of that group, you must lodge a GST return for the taxable supplies, taxable importations, creditable acquisitions and creditable importations that the non-resident makes through you. However, the taxable supplies, taxable importations, creditable acquisitions and creditable importations that you make in the course or furtherance of your own enterprise as a member of the group are included in the GST return of the representative member.

113. If you are the representative member of the group then you would include the taxable supplies, taxable importations, creditable acquisitions and creditable importations that a non-resident makes through you in the GST return you lodge on behalf of the group.

Non-residents making supplies connected with Australia through an agent

114. Division 83 which is about 'Non-residents making supplies connected with Australia', does not apply where the taxable supply is made through a resident agent.[68]

Reimbursement of agents under Division 111

115. Where a principal reimburses an agent for expenses incurred in connection with carrying on the principal's enterprise, the principal may be entitled to input tax credits for those reimbursements.[69]

116. If the principal reimburses an agent for an expense it incurs that is related directly to its activities as the agent, the reimbursement

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[68] Paragraph 83-5(2)(b).
[69] Division 111.

is treated as consideration for an acquisition that the principal makes from the agent.[70]

117. If the principal acquires something supplied to it through an agent acting on its behalf in making the acquisition, then the general principles of agency apply and it is the principal who is considered to have made the acquisition. The consideration paid through the agent for that acquisition is covered by the general rules about creditable acquisitions and not by Division 111.

118. For example, if the agent acquires something supplied to the principal within the authority of the agency agreement, the acquisition is effectively made by the principal and could therefore be a creditable acquisition to the principal. However, if the agent on its own behalf incurs, for example, petrol expenses in making that acquisition, for which the principal reimburses the agent, the principal has not made a creditable acquisition of the petrol. The principal would therefore not be entitled to an input tax credit under Division 11 for the agent's acquisition of the petrol. However, Division 111 may entitle the principal to input tax credits in relation to the reimbursement.

Creditable acquisitions relating to reimbursements

119. The fact that the supply to the principal is not a taxable supply does not stop the acquisition referred to in paragraph 116 above being a creditable acquisition. However, the acquisition is not a creditable acquisition to the extent that the agent is entitled to an input tax credit for the thing acquired in incurring the expense and is not a creditable acquisition unless the supply of the thing acquired by the agent was a taxable supply.[71]

Example 14

120. Kate is a local entertainer who has appointed Jenni to represent and organise her a tour of South-East Queensland. Jenni runs an enterprise and is registered for GST. Jenni pays rent to her grandmother for use of her garage as additional storage space to cope with the extra volume of mail being received by her enterprise. Jenni's grandmother is not carrying on an enterprise and the supply of the storage space is not a taxable supply. Kate reimburses Jenni for part of the cost of the storage space. Kate cannot claim the input tax credit on this supply as it is not a creditable acquisition to her because the supply of the storage space to Jenni was not a taxable supply.

121. If Jenni rents additional storage through a mini storage provider who is registered for GST, any reimbursement by Kate to

[70] Subsection 111-5 (1).
[71] Subsection 111-5(3).

Jenni will not be a creditable acquisition as Jenni is entitled to an input tax credit on the acquisition of the storage space.

Amounts of input tax credits relating to reimbursements

122. An input tax credit is generally equal to 1/11 of the actual reimbursement. However, the agent may be reimbursed for costs that are not entirely related to his or her activities as an agent. If such a reimbursement is subject to the *Fringe Benefits Tax Assessment Act 1986* or would have been subject to Fringe Benefits Tax (FBT) if it were not an exempt benefit, the principal would still be entitled to an input tax credit equal to 1/11 of the total reimbursement. If the reimbursement is not subject to FBT (other than exempt benefits), the principal is only entitled to an input tax credit to the extent that the reimbursement is for activities directly relating to the agent's activities as your agent.[72]

Tax invoices relating to reimbursements

123. Generally, the principal must hold a tax invoice for a creditable acquisition to be able to account for the input tax credit in a GST return for the tax period. The tax invoice must be for the taxable supply to the agent. Therefore, the agent will have to obtain a tax invoice for any acquisition with a value exceeding $50 for which the principal reimburses the agent.[73]

Definitions

124. The following terms are defined for the purposes of this Ruling.

Insurance broker

125. Insurance broker has the meaning given by section 11 of the *Insurance Contracts Act 1984*.[74] Section 11 of the Insurance Contracts Act defines an insurance broker as 'a person who carries on the business of arranging contracts of insurance, whether in Australia or elsewhere, as agent for intending insureds but does not include a person who is a supplier within the meaning of section 73' (Insurance arranged in connection with supply of goods and services) of the *Insurance Contracts Act 1984*.

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[72] Section 111-10.
[73] Section 111-15.
[74] Section 195-1.

Non-resident

126. An entity that is not a resident of Australia for the purposes of the *Income Tax Assessment Act 1936*.[75]

Resident agent

127. An agent that is a resident of Australia for the purposes of the *Income Tax Assessment Act 1936*.[76]

Detailed contents list

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[75] Section 195-1.
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Your comments

129. If you wish to comment on this draft Ruling, please send your comments promptly by **20 October 2000** to:

Contact officers: Geoff Jensen / Veronica Taylor

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veronica.taylor@ato.gov.au
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Brisbane Q 4001

Commissioner of Taxation
6 September 2000

Previous draft:

Not previously issued in draft form.

Related Rulings/Determinations:

GSTR 2000/1; GSTR 2000/5; GSTR 2000/17; GSTR 2000/10 GSTR 2000/29;

ANTS (GST) Application of Agency Arrangements to Multi- Media Industry Determination (No1) 2000; ANTS(GST)(Exempt Taxes, Fees and Charges) Determination 2000 (No.2);

Subject references:

- acquisitions
- adjustment notes
- agency relationships
- attribution rules
- creditable acquisitions
- disbursements
- general agents
- input tax credits
- insurance agents
- principals and agents
- recipient created tax invoices
- record keeping
- registration cancellation
- regulations
- reimbursement of agents
- required to be registered
- resident agents
- returns
- special agents
- supplies
- tax invoices
- tax periods
- taxable supplies
- turnover
- universal agents

Legislative references:

- ANTS(GST)A99 9-5
- ANTS(GST)A99 9-40
- ANTS(GST)A99 Div 11
- ANTS(GST)A99 11-20
- ANTS(GST)A99 13-15
- ANTS(GST)A99 15-15
- ANTS(GST)A99 17-10
- ANTS(GST)A99 23-5
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