GSTR 2001/D4 - Goods and services tax: apportioning the consideration for a supply that includes taxable and non-taxable parts

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Draft Goods and Services Tax Ruling
Goods and services tax: apportioning the consideration for a supply that includes taxable and non-taxable parts

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Preamble

This document is a draft for industry, professional and community 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 the final Ruling is 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 explains how you can identify whether a supply includes taxable and non-taxable parts under the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act).

2. The Ruling describes the characteristics of supplies that contain taxable and non-taxable parts. It refers to these supplies as mixed supplies. It also describes the characteristics of supplies that appear to have more than one part but that are essentially supplies of one thing. These supplies are referred to as composite supplies.

3. The Ruling provides methods and examples that you may use to help you work out how to apportion the consideration for a mixed supply. This means that you can identify the consideration for the taxable part of the supply. The Ruling explains that you do not need to apportion the consideration for a composite supply.

4. The Ruling also discusses how you can work out the value of the taxable part of a mixed supply under sections 9-75 and 9-80 of the GST Act.

5. Unless otherwise stated, all legislative references in this Ruling are to the GST Act.

6. This Ruling applies to the valuing of the separate parts of a mixed supply that includes food. Goods and Services Tax Determination GSTD 2000/6 explains the circumstances where a

supply of food packaging is GST-free.[1] If both the rule stated in paragraph 7 of Goods and Services Tax Determination GSTD 2000/6 and the approach given in paragraph 21 of this Ruling apply to a supply that you make, then you may choose either approach.

7. The Ruling adopts interpretations of the GST Act expressed in other public rulings issued by the ATO. This Ruling, when finalised, does not alter the views expressed in those rulings, but explains and applies those views in the context of the particular subject matter of this Ruling.

Date of effect

8. This Ruling, when finalised, applies on and from 1 July 2000.

Context

9. You pay GST if you make a taxable supply.[2] However, a supply is not taxable to the extent that:

- it is GST-free;[3]
- it is input taxed;[4]
- a section of the GST Act states it is not a taxable supply;[5] or
- it does not meet the taxable supply requirements of paragraphs 9-5(a) to (d).

A supply (or part of a supply) that is not taxable is referred to in this Ruling as being non-taxable.

10. A supply may be characterised as consisting of one or more things or parts. That is, the supply may be regarded as commercially

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[1] Paragraph 7 of Goods and Services Tax Determination GSTD 2000/6 provides a rule to use so that where GST-free food is contained in packaging that might not otherwise be normal and necessary, the packaging may be treated as if it were normal and necessary and, therefore, GST-free. This rule only applies to packaging. It does not apply to promotional items accompanying the food and packaging or to items that are usually supplied separately.

[2] Subsection 7-1(1) and section 9-40.

[3] Section 9-5 gives effect to subsection 9-30(1) and Division 38 to the extent it is a GST-free supply.

[4] Section 9-5, gives effect to subsection 9-30(2) and Division 40 to the extent it is an input taxed supply.

[5] See Appendix A for examples.

distinct in its own right or it may be regarded as having several identifiable parts.[6]

11. Where you make a supply that is identifiable as having more than one part and each part is taxable, you do not need to apportion the consideration for the supply. This is because GST is payable on the whole supply. Similarly, if all of the parts of a supply are identifiable as being non-taxable, GST is not payable on any part of the supply.

12. However, where you make a supply that is a combination of separately identifiable taxable and non-taxable parts, you need to identify the taxable parts of the supply.[7] Then you can apportion the consideration for the supply and work out the GST payable on the taxable part of the supply.[8]

Ruling

13. Where you make a supply that includes taxable and non-taxable parts, you need to work out whether the supply is mixed or composite. GST is only payable on the taxable part of a mixed supply. If a composite supply is taxable, then GST is payable on the whole supply. If a composite supply is non-taxable, then no GST is payable on the supply.

Mixed supply

14. If you make a supply that contains separately identifiable taxable and non-taxable parts, it is a mixed supply.

Composite supply

15. If you make a supply that contains only one identifiable part and it includes something that is integral, ancillary or incidental to that part, then the supply is composite. A composite supply is essentially a supply of one thing.

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[6] Paragraph 9-10(2)(h) provides that a supply may include a combination of things.

[7] A supply that may, at first, appear to be a combination of taxable and non-taxable parts is not a mixed supply if it is given a specific treatment under the GST Act. For example, a supply consisting of a combination of foods that comes within paragraph 38-3(1)(c) is not a mixed supply because the whole supply is treated as not being GST-free.

[8] Apportioning the consideration for supplies that are subject to section 38-187 or section 38-190 (GST-free supplies to the extent that they are used or are for consumption outside Australia) is made in accordance with those provisions.

16. A composite supply is either taxable or non-taxable. It may also be a part of a larger mixed supply.

Differentiating between mixed and composite supplies

17. You make an objective assessment to determine whether the parts of a supply are separately identifiable.

18. If the parts are separately identifiable, then the supply is mixed. If the parts merely form part of the supply, because they are integral, ancillary or incidental, then the supply is composite.

19. The distinction between parts that are separately identifiable and things that are integral, ancillary or incidental, is a question of fact and degree.

20. Paragraphs 44 to 51 explain what are separately identifiable parts and paragraphs 52 to 57 explain what are integral, ancillary or incidental parts.

21. Something (or things taken together) is incidental if the consideration that would be apportioned to it (if it were part of a mixed supply) does not exceed **the lesser of**:

- $3.00; or
- 20% of the consideration for the total supply.

22. This means that if the consideration for a part of a supply does not exceed the lesser of $3.00 or 20% of the consideration for the total supply, you may choose to consider that part as integral, ancillary or incidental. If you do this, then you treat the supply as being composite without having to make an objective assessment. If you choose not to apply this approach, then you will need to assess whether the part is integral, ancillary or incidental.

23. If you cannot use this approach because the consideration for a part of a supply exceeds the lesser of $3.00 or 20% of the consideration for the total supply, that part may still be something that forms an integral, ancillary or incidental part of the supply. That is, an objective assessment may determine that the part is integral, ancillary or incidental.

24. However, a part in a supply that might otherwise be considered integral, ancillary or incidental is recognised as a part in its own right where a provision of the GST Act specifically requires you to recognise it, regardless of its scale or connection with the supply.[9]

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[9] For example, the supply of food as part of an excursion or field trip may be integral, ancillary or incidental, but paragraph 38-90(2)(b) requires the consideration to be apportioned.

Apportioning a mixed supply

25. GST is payable on a mixed supply that you make, but only to the extent that the supply is taxable. You need to apportion the consideration for a supply between the taxable and non-taxable parts to find the consideration for the taxable part.

26. You can use any reasonable method to apportion the consideration for a mixed supply. The method you use must be supportable in the particular circumstances.

27. You should keep records that explain the method you use to apportion a mixed supply.[10]

Calculating the GST payable on the taxable part of a mixed supply

28. The amount of GST payable on a taxable supply is 10% of the value of the taxable supply.[11] The application of sections 9-70, 9-75 and 9-80 to a mixed supply gives an amount of GST payable of 10% of the value of the taxable part of the mixed supply.

29. To work out the value of the taxable part of a mixed supply, you identify the parts of the supply and apportion the consideration to each of the parts. The value of the taxable part is 10/11 of the consideration for the taxable part, and the GST payable is equivalent to 1/11 of that consideration.[12]

30. Paragraphs 109 to 114 explain how you may calculate the GST payable on the taxable part of a mixed supply.

Explanation

31. GST is structured around the concept of supply. It is the nature of the supply that determines its GST treatment. Therefore, to determine how GST applies to a transaction, it is necessary to characterise the nature of the supply.

32. The scheme of the GST Act depends on a clear distinction being made between taxable and non-taxable supplies. The GST Act provides that a taxable supply comes within its ambit, but not to the extent that it contains any non-taxable parts. Parts may be non-taxable if they are GST-free, input taxed, otherwise made non-taxable by a provision of the GST Act, or if they do not meet the requirements of paragraphs 9-5(a) to (d).

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[10] Paragraph 70(1)(d) of the *Tax Administration Act 1953*.
[11] Section 9-70.
[12] Subsection 9-75(1) provides that the value of a taxable supply is 10/11 of the price of the supply.

33. GST is payable on taxable supplies. Section 9-5 states that:

> 'You make a *taxable supply* if:
>
> (a) you make the supply for consideration; and
>
> (b) the supply is made in the course or furtherance of an enterprise that you carry on; and
>
> (c) the supply is connected with Australia; and
>
> (d) you are registered, or required to be registered.
>
> However, the supply is not a taxable supply to the extent that it is GST-free or input taxed.'

34. Also, the meaning of taxable supply is affected by other provisions of the GST Act.[13] Appendix A includes things that the GST Act specifies are not a taxable supply or are to be treated as if they were not a taxable supply. This means that a supply that might otherwise meet the criteria required of a taxable supply will not be taxable.

35. Subdivision 9-C sets out how to work out the GST payable on a taxable supply. The amount of GST is 10% of the value of the taxable supply.[14] The value of a taxable supply is worked out from the price of the supply.[15] Where the consideration for the supply is expressed as an amount of money, the price is the amount payable on the supply. If the consideration (or part of it) is not expressed as an amount of money, the price is (or includes) the GST inclusive market value of the consideration.

36. Section 9-80 deals with supplies that are partly taxable, and partly GST-free or input taxed. It describes how to work out the value of the part of such a supply that is a taxable supply.

37. If all of the parts in a supply have the same GST treatment, then there is no requirement to separately identify each part. That is, if all of the parts are subject to GST, then apportionment of the consideration is not necessary as GST is payable on the total value of the supply.[16] Similarly, if all of the parts are non-taxable, then no GST is payable on the supply and apportionment is not necessary.

38. This Ruling does not apply to supplies that simply involve one thing, for example, a cake. The cake is made from ingredients such as flour, butter, sugar and eggs, but it is readily apparent that only the cake is supplied.

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[13] Section 195-1 states that ***taxable supply*** has the meaning given by sections 9-5, 78-50, 84-5 and 105-5. Note: This meaning is also affected by sections 49-30, 66-45, 72-5, 78-25, 78-60, 78-65, 78-70, 81-10, 90-5, 100-5 and 113-1.
[14] Section 9-70.
[15] Subsection 9-75(1).
[16] Section 9-70.

39. However, many other supplies are more complex and contain (or may appear to contain) more than one part. In these cases, further analysis of the supply is necessary to determine the character and GST treatment of the supply.[17]

Differentiating between mixed and composite supplies

40. Overseas courts have considered a number of cases about whether a supply is mixed or composite.[18] They have considered a supply as being mixed where its parts are separately recognisable or have an aim in themselves. On the other hand, they regard a supply as composite where it contains, or appears to contain, several parts that may objectively be treated as if they are simply supplies of one thing. The terms they have used in describing subordinate parts of a composite supply include 'incidental', 'integral', 'ancillary', and 'physically and economically indissociable'.[19] These terms are used interchangeably, and import the concepts of scale and connection.

41. We agree with the line of reasoning that has emerged from the overseas cases and with the commonsense approach used to objectively assess the characteristics of a supply. In this Ruling, we have adopted the words integral, ancillary and incidental as indicators of whether a part of a supply needs to be individually recognised.[20]

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[17] Examples 1 to 18 provide instances of more complex supplies.

[18] For example: *Bophuthatswana National Commercial Corporation Ltd v. Customs and Excise Commissioners* [1993] BVC 194; *British Airways plc v. Customs and Excise Commissioners* (1990) 5 BVC 97; *Card Protection Plan Ltd v. Customs and Excise Commissioners* [1999] BVC 155; *Card Protection Plan Ltd v. Customs and Excise Commissioners* [2001] UKHL 4; *Customs and Excise Commissioners v. British Telecommunications plc* [1999] BVC 306; *Customs and Excise Commissioners v. Madgett (t/a Howden Court Hotel)* (Joined Cases C-308/96 and C-94/97) [1998] BVC 458; *Customs and Excise Commissioners v. Wellington Private Hospital Ltd* [1997] BVC 251; *E.C. Commission v. United Kingdom* (Case No. 353/85) (1988) 3 BVC 265; *Sea Containers Ltd v. Customs and Excise Commissioners* [2000] BVC 60; and *United Biscuits (UK) Ltd (t/a Simmers) v. Customs and Excise Commissioners* [1992] BVC 54.

[19] For example, in *Customs and Excise Commissioners v. Wellington Private Hospital* [1997] BVC 251, Millett LJ uses the words 'incidental' and 'ancillary' interchangeably when considering whether or not the supply of drugs related to hospital treatment was a single (composite) or multiple (mixed) supply. In *British Airways plc v. Customs and Excise Commissioners* (1990) 5 BVC 97, Lord Donaldson MR said '… the tribunal [at first instance] stated the right question, viz., was the supply of food and beverages incidental – 'integral' might perhaps be a better word – to the air transportation.' In *Customs and Excise Commissioners v. Wellington Private Hospital Ltd* [1997] BVC 251, the concept of physically and economically indissociable was discussed.

[20] The word 'incidental' has a specific meaning when used with 'financial supplies'. See *A New Tax System (Goods and Services Tax) Regulations 1999*, regulation 40-5.10. However, in this Ruling we use the term 'incidental' in its ordinary sense, in the same way as it was used in the overseas cases.

42. A mixed supply contains separately identifiable parts where one or more of the parts is taxable and one or more of the parts is non-taxable. None of these parts are integral, ancillary or incidental in relation to the whole supply. On the other hand, a composite supply is a supply of one dominant part that has other parts that are not treated as having a separate identity as they are integral, ancillary or incidental to the dominant part of the supply. Where a supply is a composite supply, then it is essentially a supply of one thing, and will be either wholly taxable or non-taxable.

43. In working out whether you are making a mixed or composite supply, the key question is whether the supply has more than one separately identifiable part, or whether it is essentially a supply of one dominant part with one or more integral, ancillary or incidental parts.

Separately identifiable parts

44. In many circumstances, it will be a matter of fact and degree whether the parts of a supply are separately identifiable, and retain their own identity. In the United Kingdom case of *Sea Containers Ltd v. Customs and Excise Commissioners* (*Sea Containers*), day train excursions were provided together with elaborate 'fine wining and dining'. Advertising for the excursions placed significant emphasis on the food, wine and attentive service provided.

45. The question at issue in *Sea Containers* was whether the supply was of transport or whether it was a mixed supply of transport and catering.[21] Keene J considered that the proper approach was to see whether the catering element was significant in its own right or whether it was merely ancillary to the provision of transport. Keene J found that:

> 'The evidence shows that it [the catering] constituted a very important element in its own right in what was being provided by the appellant. Its significance in these transactions went well beyond the point where it could be seen merely as a way of better enjoying the transport element. ...it constituted for customers an aim in itself. Not, of course, the sole aim but, given its prominence in the marketing literature, clearly a separate aim from the travel element. The emphasis upon this aspect of the facilities provided is very striking. The fine meals and wines were a vital part of what the customer was paying for, whether by way of a separate or an all-inclusive price.'[22]

[21] Under British VAT legislation, transport is 'zero-rated' and catering is 'standard-rated'.
[22] *Sea Containers Ltd v. Customs and Excise Commissioners* [2000] BVC 60 at 67.

46. *Sea Containers* can be contrasted with *British Airways plc v. Customs and Excise Commissioners* (*British Airways*), another United Kingdom case.[23] In this case, the question was whether British Airways was to be taken as making supplies of air transport and of catering services (a mixed supply), or a single (composite) supply of air transport with the catering services being merely integral or ancillary.

47. In *British Airways*, the Court of Appeal found that the provision of in-flight catering was, in substance and reality, an integral part of the air transportation. It was not a mixed supply. Stuart-Smith LJ said that:

> 'While something that is necessary for the supply will almost certainly be an integral part of it, the converse does not follow … Catering facilities are part of and integral to the transportation in that degree of comfort which British Airways have decided is commercially appropriate and indeed necessary to attract passengers.'[24]

48. The Court was also influenced by the fact that no separate charge was made for the in-flight catering, and the price of the air ticket did not vary, regardless of the type of meal provided or whether or not meals were provided. It was not part of the contractual obligation of the airline to supply meals, even if they were expected as part of the service. No refunds were made if meals were not served on a flight.

49. *Sea Containers* and *British Airways* show that different conclusions may be reached after taking into account the relevant facts of cases that are similar.

50. In *Customs and Excise Commissioner v. Wellington Private Hospital Ltd (Wellington)*, Millett LJ also considered the question of separate identity:

> 'The proper inquiry is whether one element of the transaction is so dominated by another element as to lose any separate identity as a supply for fiscal purposes, leaving the latter, the dominant element of the transaction, as the only supply. If the elements of the transaction are not in this relationship with each other, each remains as a supply in its own right with its own separate fiscal consequences.'[25]

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[23] *British Airways plc v. Customs and Excise Commissioners* (1990) 5 BVC 97.
[24] *British Airways plc v. Customs and Excise Commissioners* (1990) 5 BVC 97 at 102-103.
[25] *Customs and Excise Commissioners v. Wellington Private Hospital Ltd* [1997] BVC 251 at 266.

Millett LJ also found that courts need to ask whether one part is connected with the other, or whether the two parts are 'physically and economically dissociable'.[26]

51. *Wellington* supports the view expressed in this Ruling that a supply has separately identifiable parts where the parts require individual recognition and retention as separate parts, due to their relative significance in the supply.

Integral, ancillary or incidental parts

52. Some supplies include parts that do not need to be separately recognised for GST purposes. In a composite supply, the dominant part of a supply is accompanied by subordinate parts complementing the supply of the dominant part. If such a supply is analysed, in a common sense way, it can be seen that the supply is essentially the provision of one thing. It need not be broken down, unbundled or dissected any further. For this reason, a composite supply may appear, at first, to have more than one part, but is treated as if it is the supply of one thing.

53. In *Customs and Excise Commissioners v. Madgett and Anor (t/a Howden Court Hotel)*, the European Court of Justice described the term 'ancillary' in terms of scale and connection:

> '… a service is ancillary if, first, it contributes to the proper performance of the principal service and second, it takes up a marginal proportion of the package price compared to the principal service. It does not constitute an object for customers or a service sought for its own sake, but a means of better enjoying the principal service.'[27]

54. In *Customs and Excise Commissioners v. British Telecommunications plc*, Lord Slynn of Hadley considered whether delivery was ancillary or incidental to a supply of cars or whether it was separately identifiable. In concluding that, as a matter of commercial reality, there was one contract for a delivered car, Lord Slynn found it necessary to consider all of the circumstances of the supply and said:

> '… the fact that separate charges are identified in a contract or on an invoice does not on a consideration of all the circumstances necessarily prevent all the supplies from constituting one composite transaction nor does it prevent one supply from being ancillary to another supply which for VAT

[26] *Customs and Excise Commissioners v. Wellington Private Hospital Ltd* [1997] BVC 251 at 266.
[27] *Customs and Excise Commissioners v. Madgett & Anor (t/a Howden Court Hotel)* [1998] BVC 458 at 464.

> purposes is the dominant supply … the essential features of a transaction may show that one supply is ancillary to another and that it is the latter that for VAT purposes is to be treated as the supply.'[28]

55. No single factor (by itself) will provide the sole test as to whether a part of a supply is integral, ancillary or incidental to the dominant part of the supply.[29] Having regard to all the circumstances, indicators that a part may be integral, ancillary or incidental include where:

- it represents a marginal proportion of the total value of the package compared to the dominant part; or
- it is necessary or contributes to the supply as a whole, but cannot be identified as the dominant part of the supply; or
- it contributes to the proper performance of the contract to supply the dominant part; or
- a supplier would reasonably conclude that it does not constitute for customers an aim in itself, but is a means of better enjoying the dominant thing supplied.

That is, we consider that a part of a supply will be integral, ancillary or incidental where it is insignificant in value or function, or merely complements the dominant part of the supply.

56. It is a question of fact and degree whether a supply is mixed or composite. For example, a hotel supplies guests with a picnic box that consists of bread rolls, tomatoes, a packet of cheese slices and bananas.[30] All of these items are GST-free supplies and are packaged in a cardboard box. Also included in the picnic box are some paper serviettes and a plastic knife, that are ordinarily taxable supplies. However, because the value of the serviettes and knife is insignificant in relation to the food items, the consideration for the picnic box does not need to be apportioned.

57. However, if a packet of biscuits is added to the contents and the biscuits have a significant value in relation to the other parts of the supply, then the supply is mixed. The picnic box now consists of separately identifiable taxable and non-taxable parts. The value of the serviettes and knife is still insignificant. Therefore, the consideration

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[28] *Customs and Excise Commissioners v. British Telecommunications plc* [1999] BVC 306 at 312.

[29] See Lord Hope of Craighead in *Customs and Excise Commissioners v. British Telecommunications plc* [1999] BVC 306 at 314.

[30] The picnic box in this example is not a combination of foods under paragraph 38-3(1)(c). Also, it is not a supply of food for consumption on the premises under paragraph 38-3(1)(a).

is apportioned between the biscuits (taxable) and the other food (GST-free).

58. As previously stated, a part or parts of a supply lose their identity if they are merely integral, ancillary or incidental to the main part or parts. As a means of minimising compliance costs, subordinate parts can reasonably be treated as being incidental under the approach outlined at paragraph 21.

59. You may treat something (or things taken together) as being incidental if the consideration that would be apportioned to it (if it were part of a mixed supply) does not exceed **the lesser of**:

- $3.00; or
- 20% of the consideration of the total supply.

60. Under this approach, a supply that might otherwise be considered a mixed supply will not be treated as a mixed supply. However, if the consideration for a part exceeds the lesser of $3.00 or 20% of the consideration for the total supply, it does not necessarily mean that the part is not integral, ancillary or incidental.

Example 1 - cereal with stickers

61. *Smartwheat supplies a packet of cereal that contains a sheet of 4 stickers, for $4.20. Of this consideration, 20 cents is for the set of stickers and $4.00 is for the cereal. Because the consideration for the stickers is less than $3.00 and is less than 20% of the total consideration, Smartwheat may treat the stickers as being incidental. This is a composite supply of GST-free cereal.*[31]

62. However, in some cases, no matter how insignificant a part may be, that part is recognised as being a part in its own right where a provision of the GST Act specifically requires you to recognise it, regardless of its scale and connection with the supply. For example, certain educational excursions or field trips are GST-free under section 38-90. However, paragraph 38-90(2)(b) specifically provides that the supply of food as part of the excursion or field trip is not GST-free under this provision.[32] Therefore, a supply of food cannot be regarded as an incidental part of the supply of the excursion or field trip.

[31] The breakfast cereal in this example is GST-free under section 38-2. It does not fit any of the categories of food that is not GST-free under section 38-3.
[32] The food may, however, be GST-free under section 38-2.

Package deals

63. Many transactions consist of a variety of things packaged for a single consideration.[33] Particularly in a promotional package, the supply of one part usually depends in some way on the supply of the other parts. However, the parts do not have to be physically packaged together to constitute a package deal.

64. Where you supply a package deal for a single consideration, each thing that forms part of the package may be a separate part of a mixed supply. Whether the supply is characterised as being mixed or composite will depend upon the factors discussed at paragraphs 40 to 62.

65. In a package deal, the total price is the consideration for all of the parts in the package. This means that, for example, in a deal in which a 'free' good, service or thing is supplied on condition that another good, service or thing is purchased, the purchase price is consideration for all of the things supplied, including the 'free' good, service or thing. In such cases, the purchase price must be apportioned if it is a mixed supply.

66. Examples of package deals that are mixed supplies requiring apportionment of the consideration include:

- a 'free' daily newspaper (taxable) supplied with the purchase of a small carton of milk (non-taxable) of similar value;
- a packet of biscuits (taxable) and a jar of coffee (non-taxable) that are sold together at a discount price; and
- a 'Home and Away' tourist package that includes a 'free' domestic weekend holiday (taxable) with any overseas tour (non-taxable) purchased. The domestic weekend holiday and overseas tour package each retain their identity as individual supplies, although for marketing purposes they have been bundled together.

Examples of mixed supplies

Example 2 - commercial and residential premises

67. *Roberto owns a building comprising both residential and commercial premises. He leases the building to Lawrence who operates a small recruitment agency from the commercial premises and lives in the residential part. The supply of the residential part is*

[33] Whether you make a supply for a single consideration will depend on the facts.

input taxed.[34] *The supply of the commercial part is taxable. Roberto is making a mixed supply that is partly taxable and partly input taxed.*

Example 3 - educational courses

68. *A natural therapies college allows students to select individual units or courses that are packaged as a series of units. The packaged courses include both GST-free and taxable units. The supply of such courses for a package price is a mixed supply. The taxable part of the package price paid for the units will need to be worked out.*

Example 4 - student accommodation and food

69. *Rory is a student who lives in a university's residential college. The college provides full board by way of residential accommodation (input taxed) and taxable food.*[35] *The college charges an all-inclusive fee for the board. The accommodation and food are separately identifiable and each has significant value. This is a mixed supply. The college will need to work out its liability for the taxable part of the supply by apportioning the fee between the accommodation and the food.*

Example 5 - promotional package

70. *Terrence supplies a promotional pack of 'Toff's Tea', a cup and saucer. The tea is GST-free, and the cup and saucer are taxable. Each part of the supply has significant value. This is a mixed supply because the tea, and the cup and saucer are separately identifiable.*

Example 6 - business and private things

71. *Jules, a bricklayer, is registered for GST. He holds a garage sale to dispose of some household furniture and a cement mixer that he uses in his business. He sells a TV and the cement mixer to a buyer for $550. The supply of the TV is not a taxable supply. However, the sale of the cement mixer is a taxable supply as the supply is made in the course of Jules' enterprise as a bricklayer. Jules is making a supply that is partly taxable and partly non-taxable. He will have to apportion the $550 sale price of his mixed supply.*

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[34] Section 40-35. Paragraph 5.164 of the Explanatory Memorandum to the *A New Tax System (Goods and Services Tax Act) 1999* refers to a similar example. See also Goods and Services Tax Ruling GSTR 2000/20 which is about commercial residential premises.

[35] Under section 38-250, either the accommodation or the food may be GST-free if the college is a supplier within this section.

Example 7 - health cover and gym membership

72. *A private health fund offers six months membership to a local gym with every purchase of its premium cover package. Both the health cover and the gym membership are, in this case, each of significant value when viewed as a part of the total package, such that it can not be said that the essential character of the supply is of one part and not the other part of the supply. This is a mixed supply.*

Examples of composite supplies

Example 8 - fitted car parts

73. *Justine sells tyres for a price that includes fitting and balancing. The essential nature of the supply is the taxable supply of tyres. However, if the supply is to a person who has a disability, then the supply may be a GST-free supply of car parts under subsection 38-510(4). In this example, as the fitting and balancing are necessary procedures in providing the tyres, they are not supplies in their own right. The fitting and balancing is ancillary to the supply of the tyres and represents a small proportion of the value of the transaction for the supply of the tyres. The essential nature of the transaction for GST purposes is a composite supply of tyres.*[36] *This will be the case even if the invoice separates out the cost of the tyres and the cost of fitting, as the supply is one of fitted and balanced tyres. In this case, these goods and services are not subject to GST.*

Example 9 - delivery of GST-free goods

74. *A customer of 'Net-it-out' places an order for GST-free food through the internet. Net-it-out supplies the goods to the customer's doorstep for the price listed on its internet site. In this case, Net-it-out is making a supply of delivered GST-free goods, and has no liability to account for GST on the delivery of them because delivery is an ancillary part of the supply. In this case, delivery charges are an integral, ancillary or incidental part of a supply as the supply is of delivered goods.*[37]

Example 10 - services and water supply

75. *Antonia runs a carpet steam cleaning service. As part of this service, she uses water that she carries in her van. Antonia does not supply water to her customers. Antonia supplies a service of cleaning*

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[36] In contrast, the balancing of previously fitted tyres is a supply in its own right.

[37] See where the Court came to a similar conclusion in *Customs and Excise Commissioners v. British Telecommunications plc* [1999] BVC 306. In other cases, the facts may indicate that a delivery charge is a separately identifiable part of a supply.

carpets. The water is integral to the performance of the service and is part of a composite supply.[38]

Example 11 - GST-free services and the use of goods

76. *The Heart Hospital provides GST-free hospital treatment. During hospital stays, patients are supplied with the use of newspapers and television sets. No extra charges are made for the use of these goods. They are merely incidental and ancillary to the composite supply of hospital treatment.*

Example 12 - GST-free goods with ancillary item

77. A hearing aid is supplied with a small cleaning brush, that is used as an accessory to clean the hearing aid, so that it performs properly. Compared to the value of the hearing aid, the brush represents a small proportion of the value of the total package. In this case, from an objective and commonsense perspective, a customer who purchases the package is acquiring a hearing aid. The supply of the brush is not recognised as a part, but is merely ancillary to the supply of the hearing aid. This is a composite supply.

Example 13 - accommodation and other supplies

78. *The supply of accommodation in a hotel room includes the provision of water and sewerage services which, where supplied on their own, may be GST-free.*[39] *However, these things are merely some of the amenities that go together to make up the composite supply of hotel room accommodation, and are integral to that supply.*

Apportionment

79. The GST Act includes a number of specific provisions which state that certain supplies are not a taxable supply. For example, subsection 66-45(1) provides that, in some circumstances, a supply of goods that were part of an acquisition of second-hand goods divided for re-supply, is not a taxable supply. Therefore, such supplies are not taxable supplies, regardless of whether they meet the requirements of paragraphs 9-5(a) to (d). Similarly, any other supply that does not meet the requirements of paragraphs 9-5(a) to (d) is not a taxable supply. Also, to the extent that a supply is GST-free or input taxed,

[38] In *Mander Laundries v. Customs and Excise Commissioners* [1973] VATR 136 (31), the UK VAT Tribunal found that a supply of laundry services was not a mixed supply, but an integrated service.
[39] Section 38-285.

then it is not a taxable supply.[40] In other cases, it may be argued that the statutory context allows a particular provision to be read as requiring apportionment.[41]

80. Where non-taxable supplies are made separately, no further issue arises. However, where they are parts of a mixed supply, then the question arises whether the GST Act requires you to apportion the consideration received in the absence of a specific statutory provision.

The argument for a general rule of apportionment

81. The establishment of a sufficient nexus between a supply and the monetary (and non-monetary) payment received for that supply is central and essential to the proper operation of the GST Act. Establishment of this nexus indicates that there is consideration for the supply.

82. Apportionment also enables the proper operation of the GST Act, that is, to tax only that which is taxable. This would be prevented if the consideration for a supply that includes a non-taxable part could not be apportioned in the same manner as if the supplies had been made separately.

83. This point is demonstrated by a simple example. A registered sole trader supplies two cars for a single price. One car (a 'business' car) has been used exclusively in the sole trader's enterprise and the other (a 'private' car) exclusively for private purposes. If each car is supplied separately, then GST is correctly payable only on the supply of the business car. The supply of the private car attracts no GST. It would be anomalous if either GST was payable on the whole amount (including the supply of the private car), or not payable at all, simply because the two cars are sold together for the one price.

84. Furthermore, it would not be logical or equitable to deny an input tax credit to a registered recipient of a mixed supply that includes a non-taxable part, merely for the reason that no part of the payment for the supply can be apportioned to the taxable part.[42]

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[40] See the excluding words of section 9-5.
[41] See Goods and Services Tax Ruling GSTR 2000/31, which is about supplies connected with Australia, for a discussion of examples of such provisions.
[42] Given that the conditions of Division 11 are met.

85. The requirement to apportion generally should not be seen as unusual. The Australian income tax cases that have dealt with apportionment issues accept the principle that a single payment may be apportioned where the facts permit.[43] Once a sufficient nexus is found, apportionment can be established. In particular, the High Court in *McLaurin*, stated that:

> 'It is true that in a proper case a single payment or receipt of a mixed nature may be apportioned amongst the several heads to which it relates and an income or non-income nature attributed to portions of it accordingly … it may be appropriate to follow such a course where the payment or receipt is in settlement of distinct claims of which some at least are liquidated … or are otherwise ascertainable by calculation …'[44]

86. Also, paragraph 9-5(a) sets out a threshold requirement that you make a supply for consideration. If there is no consideration for the supply, then it will not be taxable. Consideration is widely defined and includes any payment, act or forbearance made in connection with, or in response to, or for the inducement of a supply of anything.[45] Where you identify a payment for a mixed supply, then it is reasonable to say that part of that payment is made in connection with the taxable part.

The alternative view

87. It has been argued that there is no inherent requirement to apportion for reasons which, together with our responses, appear below:

(a) the GST Act has no provision to deal with the general apportionment of consideration, as found in other jurisdictions (but see paragraph 88);[46]

(b) the decisions in both *McLaurin* and *Allsop* are authority for the view that a single payment cannot be dissected into individual payments relating to particular things (but these cases deal with income tax matters and not GST);

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[43] *Allsop v. Federal Commissioner of Taxation* (1965) 113 CLR 341 (*Allsop*); *McLaurin v. Federal Commissioner of Taxation* (1961) 104 CLR 381 (*McLaurin*); *National Mutual Life Association of Australasia v. Federal Commissioner of Taxation* (1959) 102 CLR 29; and *Commissioner of Taxation v. CSR Ltd* [2000] FCA 1513 (*CSR*). The Commissioner of Taxation has lodged an application for special leave to appeal the Full Federal Court decision in the *CSR* case.

[44] *McLaurin v. Federal Commissioner of Taxation* (1961) 104 CLR 381 at 391.

[45] Subsection 9-15(1).

[46] For example, New Zealand, the United Kingdom and Canada.

(c) the GST Act contains numerous sections giving specific powers of apportionment which would not be necessary if there was a general inherent power available under the GST Act (but these do not necessarily form a code); and

(d) the exclusion from a taxable supply to the extent that the supply is GST-free or input taxed in section 9-5, does not contain words which similarly exclude other non-taxable supplies (but things that the GST Act specifically states are not a taxable supply and things that do not meet one or more of paragraphs 9-5(a) to (d) do not need such legislative treatment).

Taxation Office view

88. We are of the view that the GST Act inherently requires that parts of a mixed supply be identified and that the consideration be apportioned where a sufficient nexus between the supply and consideration is established. This approach gives practical effect to the intention of the GST Act and is consistent with a common sense and equitable outcome.

Reasonable methods of apportionment

89. Where there is no legislative provision specifying a basis for apportionment you may use any reasonable method to allocate the consideration to the parts of a mixed supply. However, the apportionment must be supportable in the particular circumstances. What is a reasonable method of apportioning the consideration for a mixed supply depends on the circumstances of each case.[47] You should keep records that explain all transactions and other acts you engage in that are relevant to supplies you make, including GST-free and input taxed supplies.[48]

90. You may use a direct method (where practicable) when apportioning the consideration received for a mixed supply, as a direct method will usually give the most accurate measure of the consideration for the taxable part of the supply. If this is not practicable, you may use an indirect method discussed at paragraph 105.

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[47] The principles of reasonableness used in Goods and Services Tax Ruling GSTR 2000/15, which is about determining the extent of creditable purpose for claiming input tax credits and for making adjustments for changes in the extent of creditable purpose, also apply in this Ruling.

[48] Section 70 of the *Taxation Administration Act 1953* provides the rules for keeping records of indirect tax transactions.

91. The choice of method should be made after considering all of the circumstances and not because it gives you a particular result. You may need to use different methods, or a combination of methods, for different supplies to ensure the appropriate amount of GST is payable.

92. Where consideration is apportioned in a manner that cannot be justified in terms of reasonableness, the general anti-avoidance provisions of the GST Act may have application.[49]

Direct methods

93. Direct methods use relevant variables that measure the connection between what is supplied (the taxable and non-taxable parts) and the consideration for the supply. Such methods may include:

- the comparative price of each part if it were supplied on its own, relative to the whole payment received (see paragraphs 94 to 99);
- the relative amount of time required to perform the supply (see paragraphs 100 to 101); and
- the relative floor area in a supply of property (see paragraphs 102 to 104).

Price of each part relative to the whole

94. Where it is possible to determine the price for which each part would have been supplied if it was supplied separately (for example, the general retail market price for which the goods are sold), then an apportionment on this basis may be reasonable. If you use this method, the GST you pay is the same as if you supplied the taxable parts separately in the same market.

95. Where you cannot establish an appropriate market price for which particular goods are sold, then it may be reasonable for you to use a relevant market price for a similar supply (or an industry standard), to determine the appropriate price of the particular goods.

96. In many cases, you may make a mixed supply for a package price. The package price for the mixed supply may be discounted. It may be reasonable for you to apply the discount to the usual market selling price of each part, unless special circumstances exist. On this basis, you may discount the price of each item proportionately according to the payment made for the mixed supply.

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[49] Division 165.

Examples of apportionment using relative price

Example 14 - commercial and residential premises

97. *Hilary is registered for GST. She sells a property that consists of commercial premises and residential premises. The property is on a single title and is currently untenanted, although the commercial part was recently rented for $1,000 (excluding GST) per week and the residential part for $500 per week.*[50] *Hilary may reasonably apportion two thirds of the consideration for the sale to the commercial part and one third to the residential part.*

Example 15 - educational courses

98. *Pierre signs up for a college course at a discounted package price. There are four units in Pierre's course - two that are GST-free and two that are subject to GST. The college usually charges $500 for each of the GST-free units and $825 for each of the taxable units. Pierre would normally pay $2,650 for the course, but after a discount of 20%, he pays $2,120.*

99. *To reasonably apportion the consideration received, the college discounts each of the units by 20%, so that the consideration for each of the GST-free units is $400 (that is, $500 less 20%), and for each of the taxable units is $660 (that is, $825 less 20%).*

Relative time to perform the supply

100. Where you supply services and charge them out on a time basis (for example, at an hourly rate), it may be reasonable to apportion the consideration for a mixed supply based on the time taken to perform the relevant taxable and non-taxable parts of the supply. This method may be suitable where you make mixed supplies of professional or trade services.

Example 16 - GST-free and taxable services

101. *Under direction from a doctor, Gilda provides community care to a privately funded client in the client's own home. She charges a flat hourly rate for her services that include helping to feed and dress her client. These services are GST-free under section 38-30. Gilda also tidies her client's house and garden. These latter services are taxable. Gilda apportions the consideration for her services on the*

[50] The supply of commercial premises is taxable. The supply of residential premises is input taxed.

number of hours it takes for her to perform them. This is a reasonable method of apportionment.

Relative floor area in a supply of property

102. In some cases, it is reasonable for you to allocate the consideration for a mixed supply by reference to the relative floor area of the property being supplied. To make an allocation on this basis, you also need to consider the relative price of different types of floor space (for example, floor space in residential, retail and industrial property are often priced differently). That is, you may simply work out the proportionate floor area if the value per square metre does not vary. However, if the value per square metre is variable, then you should apportion on a basis of the area and the relative value. You may also need to take into account external features, such as the value of parking and recreational areas.

Example 17 - commercial and residential premises

103. *Warren rents out a property to Josef for $2,000 per month. The property is comprised of residential and commercial premises. The floor area of the residential part is 160 square metres and the commercial part is 80 square metres. Both parts share access equally to the parking facilities and recreation space. In the locality, the rental of commercial space is worth twice as much as residential space.*

104. *It would be reasonable for Warren to base the taxable proportion of the supply on the floor area of the commercial part as a proportion of the combined floor area of the commercial and residential parts. However, he also needs to take into account the difference in the relative value of the commercial and residential floor space. Warren may reasonably apportion the consideration equally between the commercial and the residential parts.*

Indirect methods

105. Where you are not able to reasonably apportion the consideration for a mixed supply using a direct method, it may be appropriate that you use an indirect method. For example, you may use a reasonable method that includes the addition of an appropriate mark-up to reflect your profit margin relative to the market you supply. Another example is when an arm's length wholesaler or manufacturer makes a mixed supply to you of something that has been packaged in the form in which you will market it, you may use the apportionment worked out by your supplier.

Example 18 - indirect method

106. *Byron manufactures cosmetics including perfume, shampoo and SPF 30+ sunscreen. Perfume and shampoo are taxable, however the sunscreen is GST-free. Byron supplies one bottle of each item in a clear plastic package to wholesalers. He chooses to use an indirect method based on the cost and usual profit margin of each item to apportion the consideration for the supply. This method is reasonable in the circumstances.*

Methods of apportionment that are not reasonable

107. Some methods may not result in a reasonable apportionment of the consideration for a mixed supply. For example, in some cases, it may not be reasonable to apportion the consideration solely on the basis of the cost of the supply to you. This would be the case if your mark-up varies from part to part. Variations in mark-ups prevent this method from being a reasonable apportionment of the consideration you receive for the supply.

108. Also, it will not be reasonable to apportion consideration using 'historical cost' and 'residual value' methods. These are amounts used for accounting purposes and do not represent the consideration for a supply.[51]

Calculating the GST payable on the taxable part of a mixed supply

109. GST is calculated as 10% of the value of the taxable supply.[52] Section 9-75 links the value of the taxable supply to its price so that the value of a supply is 10/11 of its price. This also means that the GST payable on a taxable supply is equivalent to 1/11 of the price (or consideration) of the supply.

110. However, because a mixed supply includes non-taxable parts, you need to work out the value or price of the taxable part, or the proportion of the value of the actual supply that the taxable part represents, so that the correct amount of GST is payable.

111. When you have apportioned the consideration for a mixed supply, you can calculate the GST payable as either:

- 10% of the value of the taxable part; or

[51] In Draft Goods and Services Tax Ruling GSTR 2001/D5, which is about non-monetary consideration, we also state that we do not consider that 'historical cost' or 'residual value' are acceptable methods of determining the market value of consideration.

[52] Section 9-70.

- 1/11 of the price (or consideration) for the taxable part.

Valuing the taxable part of a mixed supply where the non-taxable parts are GST-free or input taxed

112. Section 9-80 provides the method for working out the value of the taxable part of a mixed supply that consists only of taxable and GST-free or input taxed parts. The section refers to such a supply as the actual supply. It also provides a formula to work out the value of the actual supply.[53]

113. However, in analysing the actual supply that is a mixed supply, you apportion the consideration for the supply and work out the consideration for the taxable part. The value of that part is simply calculated as 10/11 of its price (or consideration).

Valuing the taxable part of a mixed supply where the non-taxable parts are not GST-free or input taxed

114. Section 9-75 applies to work out the value of the taxable part of a mixed supply consisting of taxable and non-taxable parts that are either dealt with in specific provisions of the GST Act or do not meet the requirements of paragraphs 9-5(a) to (d). The consideration that is allocated to the taxable part is the price of the taxable part referred to in section 9-75. The value of that part is simply calculated as 10/11 of its price (or consideration).

Detailed contents list

115. Below is the detailed contents list for this Draft Ruling:

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Your comments

116. If you wish to comment on this Draft Ruling, please send your comments promptly by 13 August 2001 to:

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Subject References:
- ancillary
- apportionment
- composite supply
- GST
- GST-free supply
- incidental
- integral
- input taxed supply
- mixed supply
- non-taxable supply
- package deal
- partly taxable supply

- taxable supply
- value

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- ANTS(GST)A99 9-5(d)
- ANTS(GST)A99 9-10(2)(h)
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- Sea Containers Ltd v. Customs & Excise Commissioners [2000] BVC 60
- United Biscuits (UK) Ltd (t/a Simmers) v. Customs and Excise Commissioners [1992] BVC 54

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Appendix A

In addition to section 9-5, which provides that a supply is not a taxable supply to the extent that it is GST-free or input taxed, the GST Act specifies that the following things are not a taxable supply, or are not treated as a taxable supply:

Supplies to members of the same GST group

[Subsection 48-40(2)] However:

(a) a supply that an entity makes to another *member of the same *GST group is treated as if it were not a *taxable supply, unless:

(i) it is a taxable supply because of Division 84 (which is about offshore supplies other than goods or real property); or

(ii) the entity is a participant in a *GST joint venture and acquired the thing supplied from the joint venture operator for the joint venture; and

(b) this section only applies to GST payable on a *taxable importation made, by a member of the GST group other than the *representative member, if the GST on the importation is payable at a time when GST on *taxable supplies is normally payable by the representative member.

Supplies between members of the same religious group

[Subsection 49-30(1)] A supply that a *member of a *GST religious group makes to another member of the same GST religious group is treated as if it were not a *taxable supply.

Supplies from a joint venture operator to another joint venture operator

[Subsection 51-30(2)] However, a supply that the *joint venture operator of a *GST joint venture makes is treated as if it were not a *taxable supply if:

a) it is made to another entity that is a *participant in the joint venture; and

b) the participant acquired the thing supplied for consumption, use or supply in the course of activities for which the joint venture was entered into.

Supply of goods that were part of an acquisition of second-hand goods that are divided for re-supply

[Subsection 66-45(1)] A supply you make is not a *taxable supply if:

(a) it is a supply of goods that were part of an acquisition you made that was an acquisition of *second-hand goods to which this Subdivision applied; and

(b) your *total Subdivision 66-B credit amount is more than your *total Subdivision 66-B GST amount; and

(c) what would be the amount of GST payable on the supply, if the supply were a taxable supply, is less than or equal to the difference between:

(i) your *total Subdivision 66-B credit amount; and

(ii) your *total Subdivision 66-B GST amount.

Note: This section will not apply unless the record keeping requirements of section 66-55 are met.

Supplies by an insurer in settlement of claims

[Subsection 78-25(1)] A supply that an insurer makes in settlement of a claim under an *insurance policy is not a *taxable supply.

Supplies of goods to insurers in the course of settling claims

[Subsection 78-60(1)] A supply of goods is not a *taxable supply if it is *solely* a supply made under an *insurance policy to an insurer in the course of settling a claim under the policy.

Supply by an amalgamating company to an amalgamated company in the course of amalgamation

[Subsection 90-5(1)] A supply made by an *amalgamating company to an *amalgamated company in the course of *amalgamation is not a *taxable supply if, immediately after the amalgamation, the amalgamated company is *registered or *required to be registered.

Supplies of vouchers stating monetary value

[Subsection 100-5(1)] A supply of a *voucher is not a *taxable supply if:

(a) on redemption of the voucher, the holder of the voucher is entitled to supplies up to a monetary value stated on the voucher; and

(b) the *consideration for the supply of the voucher does not exceed that monetary value.

Supplies by creditors in satisfaction of debts where the debtor supplies a written notice that the supply would not be taxable

[You make a taxable supply if you supply the property of another entity (the ***debtor***) to a third entity in or towards the satisfaction of a debt that the debtor owes to you, and the supply would have been a taxable supply if the debtor had made the supply.]

[Subsection 105-5(3)] However, the supply is not a *taxable supply if:

(a) the debtor has given you a written notice stating that the supply would not be a taxable supply if the debtor were to make it, and stating fully the reasons why the supply would not be a taxable supply; or

(b) if you cannot obtain such a notice - you believe on the basis of reasonable information that the supply would not be a taxable supply if the debtor were to make it.

Supply of work or services, under an arrangement, and a voluntary agreement to withhold is in place

[Subsection 113-5(1)] A supply that you make is not a *taxable supply to the extent that you make it under an arrangement (within the meaning of the *Income Tax Assessment Act 1997*) if:

(a) the arrangement the performance of which, in whole or in part, involves the performance of work or services (whether or not by you); and

(b) an agreement is in force that:

(c) you, and the entity acquiring what you supply under the arrangement, are parties to that agreement; and

(i) complies with section 12-55 in Schedule 1 to the *Taxation Administration Act* 1953 (about voluntary agreements to withhold); and

(ii) states that the section covers payments under the arrangement, or payments under a series of arrangements that includes the arrangement; and

(d) you have an *ABN that is in force and is quoted in the agreement; and

(e) the acquisition, by that entity, of what you supply under the arrangement would be a *creditable acquisition (and not *partly creditable) if the supply were a *taxable supply.