GSTR 2002/D11 - Goods and Services Tax: importation of goods into Australia

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Draft Goods and Services Tax Ruling

Goods and Services Tax: importation of goods into Australia

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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 is about the operation of the provisions in the *A New Tax System (Goods and Services Tax) Act 1999* ('GST Act') which apply to the importation of goods into Australia.

2. In the Ruling we explain what taxable importations are, including the meaning of the word 'import' and its derivatives for the purposes of the GST Act. We also explain who is liable to pay GST on taxable importations and how GST is paid.

3. We also discuss creditable importations including the meaning of the phrase 'you import goods' in paragraph 15-5(a), and who is entitled to claim input tax credits for creditable importations.

4. The role of agents in relation to taxable importations and creditable importations is discussed, including the GST consequences of resident agents acting for non-residents.

5. This Ruling also addresses other issues such as taxable importations without entry for home consumption, what a non-taxable importation is, the value of taxable importations, including the value of re-imported goods, how GST can be deferred under the Deferred GST Scheme, and when input tax credits for creditable importations are attributed.

6. In addressing these issues the operation of the following provisions of the GST Act are discussed:

- Section 9-25 - supplies connected with Australia;
- Division 13 - taxable importations;

- Division 15 - Creditable importations;
- Section 29-15 - Attributing the input tax credits for your creditable importations;
- Section 33-15 - Payments of amounts of GST on importations;
- Division 38 – GST-free supplies;
- Division 42 – Non-taxable importations;
- Division 57 – Resident agents acting for non-residents;
- Division 114 – Importations without entry for home consumption;
- Division 117 - Valuation of re-imported goods.

7. This Ruling only relates to the importation of goods.[1] It does not address the importation of services and intangibles covered by Division 84.

8. All legislative references in this Ruling are to the GST Act unless otherwise stated. References to the Customs Act are to the *Customs Act 1901*.

9. In this Ruling, the term 'agent' is used to describe an entity that is appointed to undertake, on behalf of another, the principal, the entering of imported goods for home consumption (within the meaning of the Customs Act). The principal is thereby bound by the legal effects of that transaction. The term agent as used in this Ruling does not include a licensed Customs Broker, unless specifically stated to be so included.

Date of effect

10. This draft Ruling represents the preliminary, though considered, view of the Australian Taxation Office. This draft may not be relied on by taxation officers, taxpayers or practitioners. When the final Ruling is officially released, it will explain our view of the law as it applied from 1 July 2000.

11. The final Ruling will be a public ruling for the purposes of section 37 of the *Taxation Administration Act 1953* ('TAA 1953') and may be relied upon, after it is issued, by any entity to whom it applies. Goods and Services Tax Ruling GSTR 1999/1 explains the GST

[1] 'Goods' defined in subsection 195-1(1) means 'any form of tangible personal property'. Therefore, goods does not include intangible things, such as computer software downloaded over the Internet.

rulings system and our view of when you can rely on our interpretation of the law in GST public and private rulings.

12. If the final public ruling conflicts with a previous private ruling that you have obtained, the public ruling prevails. However, if you have relied on a private ruling, you are protected in respect of what you have done up to the date of issue of the final public ruling. This means that if you have underpaid an amount of GST, you are not liable for the shortfall prior to the later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

Context

13. GST is a tax on the consumption of most goods, services and anything else in Australia, including things that are imported.[2] GST is payable on goods imported into Australia where the importation is a taxable importation.

14. Any person can make a taxable importation. Unlike a taxable supply, there are no requirements of registration and enterprise for a taxable importation. This is because GST is a tax on private consumption and private consumers can import goods themselves.

15. The entity that makes the taxable importation must pay the GST that applies.

16. The amount of GST is 10% of the value of the taxable importation. The value of the taxable importation is essentially the value of the goods plus the cost of bringing those goods to Australia plus customs duty and wine tax (if any).

17. GST on a taxable importation is paid to the Australian Customs Service ('Customs') before goods are released from Customs control. Alternatively, special deferral regulations may apply to defer the GST.

18. To ensure that GST is effectively borne by end consumers, an input tax credit for the GST paid on imported goods is available where goods are imported in carrying on an enterprise, unless the importation relates to making input taxed supplies or is of a private or domestic nature.

19. The amount of input tax credit is the same as the amount of the GST paid to Customs on importation (unless the goods are not wholly

[2] Explanatory Memorandum relating to the A New Tax System (GST) Bill 1998 at Chapter 1.

used in carrying on an enterprise). In effect, the input tax credit is a reimbursement of the GST paid on importation.[3]

20. If a registered supplier (or a supplier that is required to be registered) sells or uses imported goods to make other supplies, any supplies made that are taxable supplies are subject to GST.

Customs and importations

21. The Customs Act ('Customs Act') requires imported goods to be entered for home consumption, warehousing or transhipment. The 'owner' of the goods must provide Customs with specific information in a specified format (the 'Customs entry') and pay import duty to Customs at the time of entry of the goods for home consumption.

22. As defined in section 4 of the Customs Act, 'owner' in respect of goods includes any person (other than an officer of Customs) being or holding himself out to be the owner, importer, exporter, consignee, agent, or person possessed of, or beneficially interested in, or having any control of, or power of disposition over the goods.

23. The Customs Act defines 'owner' very broadly to ensure that whichever person is named as owner on the Customs entry is responsible for payment of duty, retention of records, and other responsibilities under the Customs Act.

24. As Customs entry provisions can be complex, it is common for 'owners' to employ a licensed customs broker to complete the entry formalities on their behalf. Only customs brokers authorised under the Customs Act (or employees of the owner of goods) may lodge Customs entries on behalf of an owner.

25. Customs entries lodged by customs brokers on behalf of an owner of goods, are entered in the name of the owner together with the owner's ABN (if any) and a declaration that the customs broker has been authorised by the owner to act on their behalf. The licensed broker would not normally use his or her own name as 'owner' of the goods. Customs hold the 'owner' as the person primarily responsible for the import entry.

26. There are certain situations where Customs entries are not required. The most common are 'low value importations' – goods imported through the Post Office that have a value not exceeding $1,000 and goods consigned other than by post that have a value not exceeding $250.

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[3] Explanatory Memorandum relating to A New Tax System (GST) Bill 1998 at Chapter 1.

Ruling

27. You should refer to the section headed 'Explanations' for a more detailed examination of the issues covered in this part of the Ruling.

Taxable importations

28. You must pay the GST on any taxable importation that you make.[4] You make a taxable importation if you enter for home consumption (within the meaning of the Customs Act), goods imported into Australia.[5]

29. Goods are typically imported into Australia when they are brought to Australia to be unloaded here.[6] 'Imported' in this context has its ordinary meaning.

30. Imported goods are entered for home consumption within the meaning of the Customs Act, when an 'owner', as defined in that Act[7], enters imported goods for home consumption. The imported goods are entered by lodging an import entry in the name of the 'owner'.

31. If you, as 'owner' lodge an import entry in your name, you enter imported goods for home consumption within the meaning of the Customs Act and you are liable to pay GST on that importation.

32. Typically, the 'owner' that enters imported goods is the legal owner of the goods, or the importer, exporter, consignee, or other person with an interest in, or control of the goods. While the 'owner' can lodge the entry for home consumption itself, it is more likely that a licensed customs broker is engaged to prepare the entry on behalf of the 'owner'. In either case, the entry is made in the name of the 'owner' and it is the owner that makes the taxable importation and is liable for GST. The licensed customs broker does not make the taxable importation and is not liable for the GST on that taxable importation.

33. The definition of 'owner' in the Customs Act, also includes an agent. If an agent enters goods for home consumption under an authority granted by the principal, the principal, not the agent, makes

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[4] Subsection 7-1(1).
[5] Section 13-5.
[6] Not all imported goods are unloaded. For example, vessels that arrive in Australia under their or own power that are intended to remain here are imported.
[7] 'Owner' is a defined term in the Customs Act –refer section 4. It includes '… any person (other than an officer of Customs) being or holding himself out to be the owner, importer, exporter, consignee, agent, or person possessed of, or beneficially interested in, or having any control of, or power of disposition over the goods'.

the taxable importation. The principal is liable to pay the GST on an importation made through an agent.

34. This is consistent with the general law of agency. The acts of an agent are the acts of the principal, and the principal is thereby bound to the legal effects of that transaction. If the agent pays the GST on behalf of the principal, the agent seeks reimbursement of the amount so paid from the principal.

35. Where an agent enters goods on behalf of a principal, the name of the agent appears on the entry form (unless the agent engages a customs broker[8] and the goods are entered in the name of the principal). As the entity that appears as 'owner' on the entry form is ordinarily taken to be the entity that makes the taxable importation and liable to pay the GST, it is important to be able to demonstrate the existence of an agency relationship where goods are entered in the name of an agent. Verifying the existence of an agency relationship is important for both liability and input tax credit purposes. (Entitlements to input tax credits are discussed at paragraphs 47 to 72 below).

36. Evidence of the agency relationship should exist in the form of written instructions and clear authority granted to the agent. We would also expect that there is an arrangement for reimbursement of the agent by the principal for GST outlaid by the agent (unless a non-resident makes a creditable importation through a resident agent, see paragraphs 68 to 72 below).

37. If an agent engages a customs broker to complete the customs formalities, the customs broker may be able to enter the goods in the name of the principal. If this is the case, it is clear that liability for GST on the taxable importation rests with the principal, not the agent.

38. In summary, the entity that makes the taxable importation, including an entity that makes a taxable importation through an agent, is liable to pay the GST on that taxable importation.[9] An agent may pay the GST on behalf of its principal but it is not liable to pay the GST.

39. However, general law agency principles are overridden in one special circumstance. If the entity that makes a taxable importation is a non-resident and that non-resident makes the taxable importation through a resident agent, the resident agent is liable to pay the GST on the taxable importation, not the non-resident principal.[10]

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[8] Under the Customs Act a customs broker is able to enter goods in the name of the principal.
[9] Section 13-15.
[10] Section 57-5.

40. A non-resident, as defined in section 195-1, is an individual or company that is *not* a resident of Australia for income tax purposes.[11] A resident agent, as defined in section 195-1, is an individual or company agent that is a resident of Australia for income tax purposes.[12]

41. A non-resident entity makes a taxable importation *through* an Australian resident agent, where the non-resident appoints the agent to make the entry and the resident agent is entered as 'owner' on the customs entry. As noted in paragraph 33, an agent may be 'owner'.

42. In these circumstances, a resident agent may also include a licensed customs broker where the broker is appointed to enter the goods as an 'owner', in the capacity of an agent. This is to be contrasted with the common situation where a customs broker merely facilitates the entry on behalf of an 'owner'.

43. Taxable importations are also made in certain circumstances when goods are not entered for home consumption. These taxable importations occur when any of the circumstances listed in the table to section 114-5 occur. This table is set out at Appendix A to this Ruling.

44. An importation that would otherwise meet the requirements of a taxable importation, is not a taxable importation to the extent that it meets the requirements of a non-taxable importation.[13] An importation is a non-taxable importation if it is an importation of a kind set out in Division 42.[14] This Division is summarised in Appendix B. An importation is also a non-taxable importation if, had it been a supply, it would have been a GST-free or input taxed supply.[15]

45. The amount of GST payable on a taxable importation is 10% of its value.[16] The value of a taxable importation is the sum of the customs value of the goods, the amount paid or payable for the international transport, insurance for the transport and any customs duty and wine tax.[17]

46. GST on taxable importations is payable to Customs in the same manner as customs duty is paid on the goods (or would be paid if the goods were subject to duty).[18] For most importations, this

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[11] The tests applied in establishing the residency status of an individual or a company are those contained in the definition of 'resident of Australia' found in subsection 6(1) of the *Income Tax Assessment Act 1936* ('ITAA 1936').
[12] See footnote 9 - section 57-5.
[13] Section 13-5.
[14] Section 195-1, paragraph 13-10 (a) and Division 42.
[15] Section 195-1 and paragraph 13-10 (b).
[16] Subsection 13-20(1).
[17] Subsection 13-20(2).
[18] Paragraph 33-15 (1)(a).

means that the GST is paid to Customs before the goods are released from Customs control for consumption in Australia. Alternatively, if the entity that makes the taxable importation is approved to defer payment of GST, the GST must be paid to the Commissioner on or before the 21st day after the end of the month that the liability arises.[19]

Creditable importations

47. Input tax credits are available for creditable importations.[20] An entity makes a creditable importation under Division 15 if that entity imports goods solely or partly for a creditable purpose, the importation is a taxable importation, and the entity is registered, or required to be registered.[21]

48. The first requirement for a creditable importation is that the entity imports the goods. For an importation of goods, there can be only one entity that imports the goods within the meaning of Division 15, because only one entity can claim the input tax credit.

49. The entity that enters goods for home consumption is not necessarily the entity that imports them. The act of entering goods with Customs does not equate to importing goods.

50. The entity that imports within the meaning of Division 15 is the entity that:

(a) causes goods to be brought to Australia to consume by way of supply, use or other application after importation; and

(b) completes the customs formalities for the entry of the goods and is liable to pay the GST on the imported goods.

51. It is necessary, therefore, to ensure that the entity seeking to claim the input tax credit both causes the goods to be brought to Australia to consume and is liable to pay the GST on the taxable importation. If one entity causes the goods to be brought to Australia to consume and another entity is liable to pay the GST, neither entity is entitled to an input tax credit for the GST paid on the importation. (This is discussed further in the Explanations section at paragraphs 175 to 186).

52. The entity that causes goods to be brought to Australia is identified by looking to the purpose for which the goods are brought here. The entity whose purpose it is to consume those goods by way

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[19] Paragraph 33-15 (1)(b).
[20] Section 15-15.
[21] Section 15-5.

of supply, use or other application after importation is the entity that causes the goods to be brought to Australia.

53. An entity causes goods to be brought to Australia to consume where, for example, it:

(i) arranges for goods that it owns to be sent to Australia so that it can use them in Australia;

(ii) places an order with a foreign supplier for goods, such as trading stock, to be sent to Australia; or

(iii) sends goods to Australia to sell, lease or hire them to someone in Australia.

54. Goods are applied when used in a manner consistent with their design or nature, or for the purpose for which the goods are intended to be used. For example, an imported racing car is applied by the entity who, or that, uses the car for racing. An entity that transports the car to Australia and/or provides storage does not apply it in a manner consistent with its design or the purpose for which it is intended to be used.

55. The importing entity usually acquires the right to apply goods by giving consideration commensurate with the value of the goods, such as when an entity buys, rents or hires goods. Typically, the entity that imports the goods buys them from an overseas source and either uses or consumes the goods in Australia, or re-sells them.

56. An entity completes the customs formalities and is liable to pay the GST, where that entity makes the taxable importation by entering the imported goods for home consumption. An entity either enters goods personally, engages a customs broker, or appoints an agent to enter goods on their behalf.

57. In respect of an importation, more than one party may cause goods to be brought to Australia to consume. One entity may send the goods to Australia to supply them, and another entity may request or arrange for the goods to be sent so that it can acquire them to use or resell. Where this is the case, the importing entity is the one that finalises the importation process by completing the customs formalities. That is, the entity that enters the goods for home consumption and is liable to pay the GST.

58. The importing entity can either physically bring goods and complete the customs formalities itself, or engage other entities to do these things on its behalf. Entities such as freight forwarders, international couriers, or other transport providers engaged to arrange the transportation and/or Customs clearance of those goods do not import goods. Such entities do not cause the goods to be brought to Australia to consume by way of supplying, using or otherwise applying the goods after importation. The purpose of these transport

entities is to move the goods, and/or facilitate the importation on behalf of another entity that supplies, consumes or applies the goods. The purpose for which those goods are brought to Australia is not the purpose of the transport entity. (This is discussed further in the Explanations section at paragraphs 164 to 171).

59. Imported goods may be under the care, custody and control of various entities such as a logistics operator or a customs broker. Unless that entity causes the goods to be brought to Australia to consume them by way of supplying, using or applying them after importation that entity does not import those goods. (This is discussed further in the Explanations section at paragraphs 172 to 173).

60. In certain circumstances taxable importations are made without entry for home consumption. This occurs where the circumstances set out in the table in subsection 114-5 are met. In these cases, the entity that is treated as the importer by the fourth column of that table is also the entity that imports for the purposes of Division 15.

61. The remaining requirements for making a creditable importation are that the importing entity has a creditable purpose, the importation is a taxable importation, and the importing entity is registered, or required to be registered.

62. An entity imports goods for a creditable purpose if that entity imports the goods in carrying on its enterprise.[22] This means that the entity intends to apply the goods for the purposes of its enterprise, but not for making input taxed supplies, nor for private or domestic purposes.[23]

63. Taxable importations are discussed above. For input tax credit purposes, the importing entity is only entitled to an input tax credit where it is liable for, and pays the GST.

64. An entity entitled to an input tax credit for a creditable importation attributes the input tax credit to the tax period in which it pays the GST.[24] However, if the entity is eligible to defer payments of GST, the input tax credit is attributable to the tax period in which the liability for the GST arises.[25]

65. In three special cases an input tax credit for a creditable importation is allowed to an entity that does not import the goods within the meaning of Division 15.

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[22] Section 15-10(1).
[23] See paragraph 40 of Goods and Services Tax Ruling: GSTR 2000/15 Determining the extent of creditable purpose for claiming input tax credits and for making adjustments for changes in extent of creditable purpose.
[24] Subsection 29-15(1).
[25] Subsection 29-15(2).

66. Firstly, an entity that enters for home consumption goods that have been imported and warehoused by another party, is treated under section 114-25 as having imported the goods for the purposes of Division 15. If this entity has a creditable purpose and is registered, or required to be registered, an input tax credit is allowed.

67. Secondly, a company may be entitled to an input tax credit under Division 60, where goods are imported by a member, officer or employee of the company, before the company comes into existence.

68. Finally, the Australian resident agent of a non-resident principal is entitled, under Division 57, to the input tax credits for creditable importations made by the non-resident through that agent.

69. The non-resident entity must make a creditable importation. That is, the non-resident must import the goods into Australia for a creditable purpose, the importation must be a taxable importation and the non-resident must be registered, or required to be registered.

70. A creditable importation is made *through* the resident agent where the resident agent has the authority to clear the goods through Customs on behalf of the non-resident, and the resident agent is entered as 'owner' on the entry for home consumption. A resident agent includes a licensed customs broker where the broker is appointed to enter the goods as an 'owner', in the capacity of an agent.

71. A resident agent is not entitled to an input tax credit under section 57-10, simply because it is liable to pay the GST under section 57-5. A credit entitlement exists only if the non-resident makes a creditable importation.

72. If a creditable importation is made through a resident agent, the agent needs to be able to demonstrate that there is an agency relationship, and that the requirements for a creditable importation are met.

Other Issues

Section 9-25

73. The supply of goods is a taxable supply if the requirements of section 9-5 are met, including the requirement that the supply is connected with Australia.

74. For supplies of goods to Australia, paragraph 9-25(3)(a) provides that a supply is connected with Australia if the supplier imports the goods. A supplier imports goods where the supplier causes the goods to be brought to Australia to consume by way of supplying and completes the customs formalities.

75. This is the case where a supplier enters the goods for home consumption,[26] warehousing or transhipment. However, a supplier does not import goods where the customs formalities for the importation of the goods are required to be completed by the acquirer.[27]

76. Where a supplier imports goods, there may be both a taxable supply and a taxable importation as a result of a single commercial transaction.[28]

Other provisions

77. The operation of the provisions relating to the following other issues are discussed in the 'Explanations' part of this Ruling:

- importations without entry for home consumption (Division 114);
- non-taxable importations (section 13-10, Division 42);
- calculation of the value of a taxable importation, including where the imported goods have previously been exported from Australia (section 13-20, Division 117);
- deferral of payments of GST on taxable importations (section 33-15); and
- attributing input tax credits for creditable importations (section 29-15).

Explanations

GST on importations

78. To complement the collection of GST on taxable supplies of goods in Australia, the GST Act also provides for the collection of GST on goods brought from overseas by way of taxable importations. Input tax credits are provided for creditable acquisitions,[29] and, the GST Act likewise provides for input tax credits on creditable importations.

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[26] For example, Delivered Duty Paid ('DDP') as per ICC Incoterms 2000.
[27] For example, the goods are sold on free on board ('FOB') or cost, insurance and freight ('CIF') terms, as per ICC Incoterms 2000.
[28] See GSTR 2000/31 'Supplies connected with Australia' at paragraphs 152 to 162.
[29] Section 11-5.

79. Division 13 defines taxable importations, states who is liable for the GST, and describes how to work out the amount of GST payable.

80. Division 15 defines creditable importations, states who is entitled to input tax credits and describes how to work out the input tax credits.

Taxable importations

81. GST is payable on all taxable importations of goods into Australia. GST applies even where the taxable importation is made by an entity that is not registered, or required to be registered.[30] This ensures that goods for consumption in Australia are taxed irrespective of whether the goods are acquired domestically or imported.

82. Taxable importations, referred to in Division 13, occur when:

(a) goods are imported; and

(b) entered for home consumption (within the meaning of the Customs Act).[31]

83. In addition, Division 114 sets out certain circumstances where imported goods are not required to be entered for home consumption, but are deemed to be taxable importations.[32] Division 114 is discussed at paragraphs 246 to 250 under 'Other Issues'.

Imported goods

84. The first requirement for a taxable importation is that 'goods are imported'. The word 'import' and its derivatives are used in several sections of the GST Act. For example, paragraph 9-25(3)(a) the 'supplier… imports', paragraph 13-5(1)(a) 'goods are imported', subsection 33-15(1) 'paid by the importer', and paragraph 15-5(a) 'you import goods'.

85. The word 'import' is defined in section 195-1 to mean 'import goods into Australia'.[33] The definition includes the word 'import'

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[30] The note to section 13-5 states 'There is no registration requirement for taxable importations, and the importer need not be carrying on an enterprise.'

[31] Subsection 13-5(1).

[32] Subsection 114-5(1).

[33] 'Australia' takes its meaning from the definition of section 195-1 of the GST Act. Australia includes all land territory (except external territories), the coastal sea and the installations described in section 5C of the Customs Act. Area A of the Zone of Cooperation in the Timor Gap is not part of Australia. Goods sent from the external territories or from Area A with the intention of being landed in Australia are imported into Australia. Goods sent to those places from foreign countries are not imported into Australia.

and, therefore, does not ascribe a particular or special meaning to the word in the GST Act. Rather, it confirms that the word 'import' means import into Australia rather than import to another country.

86. The ordinary meaning of import, in relation to goods, is to bring goods, or cause them to be brought, into Australia from abroad. This meaning applies, in relation to goods, to the word import and its derivatives when used in the GST Act unless the context of its use indicates a contrary intention (see for example paragraph 112 below).

87. The word import has been given its ordinary meaning in numerous cases dealing with the Customs Act.

88. In *The Queen v. Bull* [1974] 131 CLR 203; (1974) 3 ALR 171; (1974) 48 ALJR 232 Gibbs J said at CLR 254:[34]

> No definition of 'import' or of any derivative of the word is contained in the [Customs] Act . Its ordinary meaning is 'To bring in, or cause to be brought in (goods or merchandise) from a foreign country, in international commerce' (Oxford English Dictionary).

89. However bringing goods, or causing goods to be brought, into Australia also requires, in the context of Division 13, the intention of unloading them in Australia. A liability for GST on an importation of goods can only arise if the goods are to be unloaded in Australia. If the goods are in transit to another country, GST is not payable.

90. The intention to unload the goods in Australia is also consistent with the ordinary usage of the word imported. For example, goods that are en route to New Zealand from the United Kingdom are not imported into Australia when the ship puts into an Australian port, where there is no intention that those goods be unloaded.

91. Therefore, goods are imported into Australia for the purposes of paragraph 13-5(1)(a) when they are brought into Australia with the intention of their being unloaded in Australia.

92. This is consistent with the meaning of 'imported' that has been applied by the judiciary in a number of Customs cases.

93. In *Wilson v. Chambers* (1926) 38 CLR 131[35], Isaacs J stated that:

> 'Imported goods' in s.68 means goods which in fact are brought from abroad into Australian territory and in respect of which the carriage is ended or its continuity is in some way in fact broken. The underlying concept appears to me to be as follows: where within our territory, some act takes place with regard to goods arriving from abroad, whether in fact they are or are not dutiable or prohibited, which in the absence of some new or further arrangement for

[34] (1974) 3 ALR 171 at 210; (1974) 48 ALJR 232 at 252.
[35] (1926) 32 ALR 274.

> carrying them away would make their place of arrival their destination and would therefore result in the goods remaining in Australia, then they are 'imported goods'.

94. The High Court of Australia also commented on the meaning of import in *The Queen v Bull*.[36] Barwick CJ stated at CLR 212[37]:

> … importation of goods, in my opinion, according to the natural meaning of the word, involves landing them, or bringing them within a port for the purpose of landing them in the country or place in relation to which importation is regulated.

Example 1 – Goods brought to Australia but only some imported

95. *A cargo ship arrives in Australia with the intention of discharging goods at the Port of Melbourne and sailing on to Auckland to discharge the remainder. When the ship arrives at the Port of Melbourne the goods intended for discharge, are imported into Australia. The goods that remain on board the ship, for carriage to a destination outside Australia, are not imported into Australia, despite having entered Australian territory.*

Goods entered for home consumption

96. The second requirement for a taxable importation is that goods are entered for home consumption. An entry for home consumption is the specified format in which Customs require information to be provided in respect of imported goods. When it is processed and approved it allows the goods to be removed from Customs control for consumption in Australia. Imported goods can be entered for home consumption, entered for warehousing or entered for transhipment.

97. The identity of the entity importing goods into Australia is not relevant for the purposes of establishing who makes a taxable importation.

98. The entity that enters goods for home consumption is the entity that makes the taxable importation. Typically, this is the importing entity, though in some cases it may be another entity. Under the Customs Act an entry for home consumption must be made by or on behalf[38] of the 'owner' of the goods concerned.[39]

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[36] (1974) 131 CLR 203; (1974) 3 ALR 171; (1974) 48 ALJR 232.
[37] (1974) 3 ALR 171 at 176; (1974) 48 ALJR 232 at 235.
[38] An entry for home consumption can be made by a Customs broker on behalf of the 'owner' - section 183 of the Customs Act.
[39] Subsections 71A(2) and 71A(3) of the Customs Act.

99. The 'owner' of the goods for Customs purposes is not restricted to the legal owner. Section 4 of the Customs Act provides that the 'owner' can be:

> … any person (other than an officer of Customs) being or holding himself out to be the owner, importer, exporter, consignee, agent, or person possessed of, or beneficially interested in, or having any control of, or power of disposition over the goods.

100. The wide meaning of 'owner' ensures that customs duty (and GST) can be collected on imported goods from the entity that enters the goods for home consumption, regardless of who imported the goods. The 'owner' is held responsible by Customs for the information contained in the import entry. The goods may not be released from Customs control for consumption in Australia until the GST has been paid.[40]

101. GST is not payable on imported goods entered for warehousing or transhipment. Nor is GST payable on goods entered for home consumption where the circumstances of the importation satisfy the requirements of the non-taxable importation provisions.[41] Also, in special circumstances, where the imported goods meet the requirements of a temporary import within the meaning of the Customs Act, GST is not payable if the goods are exported within a specified time period. Non-taxable importations are discussed at paragraphs 251 to 263 under 'Other Issues'. A non-taxable importation is not a taxable importation. Temporary importations are discussed at paragraphs 265 to 268.

102. Section 13-15 states that the entity making a taxable importation must pay the GST. As discussed above, this is the entity that enters goods for home consumption. There is no requirement to be registered or carrying on an enterprise.

103. Commonly, the entity that enters goods for home consumption by holding itself out on the entry to be 'owner' is the legal owner of the goods. This entity normally engages a licensed Customs broker to prepare the entry on its behalf.

104. Others that may enter imported goods include the importer, exporter, consignee or other person with an interest in, or control of the goods. Again, this entity normally enters the goods by engaging a licensed customs broker to prepare the entry on its behalf. In either case, it is the 'owner' who, or that, makes the taxable importation, not the Customs broker.

105. According to the definition of 'owner' in the Customs Act, the 'owner' in respect of goods may also be an agent. If an agent is

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[40] Subsection 33-15(2).
[41] Section 13-10 and Division 42.

authorised to undertake entry of the imported goods on behalf of a principal (thereby binding the principal to the legal effects of that transaction) the principal is the entity that makes the taxable importation, not the agent. Section 13-15 does not override the common law principle of agency, whereby the acts of an agent are effectively the acts of the principal. Again, where an agent enters goods, it commonly engages a broker to prepare the entry.

106. In respect of entries through agents, it is important to note that the entity that appears as 'owner' is ordinarily taken to be the entity that makes the taxable importation in its own right. Therefore, if this entity is not in fact making the taxable importation because it is simply making the entry as an agent, the entity needs to be able to demonstrate the existence of an agency relationship. Otherwise, the agent is considered to be making the taxable importation, and is, therefore, personally liable for the GST.

107. It is also important for input tax credit purposes, for the principal to be able to demonstrate that it made the taxable importation through an agent. This is because the principal is only entitled to an input tax credit where it is liable for, and pays the GST.

108. Paragraphs 215 to 240 further explain the role of agents and in particular the special rules that apply to resident agents acting for non-residents.

109. The amount of GST payable on a taxable importation is 10% of the value of the taxable importation.[42] The value of the taxable importation is essentially the value of the goods plus the cost of bringing those goods to Australia plus the customs duty (if any) and wine tax. This is explained further in paragraphs 269 to 295 under 'Other Issues'.

Payment of GST on taxable importations

110. Subsection 33-15(1) explains how and when the liability for GST on taxable importations is paid.

111. GST on taxable importations is paid by the 'importer' to Customs at the same time, at the same place, and in the same manner as customs duty is payable on the goods (or would be payable if the goods were subject to customs duty).

112. 'Importer' in this context does not mean the entity that actually brings the goods, or causes them to be brought, into Australia. The liability for GST falls on the entity that makes the taxable importation. Importer, in this context, therefore, simply means the entity that is liable to pay the GST on the taxable importation. That entity is

[42] Section 13-20.

typically the same entity that brings the goods, or causes the goods to be brought, into Australia.

113. An importer with a GST liability may pay the amount personally or arrange for another party, such as, a customs broker or an agent, to pay the amount on its behalf. Alternatively, some importers can defer GST on taxable importations and account for it directly to the Australian Taxation Office ('ATO'). For approval to defer GST, the importer must satisfy the eligibility requirements for the deferral scheme as set out in the regulations.[43]

114. While the entity that actually imports the goods usually enters them for home consumption and pays any GST, in some cases, goods that one party imports may be entered for home consumption by another party. The fact that an entity enters goods for home consumption does not necessarily mean that it is that entity that imports the goods into Australia. Completing the customs formalities is just one part of the importation process. Identifying the entity that imports goods determines which entity may have the entitlement to input tax credits. This is discussed in the following paragraphs.

Creditable importations

115. Entities that are registered, or required to be registered, may be entitled to input tax credits for GST paid on taxable importations. An entity is entitled to an input tax credit for any creditable importations that it makes.[44]

116. Allowing input tax credits reimburses GST to entities that acquire or import things to consume or apply in carrying on their enterprises. Where an entity (that is registered, or required to be registered) acquires something by way of a taxable supply, it is entitled to an input tax credit for the GST included in the price paid where it is a creditable acquisition. Similarly, if an entity acquires goods by way of importation, it is entitled to an input tax credit for the GST paid to Customs (or accounted for to the ATO if GST is deferred) if the importation is a creditable importation. This ensures that GST is borne by end consumers.

117. Under section 15-5 there are three requirements that must be satisfied for an importation to be a creditable importation. The section states:

> 'You make a *creditable importation* if:

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[43] Regulation 33-15.03. The deferral scheme is discussed further at paragraphs 296 to 300 under 'Other Issues'.
[44] Section 15-15.

(a) you import goods solely or partly for a creditable purpose; and

(b) the importation is a taxable importation; and

(c) you are registered, or required to be registered'.

118. Paragraph 15-5(a) requires that the entity claiming the input tax credit be the entity that imports the goods and has a creditable purpose for the importation. The meaning of creditable purpose is discussed in GSTR 2000/15.[45] Goods are imported for a creditable purpose when they are imported for the purposes of an enterprise, not for some other purpose such as private use.[46] The meaning of 'you import goods' is discussed fully at paragraphs 123 to 156 below. It means that you cause goods to be brought to Australia to consume and that you complete the customs formalities for the entry of the goods, making you liable to pay GST on the imported goods.

119. Paragraph 15-5(b) requires that the importation be a taxable importation. That is, the imported goods referred to in paragraph 15-5(a) must be subject to GST. If the importation is a non-taxable importation there is no input tax credit because no GST is payable. The paragraph 15-5(b) requirement cannot be met until the customs formalities are complete, as these determine whether or not the importation is a taxable importation. For example, imported food[47] entered for home consumption or any goods entered for warehousing are not taxable importations.

120. This is the same as the approach taken in respect of goods acquired in Australia where the supply of goods is not a taxable supply. No input tax credit is available, as no GST is paid. Where an acquisition or importation is solely for a creditable purpose the amount of the input tax credit is the same as the amount of the GST that is included in the purchase price of the acquisition, or paid to Customs on the importation. In effect, the input tax credit is a reimbursement of the GST paid on the acquisition or importation.[48]

121. For a creditable importation, paragraph 15-5(c) requires that the entity that imports the goods is registered,[49] or required to be registered.[50]

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[45] GSTR 2000/15: Determining the extent of creditable purpose for claiming input tax credits and for making adjustments for changes in extent of creditable purpose.
[46] See paragraph 40 of GSTR 2000/15.
[47] The importation of 'food' within the meaning of Subdivision 38-A is not a taxable importation because of the operation of paragraph 13-10(1)(b).
[48] Explanatory Memorandum relating to the A New Tax System (GST) Bill 1998 at Chapter 1.
[49] Section 23-10.
[50] Section 23-5.

122. In summary, to make a creditable importation an entity must be registered, or required to be registered, and must have imported goods for the purposes of its enterprise, in respect of which customs formalities have been completed and GST paid.

Meaning of 'you import goods'

123. Section 15-15 provides that '*you* are entitled to the input tax credit for any creditable importation that *you* make' (italics added). The first part of paragraph 15-5(a) states that an entity makes a creditable importation if '*you* import goods' (italics added). To determine who is entitled to input tax credits for a creditable importation, it is necessary to identify the '*you*'. That is, the entity that imports the goods.

124. Consistent with the ordinary meaning of import, 'you import' goods means you bring goods, or cause them to be brought, into Australia.

125. You bring goods into Australia by physically carrying or transporting the goods yourself. You cause goods to be brought to Australia by engaging another party such as a freight forwarder, international courier, or other transport provider, to bring those goods on your behalf. Alternatively, you may cause goods to be brought into Australia by simply requesting a foreign supplier to dispatch them to Australia.

126. Where you bring goods, you may also cause the goods to be brought into Australia. However, where you physically bring goods at the request or engagement of another, you do not cause those goods to be brought into Australia. For example, where a freight forwarder is engaged to bring goods to Australia on behalf of another, the freight forwarder does not cause those goods to be brought to Australia.

127. While there can be a number of entities involved in bringing goods or causing them to be brought into Australia, Division 15 clearly intends to identify one party only as the entity that imports. This is because the Division contemplates only one entity having an entitlement to an input tax credit.

128. Paragraph 15-5(a) contemplates that the goods are imported for a particular purpose, that is, a creditable purpose. Thus 'you import' connotes that you have a purpose in importing the goods into Australia.

129. It is noted that in *He Kaw Teh v. R*[51], Dawson J referred to the purpose of importation in considering an alleged offence relating to

[51] (1985) 157 CLR 523; (1985) 60 ALR 449; (1985) 59 ALJR 620; (1985) 15 A Crim R 203.

prohibited imports. Whilst the other judges relied on other reasons, Dawson J acknowledged purpose as an intrinsic element of importation. He said at CLR 596:[52]

> … importation connotes a commercial purpose, or at least an intention to use or consume the goods… it is not possible as a matter of language to speak of importation without introducing some element of purpose or intention.

130. GST is paid on imported goods that are entered for home consumption. Division 15 seeks to identify the entity that is entitled to an input tax credit on goods that it has imported for 'consumption' in Australia. Thus, in the context of Division 15, you import connotes that you have a purpose of consuming, or at least an intention to consume, imported goods by way of supplying, using or otherwise applying those goods after importation.

131. The entity that consumes, or has the right to consume, the goods after importation is the entity that causes the goods to be brought to Australia.

132. It follows that the 'you' in 'you import goods' in paragraph 15-5(a), refers to the entity that causes the goods to be brought to Australia. This is the entity whose purpose the goods are to serve after importation.

133. Identifying the importing entity in this way is in keeping with the scheme of the GST Act as a whole.

134. Division 11 looks at the application of goods after domestic supply by the entity that acquires them. Where the application of the goods, which could include a further supply, is in the course of carrying on an enterprise, an input tax credit is allowed.

135. Division 129, which operates in respect of creditable acquisitions *and* creditable importations, tests the intended application of a thing acquired or imported against the actual application of the thing. The Division provides for an adjustment if the actual application differs from the intended application. The operation of this provision in relation to importations is only meaningful if the entity that imports and makes the initial creditable importation is the entity that is able to apply the goods.

136. In this regard, section 129-55 defines 'apply,' in relation to a thing acquired or imported, to include:

(a) supply the thing; and

(b) consume, dispose of or destroy the thing; and

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[52] 60 ALR 449 at 502; (1985) 59 ALJR 620 at 651; (1985) 15 A Crim R 203 at 256.

(c) allow another entity to consume, dispose of or destroy the thing.

137. To make an adjustment for a change in creditable purpose, an entity must import goods and then apply them in a manner or to an extent that differs from its intention. That entity must have had the intention and the right to apply the goods within the meaning of 'apply' in section 129-55.

138. Often the entity which causes the goods to be brought to Australia is the legal owner of the goods, but it may also be an entity with a lesser interest in the goods, such as a lessee. The critical factor is that the importing entity is the entity that consumes the goods by way of supplying, using or otherwise applying those goods (or has the right to supply, use, or apply those goods) after their arrival in Australia.

139. An application of goods is a use of the goods in a manner consistent with their design (or nature) or the purpose for which they are intended to be, or are capable of being used. For example, driving a car is an application or use of the car consistent with its design. To read a book is to apply the book to its intended use. Racing, breeding or showing a thoroughbred horse is an application of the horse consistent with its nature.

140. An entity has the right to apply goods for use when, for example, the entity that has manufactured, purchased, leased, hired or acquired the goods under licence. The right to use goods is usually acquired for consideration commensurate with the goods' value.

141. Where goods are imported in the course of being sold, or otherwise supplied, both the supplier and the acquirer can be said to have caused the goods to be brought to Australia. The supplier brings the goods for the purpose of supplying them, and the acquirer brings the goods to consume or apply, after importation.

142. This circumstance demonstrates that while causing the goods to be brought to Australia to consume them is a key indicator of the entity that imports goods, it cannot be the sole factor in determining the entity that imports within the meaning of paragraph 15-5(a).

143. Importation, in the context of Division 15, is not only about landing the goods in Australia for a particular use, but completing the customs formalities which may result in a taxable importation. All goods imported into Australia must be dealt with in accordance with the Customs Act. This is an intrinsic part of the importation process. customs formalities include entering goods for home consumption, for

warehousing or for transhipment.[53] Goods cannot be consumed in Australia until the customs formalities are complete.

144. Paragraph 15-5(b) specifically requires that the 'importation' referred to in paragraph 15-5(a) is a taxable importation. Whether an importation is a taxable importation or a non-taxable importation can only be determined by the customs formalities. Therefore, 'the importation' in paragraph 15-5(b) is referring to the entire importation process, which is the same process referred to by 'you import goods' in paragraph 15-5(a).

145. In the context of certain provisions of the Customs Act, Barwick CJ in *Forbes v. Traders Finance Corporation Ltd* (1970) 126 CLR 429[54] acknowledged at CLR 432[55] that

> … 'importation' extends to both sides of the actual act of importing goods into the country. The importation does not cease at the moment of the import.

Thus, if the context of the word requires it, 'importation' can encompass customs formalities.

146. The GST taxing structure for imports also recognises that customs formalities form part of the importation process. The taxing point occurs when goods are entered for home consumption or are subject to other customs formalities provided for in subsection 114-5(1).[56]

147. Hence, we consider that the words 'you import goods' must be read to include not only causing the goods to be brought to Australia for the purpose of consuming those goods but also completing the customs formalities.

Example 2 – Supply by non-resident, acquisition by resident manufacturer

148. *A non-resident supplier causes goods to be brought to Australia for the purpose of filling an order and completing a sale to an Australian manufacturer. The manufacturer also causes the raw materials to be brought to Australia to use in its factory. In this case, causing the goods to be brought into Australia does not of itself identify the entity that imports the goods. The entity that imports the goods in these circumstances, is the entity that also completes the customs formalities and pays the GST, thus completing the*

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[53] Section 68 of the Customs Act.
[54] [1972] ALR 653; (1971) 45 ALJR 668.
[55] (1971) 45 ALJR 668 at 668.
[56] Subsection 114-5(1) is about importations without an entry for home consumption (refer to Appendix A).

importation. If the parties agree for the purchaser to be responsible for the customs formalities, such as by a contract on FOB or CIF terms,[57] *the purchaser is the entity that imports.*

149. *If the importing entity applies the goods in carrying on its enterprise, an input tax credit is available, provided the goods are not imported for making input taxed supplies or for private or domestic use.*[58]

150. In circumstances where there are several parties that cause the goods to be brought to Australia, it is usual for the parties to agree which party takes responsibility for the completion of the customs entry formalities. It is this entity that imports the goods. For example, in a contract of sale a party's obligation to complete the customs formalities is established by adopting a particular Incoterm. According to ICC Incoterms 2000, the seller under DDP terms is responsible for customs formalities on importation, whereas under FOB, CIF or DDU[59] terms, the buyer is responsible.

151. The entity that imports may complete the customs formalities itself or engage a customs broker. Alternatively the importing entity may complete the customs formalities by appointing an agent to do so on its behalf.

152. An entity completes the customs formalities where that entity's name appears on the import entry as 'owner'. This occurs where the entity completes the entry itself, or engages a customs broker.

153. In the unusual case that an entity completes the customs formalities through an agent, the parties must be able to clearly demonstrate the existence of the agency arrangement and the authority of the agent. An arrangement to reimburse for GST is indicative of agency. However, it is expected that written instructions and clear authority be given. Alternatively, the agent may be able to arrange clearance through a licensed customs broker in the name of the principal.

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[57] Free on Board and Cost Insurance Freight respectively – as per ICC Incoterms 2000.

[58] Subsection 15-10(2).

[59] In Australia, customs formalities must generally be completed in respect of imported goods before they are released from Customs control. This means DDU contracts, in the strict sense of the ICC guidelines, cannot be effected. The goods cannot be delivered with the duty (and GST) unpaid. Therefore, where the parties intend for the seller to deliver goods to the buyers premises, but for the buyer to pay the GST on entry, the seller may agree to complete the customs formalities on behalf of the buyer. The buyer would then reimburse the seller for the cost of completing the formalities as well as any duty and GST paid. Ideally, the clearance arrangements should be set out clearly in the contract of sale.

In summary

154. The entity that imports within the meaning of paragraph 15-5(a) cannot be identified by one factor alone. For the purposes of section 15-5, the entity that imports within the meaning of paragraph 15-5(a) is:

(i) the entity that causes the goods to be brought to Australia for consumption by way of supplying, using or otherwise applying them to some use by that entity after importation; and

(ii) *that* entity completes the customs formalities and is liable to pay the GST on the taxable importation (or someone such as a customs broker or an agent does this on behalf of that entity).

155. This outcome promotes the purpose underlying Division 15. The provision intends to identify one party who, or that, is entitled to the input tax credit for a creditable importation. That is, the party making a creditable importation. The provision refunds GST paid on importation to the entity that imports the goods.

156. This is also consistent with the operation of section 29-15 ('Attributing the input tax credits for your creditable importations'). Section 29-15 is enacted on the basis that the entity entitled to the input tax credits pays the GST on importation itself. Subsection 29-15(1) relevantly provides that 'the input tax credit to which *you* are entitled … is attributable to the tax period in which *you* pay the GST' (italics added).

Alternative view of the meaning of 'you import' goods

157. The alternative view is that the entity that makes the taxable importation is the entity that imports the goods.

158. The only entity, therefore, that needs to be identified is the one that has held themselves out as 'owner' in terms of the Customs Act. Identifying which entity is instrumental in causing the goods to be brought to Australia to apply to some use is unnecessary, on this view.

159. Under this view the meaning of 'owner' for Customs purposes, would become synonymous with 'you import' and 'importer' for the GST Act.

160. Special rules contained in the GST Act demonstrate that the alternative view is not correct. These rules provide for circumstances where the importing entity is not the same entity that makes the taxable importation. These special rules allow the entity making the taxable importation to claim the input tax credits. The special rules are contained in section 114-25.

161. Section 114-25 operates despite Division 15 which is about creditable importations. This section states that if you enter for home consumption goods that are warehoused goods (within the meaning of the Customs Act) and that were imported by another person, you are treated, for the purpose of Division 15, as having imported the goods.

162. This section recognises that the entity that imports the goods may store the goods in a Customs licensed warehouse instead of entering them for home consumption. The entity that imports the goods may supply the goods while they are in the warehouse. If a purchaser wishes to take the goods out of Customs control, it must enter them for home consumption ex-warehouse. At this point the purchaser makes a taxable importation. Without the special rule the entity that enters the goods for home consumption, that is, the purchaser, would not be entitled to input tax credits because it does not import the goods.

163. There would be no need for this special rule if the alternative view was the correct interpretation of the GST Act.

Entities that transport goods or arrange transport for other entities; logistics or customs broker entities

164. A number of entities (including a ship or airline owner) may be involved in bringing goods to Australia on behalf of another entity by transporting them or arranging for their transport. An entity that is engaged to carry out the transport of goods, or arrange for the transport, on behalf of another entity is not, simply because of these actions, the entity that imports the goods under paragraph 15-5(a).

165. The facilitation[60] and physical movement of goods is part of the importation process. Also, entities that arrange or facilitate the physical movement of goods have a purpose associated with bringing the goods to Australia. However, that purpose (to move goods in the course of their business) is not the purpose for which goods are brought to Australia. The purpose in bringing the goods to Australia is not to change their location, which the transporting entity does, but to fulfil some purpose of the entity that caused the importation.

166. Unlike the act of bringing goods, which can be carried out by another party, an entity's purpose in causing the goods to be brought to Australia, as evidenced by its intended application of the goods after importation, cannot be delegated to another party. This remains the case even if the transporter undertakes other services such as storage on behalf of the importing entity.

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[60] Facilitation may include customs clearance, quarantine inspection, arranging any necessary import permits etc.

167. The mere handling, storage, holding, monitoring, or transporting of goods by a transporter, forwarding or logistics entity is not an application or use of the goods. The nature of the goods and their intended use is immaterial to entities that merely transport and store them on behalf of others, except to the extent that it may change the way the goods must be handled. Therefore, transport, forwarding and logistics entities do not apply the goods that are in their custody.

Example 3 – International logistics operators

168. *Inter Express operates a worldwide logistics enterprise. Harry's Wholesale is an Australian reseller of various foreign manufactured goods. Harry purchases goods and engages Inter to arrange the transportation, completion of customs formalities, and storage after importation. The goods are stored until Harry sells them to retailers in Australia and the Pacific region upon which Harry directs Inter to distribute them.*

169. *Inter Express does not import the goods within the meaning of Division 15 as it does not have the right to apply the goods after they have been imported. The transportation, storage and distribution of another entity's goods does not amount to causing the goods to be brought to Australia to consume. Inter Express merely facilitates the importation for Harry. Harry's Wholesale causes the goods to be brought to Australia for a creditable purpose and applies the goods to that purpose when he sells them to his retail customers.*

170. *Inter Express is not entitled to an input tax credit, even if it prepares the entry for home consumption.*

171. The right to consume or apply the imported goods remains with the entity that caused the goods to be brought to Australia. Also, that right is usually acquired for consideration commensurate with the goods' value. In contrast entities that move, store or transport goods do so under a contract with a value that is not set by reference to the goods' intrinsic value.

172. Imported goods may be under the care, custody and control of various entities such as a logistics operator or a customs broker, but unless that entity causes the goods to be brought to Australia to consume them, it is not the entity that imports the goods.

173. Where it is some other party who, or that, requires the particular goods for a particular purpose in Australia, it cannot be said that transport, freight forwarding, logistics or custom brokerage entities cause goods to be brought to Australia. The logistics or customs brokerage entities that bring the goods to Australia into their custody, do not consume or otherwise apply the goods for the purpose for which they are intended to be, or are capable of being, used.

174. In summary, while there may be many parties (including a ship owner) involved in effecting the movement of goods from a foreign country to Australia for another entity, their actions do not make each one an importer of the relevant goods. Only the entity that causes the goods to be brought to Australia is the importing entity. Unless the transporting, logistics operator or customs broker entity causes the goods to be brought for the purpose of applying them to some use in its business, that entity does not imports goods within the meaning of Division 15. This is the case even if the entity enters the goods for home consumption and pays the GST.

You cause goods to be brought to Australia for consumption but you are not liable to pay the GST

175. The entity that imports goods for the purposes of Division 15 must both cause the goods to be brought to Australia and be liable to pay the GST on the imported goods. Where an entity, other than the entity that causes the goods to be brought to Australia, makes the taxable importation and is, therefore, liable to pay the GST, neither entity makes a creditable importation. This is because the entity that causes the goods to be brought to Australia is not liable to pay the GST and the entity that is liable to pay the GST does not cause the goods to be brought to Australia.

Example 4 – Facilitation of an importation specialised goods transporter

176. *Jill from Coolac purchases a horse from Ireland. Jill engages a specialist horse transporter to move the horse from Ireland to Australia, to complete Customs and quarantine formalities and to pay the GST on the taxable importation. The horse transporter enters the goods for home consumption as 'owner' of the horse, and delivers the horse to Jill's stables in Coolac.*

177. *Jill is bringing the horse to Australia to race. The horse transporter does not cause the goods to be brought to Australia, and does not apply the goods after their importation. The specialty horse transporter does not import the horse, within the meaning of subsection 15-5, and is not entitled to an input tax credit.*

178. *Jill has a creditable purpose in bringing the horse to Australia as she will race it in the course of her enterprise. However, she does not undertake the customs formalities, and is never liable for GST. As the horse transporter has entered the goods for home consumption, Jill is not entitled to the input tax credit.*

179. This example highlights the importance of ensuring that the entity seeking to claim the credit is also liable to pay the GST on the taxable importation.

180. An entity that causes goods to be brought to Australia may engage a customs broker or an agent to make the taxable importation on its behalf. In that case, that entity both causes the goods to be brought to Australia and is liable to pay the GST on the taxable importation.

Example 5 – *Facilitation of an importation – specialised goods transporter*

181. *The same facts as in Example 4 but the horse transporter enters the horse for home consumption as agent for Jill. The horse transporter obtains a written agency agreement from Jill, outlining the authority to make the taxable importation of the horse on her behalf. The terms of the agency also entitle the horse transporter to be reimbursed by Jill for the GST paid on her behalf. In that case Jill both causes the goods to be brought to Australia and is liable to pay the GST on the imported horses. Jill is entitled to claim an input tax credit for the GST paid on the horses. If the goods are entered in the name of Jill, it is clear that she is liable for GST. Where the horse transporter is also a licensed customs broker, the horse can be entered in Jill's name. The horse transporter may also engage a customs broker, and arrange clearance in Jill's name by demonstrating that Jill is the 'owner' of the horse*.

182. The entity that makes the taxable importation and pays the GST is likely, in practice, to be the entity that also causes the goods to be brought to Australia. However, as demonstrated by example 4, making the taxable importation alone does not, of itself, identify the entity that imports the goods even though it is one of the elements of the importation process.

183. As noted in paragraph 98, taxable importations can be made by anyone who satisfies the definition of 'owner' in the Customs Act. The definition is wide and includes entities that do not cause goods to be brought to Australia. For example, a consignee of a bulk shipment of goods may simply be a warehousing depot that unbundles and dispatches the goods at the direction of others. The consignee may make the entry for home consumption for the entity bringing the goods to Australia for consumption, use or application in its enterprise. The consignee is not the entity importing the goods for the purposes of section 15-5 and has no credit entitlement. Also, in these circumstances the entity that causes the goods to be brought to Australia cannot claim the credit because it does not pay the GST (unless the consignee is the agent of the importing entity, such that the

entity that causes the goods to be brought to Australia pays the GST through its agent)

184. For input tax credit entitlement purposes, the entity that causes the goods to be brought to Australia must ensure that it enters the goods for home consumption by appearing as 'owner' on the entry, or appointing an agent to do so on its behalf.

185. If the importing entity engages a customs broker to complete the customs formalities on its behalf, the broker enters the name of the importing entity as 'owner' on the entry. A customs broker is licensed under the Customs Act to complete entries on behalf of 'owners'.

186. If the importing entity engages an agent that is not a customs broker, the agent would also generally enter the name of the importing entity on the entry. The agent does this by itself engaging a customs broker, and disclosing to the broker that it is acting on behalf of the importing entity.

More than two parties involved in the purchase of imported goods

187. Most importations involve two parties, an overseas supplier and a resident acquirer. However, there are situations where several entities have an interest in goods being imported. This occurs, for example, when goods required by party A have to be obtained by party B from an overseas supplier. To determine which entity imports, it is necessary to establish which entity both causes the goods to be brought to Australia to consume and is liable to pay the GST on importation.

188. Several contracts of sale may be entered into before the goods arrive in an Australian port for unloading. In these cases, all the parties to the contracts of sale cause the goods to be brought to Australia to consume. For example, the overseas supplier causes the goods to be brought to Australia to consume by way of sale to B; B causes the goods to be brought to Australia to consume by way of sale to A; and A causes the goods to be brought to Australia to consume by way of use for their designed purpose in A's enterprise. Whichever of these entities completes the customs formalities and is liable to pay the GST, thereby satisfying both requirements set out at paragraph 154, is the entity that imports the goods.

Several parties with an interest in imported goods before they are entered for home consumption

Example 6 - Purchaser places an order to buy goods with an Australian supplier. Goods are obtained by supplier from overseas supplier

189. *Farm Co Pty Ltd places an order with Hardy Co Pty Ltd to purchase high tensile fencing material. Both Australian resident companies are registered for GST. Hardy Co does not stock the expensive material and purchases the fencing material from Korea.*

190. *The contracts between Farm Co and Hardy Co, and Hardy Co and the Korean supplier are entered into before the goods are entered for home consumption. All three parties can be said to cause the goods to be brought to Australia to consume; the Korean supplier to sell to Hardy Co, Hardy Co to sell to Farm Co, and Farm Co to use in its farming business. Whichever of these entities completes the customs formalities and is liable to pay GST on the taxable importation is the entity that imports the goods. This is determined by the terms of the contracts. When the fencing material arrives in Australia, it is more likely that either Hardy Co or Farm Co enters the goods for home consumption and is liable to pay GST. Whichever of these parties undertakes this function satisfies both requirements and is the entity that imports the goods.*

191. *If Farm Co makes the taxable importation, the supply of the fencing material by Hardy Co to Farm Co is not a taxable supply. This is because the supply of those goods is not connected with Australia. Subsection 9-25(1) does not apply because the supply is not a supply of goods wholly within Australia. The fencing material is not made available, or delivered, to Farm Co in Australia.*

192. *Subsection 9-25(3) also does not apply. While that subsection applies to supplies that involve goods being brought to Australia, a connection with Australia only exists if the supplier either imports the goods into Australia or installs or assembles the goods in Australia. Neither situation is applicable in this case.*

193. *Farm Co is, of course, liable to pay GST on the taxable importation that it makes. Farm Co imports the goods into Australia in carrying on its enterprise, the importation is a taxable importation and it is registered. An input tax credit is available to Farm Co for the GST paid on the creditable importation.*

194. *As Farm Co imports the goods into Australia, the supply by the Korean supplier to Hardy Co is not connected with Australia. Subsection 9-25(3) does not apply. The supplier neither imports the goods into Australia nor installs or assembles the goods in Australia.*

195. *If Hardy Co makes the taxable importation, the supply of the fencing material by Hardy Co to Farm Co is a taxable supply. The supply is connected either under subsection 9-25(1), being a goods delivered or made available in Australia, or under subsection 9-25(3) because the supply involves the goods being brought to Australia and the supplier imports the goods. Hardy Co must pay the GST on the taxable supply that it makes. An input tax credit is available to Farm Co for the GST paid on the creditable acquisition that it makes.*

196. *Hardy Co is also liable to pay GST on the taxable importation that it makes. Hardy Co imports the goods into Australia in carrying on its enterprise, the importation is a taxable importation and it is registered. An input tax credit is available to Hardy Co for the GST paid on the creditable importation.*

197. *As Hardy Co imports the goods into Australia, the supply by the Korean supplier to Hardy Co is not connected with Australia. Subsection 9-25(3) does not apply. The supplier neither imports the goods into Australia nor installs or assembles the goods in Australia.*

Several parties with an interest in imported goods after they are entered for home consumption

Example 7 - Goods obtained from overseas supplier to meet future domestic supply

198. *Aus Co, an Australian resident company located in Sydney, purchases raw materials from US Co, a company resident in the United States. The materials are sent by US Co from the USA directly to the factory of a customer of Aus Co in Newcastle, NSW. Upon delivery to the factory in Newcastle, ownership of the goods passes from US Co to Aus Co. The goods are stored in the customer's factory until they are required for the customer's manufacturing process.. At this time a sale takes place between Aus Co and its customer for the amount of raw materials required.*

199. *The contract between US Co and Aus Co is entered into before the goods are entered for home consumption. The contract(s) between Aus Co and its customer are entered into after the goods are imported, when the customer requires the goods.*

200. *At the time of entering the goods for home consumption Aus Co causes the goods to be brought to Australia to consume by way of future sale. US Co also causes the goods to be brought to Australia to consume by way of sale to Aus Co. The customer does not cause the goods to be brought to Australia because Aus Co, at the time of entering the goods for home consumption, has not entered into a binding contract to sell the raw materials to the Newcastle customer.*

Any future sale of the goods to the Newcastle customer is contingent on its requirements which may or may not materialise sometime after the goods have arrived in Australia.

201. *Any supply by Aus Co to the Newcastle company does not involve those goods being brought to Australia. It is a supply of goods wholly within Australia. Under subsection 9-25(1) that supply is connected with Australia and is a taxable supply provided Aus Co is registered, or required to be registered.*

202. *Aus Co causes the goods to be brought to Australia to consume by way of sale. It also has a creditable purpose and, if it undertakes the customs formalities and is liable to pay the GST on the taxable importation, it is the entity that imports. Aus Co is entitled to an input tax credit for the GST paid, provided it is registered, or required to be registered for GST.*

203. *As Aus Co imports the goods into Australia the supply by US Co to Aus Co is not a taxable supply. The supply is not connected with Australia as subsection 9-25(3) is not satisfied. The supplier neither imports the goods into Australia nor installs or assembles the goods in Australia.*

204. *If the agreement is that US Co enters the goods for home consumption and pays the GST on the taxable importation, US Co is entitled to the input tax credit for the GST paid, provided it is registered, or required to be registered for GST.*

205. *If the agreement is that the Newcastle customer enters the goods for home consumption and pays the GST on the taxable importation, the Newcastle customer is not entitled to the input tax credit for the GST paid because it is not the entity that imports the goods. While the Newcastle customer completes the customs formalities and is liable to pay the GST, it does not cause the goods to be brought to Australia. Moreover, in this case, no entity is able to satisfy the requirements of section 15-5 and no entity is entitled to any input tax credit for the GST paid on the importation.*

206. Example 7 highlights the importance of ensuring that the entity seeking to claim the credit is also liable to pay the GST on the taxable importation.

Special rules for allowing input tax credits

207. Special rules contained in section 114-25 provide for circumstances where a different entity makes the taxable importation from the entity that imports the goods. The rules have the effect of allowing the input tax credit for creditable importations to the entity that makes the taxable importation, even though that entity is not the entity that imports the goods.

208. Where a non-resident entity makes a creditable importation *through* a resident agent, special rules, contained in section 57-10, apply to transfer the input credit entitlement to the resident agent.

209. A company is entitled to input tax credits in respect of goods imported by a person before the company was in existence, provided the importer becomes a member, officer or employee of the company. The other requirements of this special rule are set out in Division 60.

Warehoused goods entered for home consumption by an entity other than the entity that imports

210. Section 114-25 has effect despite Division 15 which is about creditable importations. The section states that if you enter for home consumption goods that are warehoused goods (within the meaning of the Customs Act) and that were imported by another person, you are treated, for the purpose of Division 15, as having imported the goods.[61] The person who makes the entry is entitled to the input tax credit to the extent that the goods were imported for a creditable purpose. The extent to which that person entered the goods for home consumption for a creditable purpose is treated as the extent to which that person imported the goods for a creditable purpose.[62]

211. This section recognises that an entity that imports goods may enter them for warehousing and store them in a Customs licensed warehouse. This entity normally satisfies paragraph 15-5(a) as being the entity that imports. However, as the customs formalities do not result in a taxable importation there is no creditable importation.

212. Where an entity that imports goods supplies them while those goods are in the Customs licensed warehouse, the entity that acquires the goods enters them for home consumption ex-warehouse if it wishes to take the goods out of the warehouse and thus, makes a taxable importation.

213. Without the special rule, the entity that enters the goods for home consumption would not be entitled to input tax credits for a creditable importation because that entity did not import the goods. That is, the entity did not cause the goods to be brought into Australia.

Non-resident makes a creditable importation through a resident agent

214. Section 57-10 has effect despite section 15-15, which is the general provision about who is entitled to input tax credits. Section 57-10 describes who is entitled to the input tax credits when a

[61] Paragraph 114-25(1)(a).
[62] Paragraph 114-25(1)(b).

non-resident makes a creditable importation through a resident agent. The section states that the agent is entitled to the input tax credit on the importation despite not being the entity that imports. Creditable importations made through resident agents are discussed at paragraphs 232 to 240.

Role of agents

Resident agent acting for an entity that imports

215. 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 that party's behalf is called the principal.

216. 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.[63]

217. Use of intermediaries to facilitate import transactions is part of normal commercial practice. Intermediaries are widely used by entities importing goods to undertake certain functions on their behalf. For example, an intermediary may be authorised to enter transport contracts with third parties on behalf of the entity that imports, or to arrange customs or quarantine clearance. In these cases, the importing entity is the principal and the intermediary is the agent.

218. If an entity importing goods into Australia authorises an intermediary such as a freight forwarder, customs broker or other party to undertake the entry of the goods on its behalf, thereby binding the principal to the legal effects of that transaction, the principal is the entity liable to pay the GST. The principal makes the taxable importation.

219. According to the common law principles of agency, the actions of the agent are in effect the actions of the principal. The principal is primarily liable for the actions of his or her duly authorised agent, notwithstanding that an agent acting for an undisclosed principal can also be held personally liable by third parties. The Explanatory Memorandum to the GST Act[64] explains that the principles of the general law of agency are to be followed in applying GST law to agency relationships.

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[63] *International Harvester Company of Australia Proprietary Limited v. Carrigan's Hazeldene Pastoral Company* (1958) 100 CLR 644; (1958) 32 ALJR 160.

[64] Explanatory Memorandum relating to the A New Tax System (GST) Bill 1998 at paragraph 6.277.

220. Alternatively, an importing entity may simply require the intermediary to pay the GST on its behalf. The intermediary in this sense is a paying agent.

221. The principal is the entity that is entitled to claim any input tax credit for the GST paid on a creditable importation. Where an agent pays the GST liability on behalf of its principal, recovery of the GST paid by the agent is a matter between the agent and the principal and the scope of the agent's right to be indemnified for expenses. The intermediary cannot claim input tax credits for the GST paid on behalf of its principal, as the agent does not import the goods. However, see paragraphs 226 to 240 below for special provisions that apply where the principal is a non-resident.

Example 8 - Resident agent acting for resident importing entity

222. *As in example 4, Jill appoints the horse transporter as her agent, authorising the transporter to enter the goods on her behalf. The agent enters the goods for home consumption and pays the GST on Jill's behalf. Because of the wide definition of 'owner' in the Customs Act, the horse transporter can appear as owner on the entry. Jill is entitled to the input tax credit if she imports the horse for a creditable purpose and she is registered, or required to be registered. The horse transporter does not have any entitlement to an input tax credit for the GST paid on behalf of Jill. The horse transporter does not cause the horse to be brought to Australia and it is not liable to pay the GST on the taxable importation. The horse transporter, as agent, needs to seek reimbursement from Jill for the expense of the GST which it outlaid on behalf of Jill, the principal.*

Alternative view

223. Another view is that the agent is personally liable to pay the GST on a taxable importation when the agent enters the goods as 'owner' on behalf of another. However, as noted above, the Explanatory Memorandum to the GST Act[65] explains that the principles of the general law of agency are to be followed in applying GST law to agency relationships. Section 13-5 does not, in our view, demonstrate that there is an intention to override the common law principles of agency.

224. Further, if the agent is personally liable for the GST on the taxable importation, the agent is not entitled to an input tax credit because the agent is not the entity that imports for the purposes of

[65] Explanatory Memorandum relating to the A New Tax System (GST) Bill 1998 at paragraph 6.277.

paragraph 15-5(a). The entity that imports for the purposes of paragraph 15-5(a) is also not entitled to an input tax credit for the GST on the taxable importation. This is because the importing entity is not liable to pay the GST on the taxable importation made through an agent. This is particularly borne out by the attribution rule in section 29-15 which provides that the input tax credit is attributable to the period 'in which you pay the GST on the importation'. This has the unintended consequence that no entity is entitled to an otherwise available input tax credit.

225. Also, if the agent is personally liable to pay the GST under section 13, this would undermine the operation of Division 57. That Division recognises that where a taxable importation is made *through* a resident agent, ordinarily, the non-resident is personally liable for the GST on that importation. However, the Division overrides the common law agency principles and makes the resident agent personally liable where the resident agent is acting for a non-resident. The operation of that Division is covered next.

Resident agents acting for non-residents

226. Division 57 is a special rule that makes resident agents acting for non-residents responsible for the GST consequences of what the non-residents do *through* their resident agents. This Division has effect despite sections 13-15 (which is about liability for GST) and 15-15 (which is about who is entitled to input tax credits).[66]

227. Division 57 states who is liable for the GST and who is entitled to the input tax credits. It also prescribes that the resident agent is required to be registered if the non-resident principal is registered, or required to be registered.

Taxable importations made through resident agents

228. Under section 57-5, the resident agent[67] of a non-resident[68] is liable to pay GST on any taxable importations that the non-resident *makes* through them. The GST is not payable in this case, by the non-resident principal. Section 57-5 overrides section 13-15, and therefore legislatively alters the effects of the principles of the general law of agency.

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[66] Subsection 57-5(2)

[67] A 'resident agent' is 'an agent that is an Australian resident'. An 'Australian resident' is a person, either a company or an individual, who is a resident of Australia for the purposes of the ITAA 1936.

[68] A 'non-resident' is 'an entity that is not an Australian resident'. An 'Australian resident' is a person who is a resident of Australia for the purposes of the ITAA 1936. A non-resident, therefore, is either a company or an individual that is not a resident of Australia for income tax purposes.

229. Taxable importations are made by an entity entering the goods for home consumption. A non-resident entity makes a taxable importation *through* a resident agent if the agent, on behalf of the non-resident, enters the goods as 'owner' on the customs entry form and pays the ensuing GST amount. Entering the goods as 'owner' means that the agent's name is shown on the entry form as the 'owner'. An agent is within the statutory definition of 'owner'. In this case, section 57-10 makes the agent liable for GST.

230. If instead the agent enters the goods in the name of the non-resident, the non-resident's name appearing as 'owner' on the entry for home consumption, the taxable importation is not made *through* the resident agent. It is made by the non-resident. The non-resident principal is liable for GST. It is not made *through* the resident agent, even if the agent assists with, or is responsible for the administrative activity involved in lodging the entry.

231. A non-resident may appoint an Australian licensed customs broker as its resident agent, expressly authorising the broker to make taxable importations on its behalf. The goods are entered in the name of the broker, as agent. This differs to the ordinary circumstances where a customs broker is merely engaged to provide the service of preparing and lodging the import entry for its customer, the 'owner'. The ordinary role of a broker to prepare entries on behalf of owners, is distinguished from the special role of making taxable importations, as 'owner, on behalf of a non-resident.

Creditable importations made through resident agents

232. Ordinarily if a non-resident makes a creditable importation, the non-resident is entitled to the input tax credit under section 15-15.

233. If a non-resident makes a creditable importation *through* a resident agent, the agent is entitled to claim the credit instead. The non-resident is not entitled to the input tax credit on the creditable importation. The resident agent assumes the entitlement for any input tax credits in these circumstances.[69]

234. A non-resident makes a creditable importation where all the requirements for making a creditable importation are satisfied. That is, the non-resident must be the entity that imports the goods (see paragraphs 123 to 156), have a creditable purpose, and be registered or required to be registered. The importation must also have been a taxable importation.

235. A non-resident makes a creditable importation *through* a resident agent if the non-resident makes a taxable importation *through*

[69] Section 57-10.

the agent. As discussed at paragraphs 228 to 231 above, this occurs where the resident agent is named as 'owner' on the customs entry for the goods. An arrangement whereby the non-resident does not reimburse the agent for the GST indicates that the agent is authorised to pay the GST and claim the input tax credit. However the resident agent also needs clear evidence of the agency relationship, such as written authorisation from the non-resident.

236. It is important to note that a resident agent is not entitled to an input tax credit under section 57-10, simply because it is liable for GST under section 57-5. A taxable importation made through a resident agent, does not necessarily result in a creditable importation being made. The requirements for a creditable importation must be satisfied by the non-resident. That is, the non-resident must import the goods for a creditable purpose and be registered or required to be registered.

237. For creditable importations made through resident agents, the agent will need to be able to demonstrate that the requirements for the creditable importation are met.

Example 9 - Importation by non-resident through resident agent

238. *Gobi Publishing (Gobi) based in the Ukraine publishes magazines which can only be purchased in Australia by subscription. Gobi engages Australian resident Simpson as agent to undertake certain functions in Australia. Periodically, Gobi forwards the magazines in one consignment to Simpson. Simpson arranges for the customs formalities in Australia and the delivery of the magazines to the subscribers. Simpson, as consignee and agent, appears as owner on the entry, makes the taxable importation on behalf of Gobi and pays the GST. Therefore, Gobi makes the taxable importation <u>through</u> the resident agent, Simpson.*

239. *Gobi causes the magazines to be brought to Australia to supply to its subscribers. Gobi is also liable to pay the GST on the taxable importation. Gobi is the entity that imports the magazines. As Gobi is registered (or required to be registered) for GST and the importation is for the purpose of its business, Gobi makes a creditable importation. Simpson is entitled to claim the input tax credit as Gobi has made a creditable importation through them. Gobi is not entitled to claim the input tax credit.*

240. *Gobi is making taxable supplies of the magazines in Australia, as the supplies of the magazines are connected with Australia under subsection 9-25(3). The sale of the magazines is a supply of goods to Australia and the supplier (Gobi) imports the magazines. Gobi is liable for the GST on the taxable supplies of magazines, unless these*

supplies are also made through a resident agent, in which case section 57-5 makes the resident agent liable. If the supply is not made through a resident agent, the GST on the taxable supply made by Gobi can, with the agreement of the recipients and satisfaction of the certain requirements, be reverse charged to the recipients.[70]

Other Issues

Section 9-25

241. One of the requirements for a supply to be a taxable supply is that the supply is connected with Australia.[71]

242. For supplies of goods to Australia, paragraph 9-25(3)(a) provides that a supply is connected with Australia if the supplier imports the goods into Australia.

243. Both a supplier and an acquirer of goods may cause the goods to be brought into Australia. The word 'import' must, therefore, in the context of paragraph 9-25(3)(a), encompass completing the customs formalities. In that way it can be established which entity imports the goods into Australia.

244. The supplier, therefore, imports goods into Australia for the purposes of subsection 9-25(3) if it causes the goods to be brought to Australia and it also completes the customs formalities. This is the case where a supplier enters the goods for home consumption[72] or warehousing or transhipment. However, a supplier does not import goods where the customs formalities for the importation of the goods are required to be completed by the acquirer.[73]

245. Where a supplier imports goods, there may be both a taxable supply and a taxable importation as a result of a single commercial transaction.[74]

Taxable importations which do not require an entry for home consumption

246. Certain goods that come to Australia are not required to be entered for home consumption. For example, personal household effects of passengers and crew or low value consignments by post. These importations are not, therefore, taxable importations as defined

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[70] Division 83.
[71] Section 9-5.
[72] For example, Delivered Duty Paid ('DDP') as per ICC Incoterms 2000.
[73] For example, the goods are sold on free on board ('FOB') or cost, insurance and freight ('CIF') terms, as per ICC Incoterms 2000.
[74] See example 15 in this Ruling, and also GSTR 2000/31 'Supplies connected with Australia' at paragraphs 152 and 162.

in section 13-5. However, they are treated as taxable importations through the operation of section 114-5 (provided the importation does not satisfy the specific non-taxable importation provisions).[75]

247. Subsection 114-5(1) sets out, in column 3, circumstances that occur in relation to particular kinds of importations.[76] It also identifies, in column 4, the person or entity that makes the taxable importation in relation to a particular circumstance. An entity is liable for the GST under section 13-15, if the circumstance occurs and that entity is identified as making the taxable importation. However, there is not a taxable importation to the extent that the importation is a non-taxable importation.

248. The table in Appendix A is an extract from section 114-5 providing a list of the circumstances in which importation of goods, that are not required to be entered for home consumption, are still considered to be taxable importations. It also identifies the entity that makes the taxable importation.

249. It is important to note that 'importer' for the purposes of section 114-5 means the entity deemed by that section to be making a taxable importation, and is therefore liable to pay the GST on that taxable importation. This entity may not always be the same one identified as the entity that imports for the purposes of paragraph 15-5(a) (see further paragraphs 123 to 156).

250. To determine which entity is entitled to the input tax credits, it is necessary to identify the entity that imports the goods. Paragraph 154 sets out that the entity that imports is the one that causes the goods to be brought to Australia and completes the customs formalities. However, section 114-5 prescribes the person that, in effect, makes the taxable importation, where there are no customs entry formalities. That person is described as the importer. We consider that for the purposes of paragraph 15-5(a), the entity that imports in the circumstances of an importation without entry for home consumption must be the entity identified as the importer in section 114-5.

Non-taxable importations

251. GST is payable on taxable importations.[77] Importations are not taxable importations to the extent that they satisfy the requirements for a non-taxable importation.[78] Non-taxable

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[75] Most personal household effects and low value postal consignments will satisfy the requirements of a non-taxable importation under Division 42. See paragraphs 253 to 260 and Appendix B on non-taxable importations.
[76] The circumstances listed in subsection 114-5(1) are included at Appendix A.
[77] Subsection 7-1(1).
[78] Sections 13-5 and 114-5.

importation means that no GST is collected in respect of the importation.

252. Section 13-10 states that an importation is a non-taxable importation if:

(a) it is a non-taxable importation under Part 3-2; or

(b) it would have been a supply that was GST-free or input taxed if it had been a supply.

Non-taxable importations under Part 3-2

253. Division 42 sets out the importations that are non-taxable. The operation of this Division complements several of the existing concessional items in Schedule 4 of the *Customs Tariff Act 1995,* which reduce the customs duty to zero in particular circumstances.

254. Subsection 42-5(1) lists the Schedule 4 items under which no customs duty or GST is payable. Each of these items is described in Appendix B.

255. Subsection 42-5(1A) allows the importation of containers covered by item 34 of Schedule 4 of the *Customs Tariff Act 1995* to be non-taxable importations where the containers, after having been used to import goods, are exported without being put to any further use. For example, reels for transporting cable, or drums for carrying liquid.

256. Subsection 42-5(1C) lists some additional Schedule 4 items which relate to importations where Australia has international obligations, such as those under treaties. Importations under these items are only non-taxable if they are so specified in the regulations. As at August 2002, no regulations have been enacted.

257. Where goods cannot be covered by a Schedule 4 item due to the operation of subsection 18(1) of the *Customs Tariff Act 1995,*[79] subsection 42-5(2) allows the goods to be treated as non-taxable importations if Schedule 4 otherwise applies.

258. Goods returned to Australia in an unaltered condition can be non-taxable importations, provided the conditions in section 42-10 are satisfied.

259. Subsection 42-10(1) provides that where goods originally acquired in Australia after 1 July 2000 are exported by their owners, and then re-imported into Australia by the same owners, they are non-taxable importations provided:

[79] Subsection 18(1) of the *Customs Tariff Act 1995* excludes the operation of Schedule 4 to goods which substantively have a zero duty rate.

(a) the exported and re-imported goods are unchanged, that is, they have not been subjected to any treatment, industrial processing, repair, renovation, alteration or any other process since their export;

(b) there was no entitlement to a refund of GST under the tourist refund scheme when the goods were exported; and

(c) the importer is the manufacturer of the goods, or had previously acquired the goods by way of a taxable supply or taxable importation.

260. Goods that were acquired before 1 July 2000, and were therefore subject to the taxation system in existence prior to 1 July 2000, are covered by subsection 42-10(2). This subsection provides that the re-importation of goods is a non-taxable importation where:

(a) the importer manufactured, acquired or imported the goods prior to 1 July 2000;

(b) the importer was not entitled to, and did not claim, a refund under the tourist refund scheme when the goods were exported;

(c) the goods have been exported then re-imported without being subject to any treatment, industrial processing, repair, renovation, alteration or any other process; and

(d) the ownership of the goods has not changed.

Non-taxable importations of goods that would be GST-free or input taxed if supplied

261. An importation of any goods that would have been GST-free or input taxed, if it were a supply, is a non-taxable importation. For example, the supply of a wheelchair is GST-free, therefore, an importation of a wheelchair is also GST-free.

262. Importations of goods are non-taxable when a supply of the same goods in Australia would have been GST-free under Division 38 (or input taxed under Division 40).[80]

263. Supplies of goods that are GST-free under Division 38 include the following:

- food or beverage items within the meaning of Subdivision 38-A;

[80] Paragraph 13-10(b).

- Medical aids and appliances which meet the requirements of paragraph 38-45(1)(b) and are listed in Schedule 3, and spare parts for these;
- Health goods, drugs and medicines covered by sections 38-47 and 38-50; and
- Cars for use by disabled people covered by Subdivision 38-P.

Other importations on which GST is not payable

Money

264. An importation of money is not an importation of goods into Australia.[81] 'Money' is defined in section 195-1 and includes both Australian and foreign currency, provided the market value does not exceed its stated value as legal tender in the country of issue. Money does not include collector's pieces, investment articles or items of numismatic interest.

Temporary imports where security is given

265. Division 171 provides a special rule about payments of GST on taxable importations. No GST on a taxable importation is payable if a security or undertaking described in section 162 or section 162A of the Customs Act is given and complied with.

266. Securities and undertakings may be taken in respect of temporarily imported goods, as prescribed by Customs regulations.[82] These include goods imported by temporary residents or tourists, goods imported for use at a public exhibition or entertainment event, and goods covered by an inter-governmental agreement such as goods covered by an international carnet.

267. The conditions include that the goods cannot be lent, sold, pledged, mortgaged, hired, given away, exchanged or otherwise disposed of or altered in any way.[83] If the conditions of the security are contravened, GST becomes payable on the taxable importation.

268. The conditions also require that the goods must be exported within 12 months (or such further time as Customs allow) after their importation.[84] GST becomes payable if the goods are not exported, unless they have no value as a result of being accidentally damaged or

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[81] Subsection 13-5(3).
[82] Regulations 124, 125 and 125A of the Customs Regulations 1926.
[83] Subregulations 124(4) and 125B(1) of the Customs Regulations 1926.
[84] Paragraphs 162(3)(b) and 162A(5)(b) of the Customs Act.

destroyed, or in the case of an animal, it has died or been destroyed as a result of an accident or illness.

Value of the taxable importation

269. The amount of GST on a taxable importation is 10% of its value.[85] Subsection 13-20(2) provides that the value of the taxable importation is the sum of: the customs value of the imported goods; the cost of the international transport of the goods; the insurance for the transport; any customs duty[86]; and wine tax payable.

270. This is analogous to GST on taxable supplies. Suppliers in Australia sell goods at a price that recoups all the costs relating to the goods plus a margin for profit. The price usually reflects the cost of the goods plus the cost of transport, plus any fees and charges associated with the goods. It is this price on which GST is calculated.

271. The customs value of imported goods is defined in section 195-1 by reference to Division 2 of Part VIII of the Customs Act. Section 161J of this Division stipulates that the customs value of goods is to be expressed in Australian currency based on the ruling rate of exchange on the day of exportation of the goods to Australia.

272. Customs duty is imposed on the customs value of the imported goods. The customs value, as determined under the Customs Act, is most easily described as the 'free on board' value of the goods, usually calculated by reference to the sale price of the goods.

273. The cost of transporting goods to Australia forms part of the value of the taxable importation. Subsection 13-20(2) provides that the amount to be included is the amount paid or payable for the international transport of the goods to their place of consignment in Australia, to the extent that the amount is not already included as part of the customs value.

274. 'International transport' is defined in section 195-1. In relation to the importation of goods it means:

> … the transport of the goods from a place outside Australia to their place of consignment in Australia (excluding loading and handling within Australia).

275. The cost of loading and handling in Australia is not included in the value of the taxable importation, but forms part of the value of any taxable supply.

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[85] Subsection 13-20(1).
[86] Customs duty includes dumping duty, interim dumping duty and countervailing duty where applicable.

276. 'Place of consignment' is also defined in section 195-1 to mean:

(a) 'if the goods are posted to Australia - the place in Australia to which the goods are addressed; or

(b) in any other case - the port or airport of final destination as indicated on the transportation document.'

277. Goods weighing less than 31.5 kilograms that are transported to Australia and delivered by an international express courier service are treated as goods posted to Australia.

278. The port or airport of final destination is where the goods can be removed from Customs control after being dealt with in accordance with the Customs Act.

279. 'Transportation document' includes such documents as: consignment notes, house bills of lading, ocean bills of lading, house air waybills, master air waybills, sea waybills, straight line air waybills, sub-master air waybills and other similar documents.[87]

280. In effect the total cost of transporting goods from an overseas supplier's premises to the consignee's premises in Australia is subject to GST. Transportation costs incurred before goods arrive at the place of export are included in the customs value, for example, foreign inland freight. Transportation costs from the place of export to the port or airport of final destination are those referred to in subparagraph 13-20(2)(b)(i). To the extent that a supply involves transporting the goods from the port or airport of final destination to the consignees premises, the supply is a taxable supply.

281. The amount paid or payable to insure goods for international transport is also included in the value of the taxable importation.

Example 10 - Components of international transport to be included in the value of the taxable importation

282. *Goods are consigned to Ballarat, Victoria, from a supplier's premises in California. They are trucked to a freight consolidator in San Francisco where they are packed into a container and loaded on board a ship destined for Melbourne. Melbourne is the port of final destination nominated on the house bill of lading. The goods are offloaded in Melbourne, cleared though Customs, and delivered to the recipient's premises in Ballarat.*

[87] Section 195-1.

283. *The cost of transporting the goods from the supplier's premises to where they are packed into a container, is included in the customs value. The cost of transporting the container from the consolidator's depot to Melbourne is the international transport referred to in subparagraph 13-20(2)(b)(i). The supply of local cartage from Melbourne to Ballarat is a taxable supply.*

284. It is common for the cost of international transport and insurance to be expressed (and often paid for) in a foreign currency. Where this happens, subsection 13-20(2A) ensures that the exchange rate used to convert the foreign currency to Australian currency is that prevailing on the day of exportation of the goods.[88] This is the same date used when converting the customs value to Australian dollars.

285. In some cases the amount paid or payable by an importer for international transport and insurance covers a number of shipments. Paragraph 13-20(3)(a) makes provision for the Commissioner to determine the way in which the international transport and insurance are apportioned over the shipments.

286. Paragraph 13-20(3)(b) also provides the Commissioner with the discretion to determine that an amount paid or payable for a specific kind of transport or insurance is zero. An example of where a zero amount is payable is the transport and insurance for non-commercial goods imported by international passengers and crew disembarking from international flights.

Valuation of re-imported goods

287. In some cases the re-importation of goods that have been exported from Australia will be a non-taxable importation. For example, re-imported goods that satisfy the requirements of section 42-10, or that are covered by item 18A as referred to in section 42-5.

288. However, for re-importations that are taxable importations, Division 117 provides a special rule for the valuation of re-imported goods. The special rule covers the re-importation of goods which have been exported to be repaired or renovated.[89] It also covers the valuation of re-importations of live animals such as breeding stock.[90]

289. When goods are exported from Australia for repair or renovation, or are exported as part of a batch repair process, then re-imported, GST only applies to the cost of the materials, labour and other charges involved in the repair or renovation (not to the full value

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[88] Refer section 161J of the Customs Act.
[89] Section 117-5.
[90] Section 117-10 and Explanatory Memorandum relating to the Taxation Laws Amendment Bill (No. 8) 2000, paragraphs 2.13 to 2.16.

of the goods). The cost of bringing those goods back to Australia and any customs duty also is included in the value of taxable importation.

290. Goods are part of a batch repair process if:

(a) they are part of a process to replace goods that were exported from Australia for repair and renovation; and

(b) they are not new or upgraded versions of the exported goods; and

(c) they are not replacing goods that have reached the end of their effective operational life.[91]

Example 11 - Goods exported for repair and re-imported

291. *Equipco Pty Ltd sends an automatic drink vending machine with a value of $100,000 to Japan for repairs. The cost of materials, labour and other charges associated with the repairs is $20,000. The transport and insurance costs from Japan to Australia are $2,500. The customs duty is 5%. Equipco re-imports the vending machine. The value of the taxable importation is $23,500 ($20,000 plus $2,500 plus $1,000 customs duty ($20,000 x 5%)).*

292. Animals exported for the purpose of being serviced at stud and re-imported when pregnant are only subject to GST on the increased value of the animal, provided the animal was re-imported by the same owner who exported her.[92]

293. The increased value is the difference between the value of the animal on re-importation less the value of the animal immediately before it was exported.

Example 12 - Re-importation of breeding livestock

294. *A horse racing syndicate sends its best mare to New Zealand to be serviced by a past Melbourne Cup winning stallion. On export the mare is valued at $250,000. When the syndicate re-imports the mare, her value has increased to $275,000, due to her being in-foal. The value of the taxable importation is $25,000 ($275,000 minus $250,000). The GST payable is $2500.*

295. If the difference between the export value of the animal and the import value of the animal is equal to, or less than zero, then the value of the taxable importation is nil.

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[91] Subsection 117-5(2).
[92] Subsection 117-10.

Scheme for deferred payment of GST

296. The provision for deferral of GST is included in the GST Act to allow registered businesses to defer GST normally payable at the time of entry for home consumption. The purpose of the provision is to remove the cash flow disadvantage of businesses that import goods, compared with businesses that obtain goods locally.[93]

297. Paragraph 33-15(1)(b) provides for GST on taxable importations to be paid by the importer at some time, manner and place other than those where customs duty is paid, as specified in the regulations. The regulations allow for deferral of GST payments on taxable importations to coincide with payments of net amounts of GST on the BAS. Only eligible entities are able to defer payments of GST on imported goods.[94]

298. An entity may apply to the Commissioner for approval to make deferred payments of GST on taxable importations.[95] The application must be made in a manner approved by the Commissioner and contain the information required by the Commissioner.[96]

299. The requirements for approval to make deferred payments of GST on taxable importations contained in the regulations include:

(a) the entity is registered for GST;

(b) the entity has an ABN;

(c) if the entity is an individual, the entity is not an undischarged bankrupt;

(d) the entity has a monthly tax period;

(e) a bank guarantee (if required) has been provided;

(f) the entity deals electronically with Customs and the ATO, that is, the entity enters goods for home consumption, lodges its GST returns and makes payments of its GST liability electronically; and

(g) the entity does not have any outstanding return or tax-related liability. [97]

300. The due date for deferred payments is on or before the 21st day after the end of the month in which the liability for the GST arises.[98] The effect of this is that importers who satisfy the requirements of

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[93] Explanatory Statement relating to A New Tax System (Goods and Services Tax) Amendment Regulations 2000 (No 3).
[94] Division 33 A New Tax System (Goods and Services Tax) Regulations 1999 ('GST Regulations').
[95] Regulation 33-15.02 of the GST Regulations.
[96] Regulation 33-15.02 of the GST Regulations.
[97] Division 33 of the GST Regulations.
[98] Regulation 33-15-07.

Division 15 can use input tax credits for creditable importations to offset the amount of GST payable on taxable importations.

Attributing the input tax credits for your creditable importation

301. Subsection 29-15(1) provides that 'the input tax credit to which you are entitled for a creditable importation is attributable to the tax period in which you pay the GST on importation'.

302. The input tax credit entitlement can only be attributed to the tax period in which the entity that imports the goods pays the GST. The entity may have paid directly or indirectly by reimbursing GST paid on its behalf.

303. Therefore, importing entities attribute all the input tax credit on a creditable importation to the tax period in which they pay the GST on the taxable importation.

304. For entities that pay GST to Customs and lodge a BAS *monthly*, the input tax credit must be claimed by the 21st of the *month* following the month in which the importation occurred. For entities that pay GST to Customs and lodge a BAS *quarterly*, the input tax credit must be claimed by the 21st day after the end of the *quarter* in which the importation occurred.

305. For entities that defer the GST on taxable importations the input tax credit is attributable to the tax period in which the liability for the GST arises.[99] Entities approved for the Deferred GST Scheme must report and pay their GST monthly. The input tax credit must be claimed by the 21st of the month following the month in which the importation occurred. Entities eligible to defer GST on taxable importations are able to offset any GST payable to the ATO with the input tax credits they are entitled to on creditable importations.

306. A tax invoice is not required for creditable importations. Tax invoices are only required for taxable supplies.[100] A copy of the entry for home consumption for a taxable importation is sufficient for the purposes of claiming the input tax credit.[101] If the entry for home consumption does not show the entity that imported the goods into Australia as 'owner', the importing entity needs to have evidence that it paid GST in order to claim the input tax credit. This may be in the form of an invoice for reimbursement of the GST paid on the importer's behalf by another party, together with evidence showing

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[99] Subsection 29-15(2).
[100] Subsection 29-70(1) and subsection 29-10(3).
[101] For taxable importations under Division 114 where there is no entry for home consumption, a receipt from Customs evidencing payment of GST will be sufficient.

that the 'owner' as per the customs entry was acting as agent on behalf of the importing entity.

307. If the entity that makes the taxable importation and pays the GST is not the entity that imports the goods into Australia, it does not make a creditable importation and therefore cannot claim the input tax credits.

308. To be entitled to input tax credits on a taxable importation, a registered entity must have paid (or deferred) the GST, be the entity that causes the goods to be brought to Australia to consume by way of supply, use or other application, and have a creditable purpose for importing the goods.

Example 13 - Attribution of input tax credit

309. *An Australian car dealer purchases 50 Japanese cars from a Japanese car dealer and brings them to Australia to sell. The Australian car dealer completes the customs formalities and pays the GST on the taxable importation. The car dealer is the entity that causes the cars to be brought to Australia by way of sale in his business, which is a creditable purpose. The car dealer has made a creditable importation and is entitled to the input tax credits. The car dealer attributes the input tax credit to the tax period in which he pays the GST.*

Further examples

Examples of entities that import goods for the purposes of paragraph 15-5(a)

310. Goods are imported into Australia under many circumstances. Typically, they are sent from overseas as a result of being supplied or acquired by way of sale, hire or lease.

311. Other reasons for importing goods include non-resident entities importing 'on consignment', or residents importing their own goods from overseas. For example, a resident company transferring goods from a branch office located overseas.

312. The following examples further illustrate how to identify the entity that imports goods for the purposes of paragraph 15-5(a):

Example Number	Imports to Australia
14	Goods purchased from overseas to be used in Australia
15	Goods purchased from overseas and delivered by overseas supplier in Australia.
16	Lease of goods which are located overseas at time of agreement – lessee imports
17	Lease of goods – lessor imports
18	Hire of goods located overseas and subsequently imported
19	Personally owned goods
20	'On consignment goods' consigned to Australian business for sale in Australia
21	Goods sent to Australia for sale by agent in Australia.
22	Goods sent to Australia to be displayed

313. The examples indicate in each case the entity that imports and that is entitled to an input tax credit. It is also stated whether each supply is a supply connected with Australia pursuant to section 9-25.[102]

Example 14 – Goods purchased from overseas to be used in Australia

314. *Aus Ice places an order for a gelato-making machine with Lorenzo in Italy. The machine is to be used by Aus Ice to make gelato as part of its ice cream business. Under the terms of the sales contract Aus Ice takes delivery of the machine once Lorenzo places it on board the ship destined for Australia.*[103] *Aus Ice completes the customs formalities including payment of customs duties and GST on the taxable importation.*

315. *By placing the order with the overseas supplier to buy the machine, Aus Ice brings or causes the machine to be brought to Australia for use in its ice cream business. Aus Ice is liable to pay*

[102] Paragraph 9-25(3)(a) deals with supplies of goods to Australia. A supply of goods is connected with Australia, when the supplier imports the goods or installs or assembles the goods in Australia.
[103] This is typically the situation for FOB contracts.

GST on the taxable importation. Aus Ice, therefore, is the entity that imports the machine. Aus Ice is entitled to input tax credits on the creditable importation.

316. *Lorenzo does not make a taxable supply to Aus Ice as all the elements of a taxable supply are not met The supply is not connected with Australia. Even though it is a supply that involves the goods being brought to Australia, the supplier (Lorenzo) does not import the goods into Australia (subsection 9-25(3)). Nor does the supplier deliver, or make available, in Australia the imported goods (subsection 9-25(1)).*

Example 15 – Goods purchased from overseas and delivered by overseas supplier in Australia

317. *Jamie orders some sheep skin seat covers from New Zealand (NZ). The purchase price includes the delivery of the covers to Jamie's premises in Brisbane. To complete the sale, the supplier is obliged to freight the covers to Australia, undertake the customs formalities including payment of customs duties and GST on the taxable importation and organise the local delivery.*[104]

318. *The NZ company causes the seat covers to be brought to Australia for supply to Jamie. However, Jamie also causes the seat covers to be brought to Australia to use in his car. Whichever of these two entities undertakes the customs formalities and pays the GST, is the entity that imports the covers. This entity may be entitled to the input tax credits if the importation is a creditable importation.*[105]

319. *As the NZ supplier completes the customs formalities, makes the taxable importation and pays the GST, the NZ supplier is the entity that imports the seat covers. If the NZ supplier is registered, or required to be registered, the supplier is entitled to an input tax credit for the GST paid on the creditable importation that it makes.*

320. *If the NZ supplier is registered, or required to be registered, the supply to Jamie is a taxable supply as all the requirements of a taxable supply are met. The supply is connected with Australia because the supplier imports the seat covers into Australia (subsection 9-25(3)).*

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[104] This is typically the case in DDP contracts of sale.

[105] In a DDP contract, the supplier undertakes the customs clearance. (If the contract is on DDU terms, the buyer agrees to pay for the customs clearance of the goods, including the GST, and is therefore the entity that imports.)

Example 16 – Lease of goods which are located overseas at time of agreement – lessee imports

321. *Aus Farmequip purchases US made crop dusters from US Co. The crop dusters remain in the US until Aus Farmequip enters into a lease agreement with Aus Cotton. Aus Cotton leases one crop duster which it intends to use to spray cotton crops in Moree, Australia. Delivery of the crop duster to Aus Cotton takes place in the US. Aus Cotton transports the crop duster from the US to Moree. Aus Cotton pays all the transportation costs, takes care of the customs formalities including customs duties and GST on the taxable importation.*

322. *Aus Farmequip retains legal ownership of the crop duster, but has no further role in the importation of the duster. Aus Cotton causes the goods to be brought to Australia for spraying its crops and contracting to spray other farmers crops. Aus Cotton is the entity that imports the crop duster and is entitled to the input tax credit on the creditable importation.*

323. *Us Co does not make a taxable supply to Aus Farmequip as not all the requirements for a taxable supply are met. The supply is not connected with Australia under subsections 9-25(1) or 9-25(3). The crop duster is not delivered, or made available, in Australia (subsection 9-25(1)), and the supplier (Aus Farmequip) does not import it (subsection 9-25(3)).*

324. Aus Farmequip does not make a taxable supply to Aus Cotton as not all the requirements for a taxable supply are met. The supply is not connected with Australia under subsections 9-25(1) or 9-25(3). The crop duster is not delivered, or made available, in Australia (subsection 9-25(1)), and the supplier (Aus Farmequip) does not import it (subsection 9-25(3)).

Example 17 – Lease of goods – lessor imports

325. *As in example 16, Aus Farmequip leases a crop duster to Aus Cotton, but the lease does not commence until the crop duster is made available to Aus Cotton in Australia. Aus Farmequip is required to bring the crop duster from the USA and complete the customs formalities. In this case Aus Farmequip causes the crop duster to be brought to Australia to lease to Aus Cotton. Aus Farmequip is the entity that has the right to apply the goods after their importation. Because Aus Farmequip also completes the customs formalities it is the entity that imports the goods.*

326. *Aus Farmequip makes a taxable supply to Aus Cotton as all the requirements for a taxable supply are met. The supply is connected with Australia as the crop duster is delivered, or made available, in Australia (subsection 9-25(1)).*

Example 18 – Hire of goods located overseas and subsequently imported

327. *Clang and Bang, a UK resident heavy metal band, is about to tour all Australian capital cities as part of their world tour. Prior to commencing the tour Clang and Bang engages an American management company to undertake all functions associated with the tour including providing the sound equipment and arranging movement, assembly and disassembly of the stage and lighting. The US management company hires state of the art sound equipment from a UK based hire company. The sound equipment is to be imported into each of the countries in which the band is appearing, commencing with Australia. The US management company pays for all the transportation costs from the UK, customs formalities, including entry for home consumption, and delivery of the equipment to the venues. The UK hire company has no role in the importation of the goods.*

328. *The obligations of the UK hire company are complete when the US management company takes possession of the goods in the UK. The UK hire company retains legal ownership of the equipment. The US management company causes the goods to be brought to Australia to use as part of its contractual obligations to provide the equipment and support services to Clang and Bang. The US management company is the entity that has the right to apply the goods after importation. As the US management company also pays the GST on importation, it is the entity that imports the goods into Australia for the purposes of paragraph 15-5(a). The US management company is entitled to the input tax credit for the creditable importation, if it is registered, or required to be registered.*

329. *The UK hire company does not make a taxable supply to the US management company. The supply is not connected with Australia as the equipment is not delivered, or made available, in Australia (subsection 9-25(1)) and the UK hire company neither imports the goods into Australia nor installs or assembles the goods in Australia (subsection 9-25(3)).*

330. *The supply between the US management company and Clang and Bang is a taxable supply to the extent that the services are performed in Australia.*

Example 19 – Personally owned goods

331. *Mr Spinner, a recently arrived Australian resident, is establishing a woollen mill in Australia to produce wool for export. Prior to arrival in Australia Mr Spinner owned a similar business in New Zealand and imports the machinery he owned and used in that*

business. There is no supply of the machinery. Mr Spinner organises and pays all the costs of transportation, delivery and installation and engages a customs broker to clear the goods through Customs.

332. *While other entities may be involved in facilitating the physical transportation of the machinery, Mr Spinner causes the machinery to be brought to Australia to use in his business. Mr Spinner completes the customs formalities and is liable to pay GST on the importation. Mr Spinner is the entity that imports the machinery into Australia and is entitled to the input tax credit on the creditable importation that he makes.*

Example 20 – 'On consignment goods' consigned to an Australian business for sale by the consignor in Australia

333. *Berlin Co, a German based company, has developed an innovative lifting device. To establish a market in Australia, Berlin Co (consignor) sends 10 of the devices to Westoz, a distributor of similar equipment located in Fremantle, Western Australia. Westoz has agreed to provide floor space in its retail outlet for a commission from Berlin Co based on 25% of the sales price of each of the devices. There is no supply of the goods by way of sale from Berlin Co to Westoz. Berlin Co only sells the devices to the Australian customer. Berlin Co pays all costs in respect to the transportation and delivery of the goods and engages a Customs broker to clear the goods through Customs.*

334. *Berlin Co causes the goods to be brought to Australia to sell on the domestic market. Although the goods are physically in the care and custody of Westoz, Berlin Co retains legal ownership of and risk in the goods. Once Westoz finds buyers for them a contract of sale is effected between Berlin Co and the buyer. Berlin Co is the only entity who has the right to apply the goods after importation. Berlin Co is the entity that imports the goods and if registered, or required to be registered, is entitled to the input tax credit on the creditable importation*

335. *If Berlin Co appoints Westoz as its agent to make the taxable importation, that would trigger the operation of Division 57. See Example 9 for the operation of Division 57. Depending on the arrangements between Berlin Co and Westoz, Berlin Co may make taxable supplies through Westoz as a resident agent.*

Example 21 – Goods sent to Australia for sale by agent in Australia

336. *A wealthy foreign art collector wishes to sell a famous painting by an Australian artist. To achieve the best price for the painting, the collector is advised by his selling agent, Kyles Auction*

House, to sell the painting in Australia. Kyles, for a commission, agrees to undertake the complete task of marketing, displaying and selling the painting in Australia, including arranging for the transport from overseas, customs clearance in Australia and insurance of the painting.

337. *Kyles physically brings the painting to Australia and enters it for home consumption, thus taking delivery of the painting and then displaying it with a view to attracting a buyer. The painting is sold at an auction in Sydney. Kyles receives a commission for the sale, deducts its expenses and passes on the remaining proceeds to the art collector as per their agreement.*

338. *The collector causes the goods to be brought to Australia to consume by way of selling. The reason the painting is brought to Australia is for it to be sold by the collector, through the agent, Kyles. As it is the collector who is selling the goods, only the collector consumes or otherwise applies the goods after their importation. Kyles does not have the right to consume the painting after importation. Kyles can only display and sell the painting on behalf of the owner. While the control of the painting is given to Kyles to transport, this does not amount to consumption of the goods by Kyles.*

339. *Kyles is not, therefore, the entity that imports the goods for the purposes of paragraph 15-5(a). While Kyles completes the customs formalities and is liable to pay the GST on the importation, it does not cause the goods to be brought to Australia.*

340. *If the art collector appoints Kyles to make the taxable importation on his or her behalf, the art collector makes a taxable importation through a resident agent. Kyles is entitled to an input tax credit for the GST paid on the taxable importation provided the art collector makes a creditable importation. To make a creditable importation, the art collector must import the goods into Australia in carrying on his or her enterprise and be registered, or required to be registered. (See further example 9 regarding the implications of Division 57). If the art collector is carrying on an enterprise and is registered or required to be registered, the sale of the painting at auction in Australia is a taxable supply.*

Example 22 – Goods sent to Australia to be displayed

341. *To attract more visitors, a Melbourne museum organises a Renaissance Art exhibition featuring a famous Italian painting. With the permission of the painting's owner, the painting is removed from a gallery in Rome and transported to the museum. The Melbourne museum enters the painting for home consumption and pays GST. The museum is the entity that causes the goods to be sent to Australia for the purposes of applying the painting to the use for which it is*

intended (to display). The museum is the entity that imports for the purposes of Division 15.

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Your comments

343. If you wish to comment on this draft ruling, please send your comments promptly by **7 February 2003** to:

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- creditable purpose
- customs brokers
- deferral of GST
- deferred GST scheme
- entry for home consumption
- entry for transhipment
- entry for warehousing
- freight forwarders
- import
- imported
- importer
- importation
- input tax credits
- non resident supplier
- supplier
- resident agents
- taxable importations
- taxable supplies

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- ANTS (GST)A 1999 7-1(1)
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- ANTS (GST)A 1999 9-25
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- ANTS (GST)A 1999 9-25(3)
- ANTS (GST)A 1999 9-25(3)(a)
- ANTS (GST)A 1999 Div 11
- ANTS (GST)A 1999 11-5
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- ANTS (GST)A 1999 13-5
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APPENDIX A

Division 114 - Importations without entry for home consumption

114-5 Importations without entry for home consumption

(1) You make a taxable importation if:

(a) the circumstances referred to in the third column of the following table occur; and

(b) you are referred to in the fourth column of the table as the importer in relation to those circumstances.

However, there is not a taxable importation to the extent that the importation to which the circumstances relate is a non-taxable importation.

Division 114 - Importations without entry for home consumption

Item	Topic	Circumstance	Importer
1	Personal or household effects of passengers or crew	Goods of a kind referred to in paragraph 68(1)(d) of the Customs Act are delivered into home consumption in accordance with an authorisation under section 71 of that Act.	The person to whom the authorisation was granted
2	Low value consignments by post	Goods of a kind referred to in paragraph 68(1)(e) of the Customs Act are delivered into home consumption in accordance with an authorisation under section 71 of that Act.	The person to whom the authorisation was granted
3	Other low value consignments	Goods of a kind referred to in paragraph 68(1)(f) of the Customs Act are delivered into home consumption in accordance with an authorisation under section 71 of that Act.	The person to whom the authorisation was granted
4	Other goods exempt from entry	Goods of a kind referred to in paragraph 68(1)(i) of the Customs Act are delivered into home consumption in accordance with an authorisation under section 71 of that Act.	The person to whom the authorisation was granted
5	Like customable goods	Goods are delivered into home consumption in accordance with a permission granted under section 69 of the Customs Act.	The person to whom the permission was granted

Division 114 - Importations without entry for home consumption (Continued)

Item	Topic	Circumstance	Importer
6	Special clearance goods	Goods are delivered into home consumption in accordance with a permission granted under section 70 of the Customs Act.	The person to whom the permission was granted
7	(Repealed by No 176 of 1999)		
8	(Repealed by No 176 of 1999)		
9	(Repealed by No 176 of 1999)		
10	Return of seized goods	Goods that have been seized under a warrant issued under section 203 of the Customs Act, or under section 203B or 203C of that Act, are delivered to a person on the basis that they are not forfeited goods.	The person to whom the goods are delivered
11	(Repealed by No 176 of 1999)		
12	(Repealed by No 176 of 1999)		
13	Inwards duty free shops	Goods that are *airport shop goods purchased from an *inwards duty free shop by a *relevant traveller are removed from a *customs clearance area.	The relevant traveller
14	COMPILE contingency arrangements	Goods are taken into home consumption in accordance with a permission granted under section 77D of the Customs Act.	The person to whom the permission is granted
15	Installations and goods on installations	Goods are deemed by section 49B of the Customs Act to be imported into Australia.	The person who is the owner (within the meaning of the Customs Act) of the goods when they are deemed to be so imported
16	Goods not entered for home consumption when required	Goods not covered by any other item of this table are imported into Australia, and: (a) if they are required to be entered under section 68 of the Customs Act - they are not entered in accordance with that requirement; or (b) in any other case - a requirement under that Act relating to their importation has not been complied with.	The person who fails to comply with that requirement

APPENDIX B

Subsection 42-5(1) - Non-taxable importations

Schedule 4 to the *Customs Tariff Act 1995*

Schedule 4 Item	Description *(The following descriptions are provided as a guide only. Refer to the legislation for the full description)*
4	Goods owned by and for official use of the government of a country other than Australia
8	Goods for use by or sale to persons the subject of a Status of Forces Agreement
15	Goods imported by passengers and crew, inward duty free purchases, goods brought in or sent to Australia by members of the Defence Force stationed outside Australia, goods imported by members of forces of Canada, New Zealand, or United Kingdom, and passengers' personal effects
18A	Goods, or parts of goods, previously imported into Australia and returned after repair overseas free of charge in accordance with the provisions of a warranty applicable to the previously imported goods
18B	Goods, or parts of goods, supplied free of charge under the provisions of a warranty to replace goods or parts of goods previously imported into Australia
18C	Goods, or parts of goods, supplied free of charge as part of a global product safety recall due to a product safety fault
21	Goods that are imported for repair, alteration or industrial processing and are to be exported
21A	Goods imported by a holder of a TRADEX order
23A	Goods donated or bequeathed by non residents to an organisation established in Australia for the purposes of performing work of a philanthropic nature
23B	Goods donated or bequeathed to the public or a public institution
24	Goods that are not to be sold or to be used for the purpose of trade that became the property of the importer under a will or intestacy of a deceased person
25A	Trophies won outside Australia
25B	Decorations, medallions or certificates awarded or to be awarded outside Australia and sent from outside Australia to persons within Australia
25C	Trophies or prizes sent by donor residents outside Australia for presentation or competition in Australia
32A	Goods on which no duty is payable and the value is insubstantial

Subsection 42-5(1)- Non-taxable importations
Schedule 4 to the Customs *Tariff Act 1995*
(continued)

32B	Goods on which the amount of duty that, but for this item, would be payable and the value are insubstantial
33A	Calenders, catalogues and overseas travel literature, overseas price lists and other overseas printed matter
33B	Samples of negligible value
64	Goods imported by, or on behalf of, non-Australian Olympic and Paralympic Family members, for use in, or for purposes related to, the Sydney 2000 Olympic Games, the Sydney Paralympic Games etc