GSTR 2008/D4 - Goods and services tax: cancellation fees

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Draft Goods and Services Tax Ruling

Goods and services tax: cancellation fees

Preamble

This publication is a draft for public comment. It represents the Commissioner's preliminary view about the way the law applies. It is not a public ruling or advice for the purposes of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953*.

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What this Ruling is about

1. This draft Ruling considers the goods and services tax (GST) consequences resulting from payments made when an arrangement under which a particular supply was intended to be made (intended supply) does not proceed or does not proceed in the manner originally contemplated. These payments can include the forfeiture of all or part of the consideration for the intended supply. These payments are referred to in this draft Ruling as 'cancellation fees'.

2. This draft Ruling focuses on arrangements that are cancelled by or on behalf of a recipient or intended recipient (in this draft Ruling referred to as a customer). A supplier may also cancel an arrangement. However, in the latter case a cancellation fee is usually not charged. Therefore, this draft Ruling does not deal with cancellations made by a supplier except in relation to a ticketed arrangement for the supply of performances, events or similar arrangements.[1]

3. In considering the GST consequences of cancellation fees, this draft Ruling principally examines whether there is a supply for which a cancellation fee is consideration. The draft Ruling also discusses the interaction between security deposits[2] and cancellation fees as well as the circumstances in which a cancellation fee is not consideration for a supply.

[1] See paragraphs 152 to 163 of this draft Ruling for this discussion.
[2] See also Goods and Services Tax Ruling GSTR 2006/2 Goods and services tax: deposits held as security for the performance of an obligation.

4. This draft Ruling does not deal with:

- payments of fines and penalties arising from a breach of a statutory law or a set of rules imposed by a body such as an unincorporated association;[3]
- early termination fees for the cancellation of financial supplies;
- payments on early termination of a lease of goods;[4] and
- payment of taxes, fees and charges to which Division 81 of the *A New Tax System (Goods and Services Tax) Act 1999* applies.

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

6. In this draft Ruling:

- a reference to a supply being a taxable supply assumes that all the requirements of section 9-5 are met and the supply is not input taxed or GST-free; and
- a reference to a deposit is a reference to a deposit that is not held as security for the performance of an obligation and to which Division 99 does not apply.

Date of effect

7. This draft Ruling represents the preliminary, though considered view of the Commissioner. When the final Ruling is officially released, it will explain the Commissioner's view of the law as it applies both before and after its date of issue.

8. The final Ruling will be a public ruling for the purposes of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953* and may be relied upon, after it is issued, by any entity to which it applies. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and the Commissioner's view of when you can rely on our interpretation of the law in GST public and private rulings.

9. The Commissioner invites comment on what, if any, transitional arrangements are appropriate in implementing the final Ruling, including arrangements appropriate to cater for circumstances where an entity needs to make systems or process changes to be fully compliant with the views expressed in it.

[3] See Goods and Services Tax Determination GSTD 2005/6 Goods and services tax: does a club, association, trade union, society or co-operative ('association') make a supply when it imposes a non-statutory fine or penalty (fine or penalty) on a member for a breach of the association's membership rules?

[4] See Goods and Services Tax Ruling GSTR 2003/11 Goods and services tax: payment on early termination of a lease of goods.

Background

10. The failure to proceed with an arrangement under which an intended supply was to be made may involve:

- the customer notifying the supplier that they are cancelling before the time of the intended supply. In this draft Ruling, this is referred to as a '**cancellation**';
- the customer failing to take advantage of the arrangement by not showing up at the time of the intended supply, for example, failing to show up for an appointment or hotel reservation. In this draft Ruling, this is referred to as a '**no show**'; or
- the customer failing to show up at the time of the intended supply under the arrangement but showing up after that time. In this draft Ruling, this is referred to as a '**late show**'.

11. In some cases, the effect of a late show will be exactly the same as a no show. In this draft Ruling, the term 'no show' should be taken to include a late show that has the same outcome as a no show.

12. A supplier may charge a cancellation fee as a normal adjunct of carrying on an enterprise (usually a business).

13. Not all cancellations or no shows incur a cancellation fee. Whether a fee is charged for a cancellation depends on the terms of the arrangement between the parties. The charging of a fee often depends on whether the cancellation is made prior to or during a prescribed period of time before the intended supply is to be made.

14. Where an arrangement includes such a prescribed period, cancellations made prior to the commencement of that period usually do not result in a cancellation fee being charged by a supplier. Once the prescribed period commences, the supplier may charge a fee for a cancellation.

15. A cancellation fee may be charged under:

- the terms of the original arrangement; or
- a separate arrangement entered into before or at the time the fee is paid.

16. A cancellation fee may be calculated by reference to the consideration payable for the intended supply. For example, for a hotel reservation, a fee equivalent to one night's accommodation (or a percentage thereof) may be charged for a cancellation or no show.

17. Alternatively, depending on the nature of the arrangement, a flat fee may be charged. A flat cancellation fee is more common in those cases where:

- the supplier can easily quantify its costs in facilitating the supply up to the time of cancellation;

- the supplier is dealing with a non-business consumer;
- systems used by the supplier do not allow for a 'percentage' fee to be charged as a cancellation fee; or
- it is industry practice or custom to use a flat cancellation fee.

Legislative context

18. Under section 9-5, you make a taxable supply if:

(a) you make the supply for consideration;

(b) the supply is made in the course or furtherance of an enterprise that you carry on;

(c) the supply is connected with Australia; and

(d) you are registered or required to be registered.

However, the supply is not a taxable supply to the extent that it is GST-free or input taxed.

Ruling

19. In considering the GST consequences of a cancellation fee, the main issues are whether a 'supply' has been made and whether the supply is 'for consideration'. A supply can be for consideration if the consideration is 'in connection with' the supply.[5]

Supplies for which cancellation fees may be consideration

20. A supply for which a cancellation fee may be consideration can be:

- the intended supply (see paragraphs 23 to 24 of this draft Ruling); or
- a different supply, which may include one or more of the following supplies:
  - goods or services or other things in facilitating the intended supply up to the time of cancellation or no show, even though the intended supply is ultimately not made (**facilitation supply** – see paragraphs 25 to 39 of this draft Ruling);

[5] See the definition of 'consideration' sections 9-15 and 195-1 and Goods and Services Tax Ruling GSTR 2001/6 Goods and services tax: non-monetary consideration.

- different goods, services or other things related to the intended supply (see paragraphs 40 to 47 of this draft Ruling);
- the entry into obligations to do certain things under the terms of an arrangement (whether by way of a contract or under an informal arrangement) (see paragraphs 48 to 51 of this draft Ruling);
- services relating to the cancellation of an arrangement, for example, administrative services to give effect to the cancellation (**cancellation supply** – see paragraphs 52 to 58 of this draft Ruling); or
- a release from an obligation to do anything, refrain from an act or tolerate an act or situation (**release supply** – see paragraphs 59 to 69 of this draft Ruling).[6]

21. It is a question of fact whether the intended supply or a different supply is made.

22. If a cancellation fee is consideration for a supply, the supply will be a taxable supply if it meets all the other requirements in section 9-5.

Cancellation fees as consideration for the intended supply

23. In some circumstances, a supplier may make the intended supply even though the customer fails to take advantage of that supply. Alternatively, a customer may be unable to cancel the intended supply. If there is a no show or a term of the arrangement prevents the customer from cancelling, the Commissioner considers that the intended supply would still be made.

24. If the intended supply is actually made available for the customer's enjoyment but the customer does not avail themselves of it through a no show, any payment for the intended supply remains consideration for that supply. Also, a cancellation fee is consideration for the intended supply if it represents payment for work done by a supplier in making the intended supply.[7] See paragraphs 40 to 47 of this draft Ruling for a discussion on those cases where work performed up to the time of cancellation constitutes a different supply to the intended supply.

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[6] See Goods and Services Tax Ruling GSTR 2001/4 Goods and services tax: GST consequences of court orders and out-of-court settlements and paragraphs 50 to 55 in which release supplies are discussed in the context of discontinuance supplies in disputes that are the subject of settlement after commencement of litigation. .

[7] This view is consistent with the approach taken in the UK case of *British Telecommunications plc* (*BT*) [1997] BVC 2370 and the Canadian case of *Skylink Voyages Inc. v. Her Majesty the Queen* [2000] GTC 732.

Cancellation fees as consideration for a different supply

Facilitation supply

25. If an intended supply is cancelled or there is a no show, the supplier may still have entered into obligations, allocated resources, provided other things, performed services or undertaken certain tasks in preparing to make the intended supply. The supplier may also have refrained from entering into an arrangement with another entity because the intended supply was to be made to the customer.

26. The allocation of resources, refraining from entering into an arrangement with another customer for the same or similar intended supply at the same or a similar time and the recognition of the supplier's obligations (whether enforceable or non-enforceable) in relation to the provision of the intended supply constitute a real advantage or benefit conferred on the customer.[8] These things constitute a facilitation supply made by the supplier. They give the customer the opportunity to enjoy the intended supply.

27. Such facilitation supplies may include:

- making an appropriate booking or reservation or providing a ticket;
- making available facilities for the use of the customer, for example, a seat at a venue to watch a performance or event, or a seat in an aircraft to enable the transport of a passenger;
- providing a right or entitlement to the customer to receive another supply, usually the intended supply, for example, a right to receive a supply of travel;[9]
- arranging for the provision of goods or services to enable the supplier to perform its obligations under the arrangement, including paying deposits or other amounts to secure those goods or services;
- allocating the services of particular personnel and/or appropriating equipment or goods for use in making the intended supply; and
- administrative services in facilitating the intended supply.

28. If the original arrangement is completed – that is, the intended supply is made – the services or tasks that constitute a facilitation supply form part of the intended supply, even if the customer fails to take advantage of it through a no show. However, if the intended supply does not proceed because of a cancellation or no show, a facilitation supply is still made to the customer. Any cancellation fee payable by the customer may be consideration for this facilitation supply, which is a different supply to the intended supply.

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[8] The concept of supply in its ordinary meaning in subsection 9-10(1) includes the conferral of some thing: see *Westley Nominees v. Coles Supermarkets Australia Pty Ltd* (2006) 152 FCR 461 at 466; [2006] FCAFA 115 at paragraph 16.

[9] If the right is to receive a supply that is GST-free or input taxed, the supply of the right is also GST-free or input taxed: see subsections 9-30(1) and 9-30(2).

29. If the actual supply made upon a cancellation or no show is different from the intended supply, the GST status of that actual supply may not be the same as the GST status that would have applied to the intended supply. The GST status of the actual supply that is made is independent of the anticipated GST status of the intended supply.[10] The status of the actual supply identified must be analysed against provisions in the GST Act to determine whether it is taxable, GST-free or input taxed.

30. For example, if a facilitation supply is within one of the following provisions of the GST Act, that supply would be GST-free:

- paragraph 9-30(1)(b), which provides that a supply is GST-free if it is a supply of a right to receive a supply that would be GST-free under either Division 38 or under a provision of another Act;
- paragraph 38-85(b), which provides that a supply is GST-free if it is a supply of administrative services directly related to the supply of a GST-free education course, but only if the services are supplied by the supplier of the course;
- item 4 of the table in subsection 38-190(1), which provides that the supply of certain rights covered by that item is GST-free;
- item 7 of the table in section 38-355, which provides that the supply of arranging certain kinds of international transport of passengers, goods or insurance is GST-free;[11] and
- section 38-360, which provides that a supply is GST-free if the supplier makes the supply in the course of carrying on an enterprise as a travel agent and the supply consists of arranging for the making of a supply, the effective use or enjoyment of which is to take place outside Australia.

31. The Commissioner considers that paragraphs 9-30(1)(b) and 9-30(2)(b) would apply to make a facilitation supply GST-free or input taxed if the facilitation supply includes a right for the customer to get the intended supply, and the intended supply would have been GST-free or input taxed, respectively.

32. In other cases, the absence of a specific provision in the GST Act that provides GST-free or input taxed treatment for a facilitation supply made in relation to an intended supply that would be GST-free or input taxed may mean that the facilitation supply is a taxable supply if the intended supply does not proceed.

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[10] Other than in the case where the facilitation supply is the right to receive the intended supply: see subsections 9-30(1) and 9-30(2).

[11] Under item 7, arranging transport of passengers to, from or outside Australia or arranging transport of passengers within Australia as part of international transport, international transport of goods and international transport insurance is GST-free. See the table in section 38-355 for all the requirements that have to be met for the supply under item 7 to be GST-free.

Example 1: supply of facilitation services – GST-free supply

33. *Abra Cadabra Training School (Abra Cadabra) provides a GST-free English language course for overseas students. The course runs for six months. Che Zhuan applies for enrolment in the course, which is accepted by Abra Cadabra.*

34. *Abra Cadabra makes a facilitation supply to Che Zhuan in providing him with details of the course and course materials, setting up an enrolment file, advising the Department of Immigration and Citizenship of the enrolment to facilitate Che Zhuan's student visa application, arranging for Che Zhuan's accommodation and informing the various lecturers and tutors of Che Zhuan's enrolment. These administrative services are directly related to the supply of the GST-free English language course.*

35. *Under the terms of the enrolment, Abra Cadabra advises Che Zhuan that the course fee of $2,000 is to be paid three weeks prior to the start of the course and if Che Zhuan cancels his enrolment before the start of the course a cancellation fee of $250 will be charged. Once the course is commenced there is no refund. Che Zhuan pays the fee of $2,000.*

36. *Instead of starting the course, Che Zhuan decides to go to the US to learn English. He advises Abra Cadabra that he will not be attending the course. Abra Cadabra retains $250 as a cancellation fee and refunds $1,750 to Che Zhuan.*

37. *The $250 retained by Abra Cadabra is consideration for the facilitation supply (of administrative services) directly related to the supply of the GST-free education course by Abra Cadabra. The facilitation supply is GST-free under paragraph 38-85(b).*

Example 2: supply of education course – GST-free

38. *Following on from Example 1, Che Zhuan attends the first three months of the course but due to an illness in the family returns home. Che Zhuan does not attend the remainder of the course.*

39. *Although Che Zhuan does not attend part of the course, a supply of the course is still made by Abra Cadabra. The fact that Che Zhuan does not attend for the remainder of the course does not change this. The supply is a GST-free supply of the education course for which the $2,000 fee is consideration.*

Different goods, services or other things related to the intended supply

40. A customer may cancel an intended supply after the supplier has purchased materials or performed work to enable that supply to be made. The terms of the arrangement may, in these circumstances, provide for the charging of a cancellation fee to pay the supplier for the supplies made or work done.

41. If the intended supply is cancelled, the supplier cannot make that supply as originally contemplated but may nevertheless make a different supply, for example, where a supplier provides the customer with work in progress if the intended supply is cancelled. This is a different supply to the intended supply. A cancellation fee may be consideration for that different supply.

Example 3: cancellation fee charged for a different supply – work in progress

42. *Capri Enterprises Ltd (Capri) is asked by Mining Giant Enterprises Ltd (Mining Giant) to prepare a feasibility report on a new mining project. The contract provides for the payment of a cancellation fee to Capri if the contract is terminated early by Mining Giant. This amount is to be determined by reference to the work in progress up to the time of cancellation.*

43. *On the basis of informal briefings provided by Capri, it becomes apparent that the project is not viable. The Board of Mining Giant decides not to proceed with the mining project and cancels its contract with Capri. Capri charges a cancellation fee of $100,000.*

44. *This cancellation fee is consideration for the services supplied by Capri up to the time of cancellation. This is not the same as the intended supply (the feasibility report). Even though Capri did not complete the feasibility report, the cancellation fee is consideration for the work done by Capri towards the provision of the feasibility report, which is reflected in the briefings provided up to the time of cancellation. Therefore, this is still a taxable supply.*

Example 4: cancellation fee for a different supply – different goods or services

45. *In July, Ken orders a custom built shed from Wallaby Worksheds for a GST inclusive price of $1,100. Wallaby Worksheds, which has monthly tax periods and accounts on an accruals basis, invoices Ken but does not require any payment until the shed is erected. The agreement provides for the payment of a cancellation fee of 50% of the price if Ken cancels the order. Wallaby Worksheds designs the shed to Ken's specifications and acquires materials for constructing the shed.*

46. *In August, Ken cancels the order as he no longer needs the shed. Ken refuses to pay the cancellation fee unless Wallaby Worksheds agrees to supply the materials, the plans and specifications for the shed. Wallaby Worksheds agrees to this. The cancellation fee is consideration for this different supply as the intended supply, being the supply of the shed, is not made.*

47. *The GST consequences for Wallaby Worksheds are as follows:*

- *as Wallaby Worksheds has attributed the GST payable on the $1,100 to the July tax period, it has a decreasing adjustment of $100 attributable to the August tax period being the period in which it becomes aware of the adjustment (the tax period in which the order is cancelled);*[12] *and*
- *the cancellation fee of $550 is consideration for the new supply of materials, the plans and specifications. This supply, which is a taxable supply, is different from the intended supply of the custom built shed. The GST payable of $50 on this supply is attributed under the basic rules in Division 29 to the August tax period.*

The entry into obligations to do certain things under the terms of an arrangement

48. When a supplier and a customer enter into an arrangement involving an intended supply the supplier and the customer enter into mutual obligations, thereby creating rights for their respective benefits. The parties may enter into mutual legal relations with the executory obligations and rights laid out in a contract.[13] Under such arrangements it is often the case that the customer will pay a security deposit, which may be forfeited under a cancellation clause if the customer cancels the intended supply or may be liable to pay a cancellation fee greater than the security deposit depending on when the intended supply is cancelled.

49. Alternatively, under an arrangement not involving a formal contract, the supplier may be obliged to do certain things in the expectation, but with no certainty, that the intended supply will take place. For example, in the case of some appointments,[14] the supplier may be obliged to set aside an allotted time to see the customer on the understanding that the customer will pay a cancellation fee if they fail to turn up or cancel the appointment.

50. In each of the situations mentioned in the preceding two paragraphs, the entry into obligations by the supplier constitutes a supply when the arrangement is entered into. The cancellation fee may be consideration for that supply. If the cancellation fee is the amount of the security deposit paid by the customer, Division 99 applies to treat that deposit as consideration for the supply when it is forfeited.[15]

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[12] Division 19 deals with adjustment events. Subsection 29-20(1) sets out the attribution rules for adjustments. Paragraphs 76 to 79 of this draft Ruling discuss adjustment events and the attribution rules in Division 29 to the extent that those rules are relevant to this draft Ruling.

[13] *Federal Commissioner of Taxation v. Reliance Carpet Co Pty Ltd* [2008] HCA 22 at paragraph 33.

[14] See paragraphs 108 to 120 of this draft Ruling for a discussion on appointments and cancellation fees.

[15] See GSTR 2006/2. Also, paragraphs 79 to 90 of this draft Ruling for a discussion on security deposits as cancellation fees.

51. Where the supply is of a right, as discussed in paragraph 48 of this draft Ruling, the Commissioner considers that paragraphs 9-30(1)(b) and 9-30(2)(b) would apply to make that supply GST-free or input taxed if the right is for the customer to get a supply that would have been GST-free or input taxed, respectively.

Cancellation supply

52. Services provided by a supplier to give effect to the cancellation of an arrangement constitute a cancellation supply.[16] A cancellation supply may include administrative services provided in unwinding an arrangement or making refunds. The fee for these services is commonly a flat fee which may be referred to as a cancellation fee, administration fee, change fee or service fee. This fee is consideration for the supply of these services.

53. It does not matter whether the fee is charged separately or taken out of deposits or other monies already paid. The GST treatment is not affected by how the cancellation fee is paid.

Example 5: cancellation fee as consideration for a cancellation supply

54. *White Hills Enterprises Ltd (White Hills) operates a ski lodge in Australia and takes bookings for ski holiday packages. The terms and conditions as set out on its website and in its brochures state that a booking fee of $55 is charged when a booking is made and if a booking is cancelled, a cancellation fee of $33 applies for services provided in giving effect to the cancellation. Services provided to give effect to a cancellation include arranging for the reimbursement of balance of amounts paid, informing ski instructors of the cancellation and altering various other arrangements.*

55. *In December, Wati books and pays $605 (including the booking fee) for a ski holiday in mid September the following year. However, in early September, Wati cancels her booking. White Hills charges a cancellation fee of $33 and refunds $517 (that is, $605 less the booking fee of $55 and the cancellation fee of $33).*

56. *The cancellation fee is consideration for the supply of services to give effect to the cancellation. The supply is a taxable supply.*

57. *As White Hills accounts for GST on a monthly basis, it accounts for the GST payable on $605 in the tax period ending 31 December.*

58. *When Wati cancels her booking, White Hills has a decreasing adjustment of $50 (being the GST payable on the $550 Wati paid for the holiday, that is, $605 less $55). In addition, White Hills needs to account for the GST payable of $3 on the taxable cancellation supply. The decreasing adjustment and the GST payable on the taxable cancellation supply are attributable to the tax period ending 30 September in the following year.*

[16] Paragraphs 20 and 52 to 58 of this draft Ruling explain what a cancellation supply is.

Release supply

59. A customer who has entered into a contract may not wish to, or may be unable to complete the contract. A term in the original contract may grant to the customer the right to terminate the contract upon payment of a cancellation fee in these circumstances.

60. Alternatively, the parties to the contract may enter into another contract under which one party (usually the supplier) upon payment of a cancellation fee agrees to release the other party (usually the customer) from performing the latter's obligations under the original contract.

61. An example of a clause that provides for a release from the performance of the customer's obligations under the contract is:

> If you no longer wish to continue this contract, you have the right to terminate it at any time by calling our customer service hotline. However, if you terminate this contract after the end of the cooling-off period and before the end of your contract term, you must pay us a cancellation fee.

62. In the circumstances outlined above, the customer may terminate the agreement pursuant to a right set out in the terms of the arrangement. The termination is not a breach of the contract. The customer exercises their contractual right, for which they agree to pay a cancellation fee as consideration.[17]

63. Without limiting subsection 9-10(1), a supply includes the supply of services, the creation or surrender of any right and the release from an obligation under paragraphs 9-10(2)(b), 9-10(2)(e) and 9-10(2)(g) respectively. In the context of the broad definition of supply, and having regard to the things included as supplies as set out in subsection 9-10(2), the Commissioner's view is that, if it is not consideration for any other supply, a cancellation fee may be consideration for the creation or surrender of rights and/or a release supply[18] that occurs when an arrangement is cancelled, and/or a combination of these supplies under paragraph 9-10(2)(h).

64. The GST status of the release supply is not determined by the GST status of the intended supply.

65. The view outlined in paragraph 63 of this draft Ruling is different from a situation where a termination or cancellation payment changes the consideration for the supply.

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[17] Support for the above view is found in *Bridge v. Campbell Discount Co Ltd* [1962] 1 All ER 385. The case was referred to by Mason and Wilson JJ in *AMEV-UDC Finance Ltd v. Austin* (1986) 162 CLR 170 at 183-186.

[18] Paragraphs 20 and 59 to 69 of this draft Ruling explain what a release supply is.

66. If the termination payment or cancellation fee has a sufficient nexus with an earlier supply, the fee may change the consideration for the earlier supply but is not consideration for a release supply. The change in consideration gives rise to an adjustment event in relation to the earlier supply.[19] For example, this may occur where an agreement for progressive and periodic supplies has been terminated because the making of the supply has already commenced or the supply has been made. This is different from the scenarios addressed in this draft Ruling where the intended supply has not been made at the time of release.

Example 6: release supply

67. *Trust Mee Enterprises Ltd (Trust Mee), a property management company, enters into a management agreement with Children's Reward Investment Bank (CRIB). Under the management agreement, Trust Mee will manage a commercial property owned by CRIB for 10 years. The agreement allows either party to negotiate with the other party to release them from their obligation under the agreement.*

68. *Three years into the contract, CRIB wishes to terminate the management agreement. After a long negotiation, both parties enter into a separate agreement, under which Trust Mee and CRIB agree to terminate the original management agreement upon payment of $1 million by CRIB to Trust Mee.*

69. *The separate agreement provides CRIB with a right to terminate the original management agreement. In entering into the separate agreement, Trust Mee agrees to release CRIB from its obligations under the terms and conditions of the original management agreement. Trust Mee makes a release supply for which the payment of $1 million is consideration. The release supply is a taxable supply.*

Cancellation fees as damages, penalties or compensation

70. The fact that an amount paid in relation to a cancelled arrangement might be described as 'damages', a 'penalty' or 'compensation' does not mean that the amount is not thereby consideration for a supply. An amount can have both the character of damages, a penalty or compensation and be consideration in connection with a supply.

71. Goods and Services Tax Ruling GSTR 2001/4 Goods and services tax: GST consequences of court orders and out-of-court settlements sets out the Commissioner's views on when damages are, and are not, consideration for a supply. The Commissioner takes the view that payments that are called 'damages' resulting from court orders and out-of-court settlements need to be examined to establish whether the payment relates to a supply.[20]

[19] See paragraphs 27 to 37 of GSTR 2003/11.
[20] See in particular paragraphs 19, 42 to 44 and 68 of GSTR 2001/4.

72. Regardless of whether an amount payable is damages as properly understood (whether it is paid under a liquidated or agreed damages clause or otherwise), the fundamental question to be answered in an Australian GST context is whether the amount payable is consideration for a supply. The classification of an amount as damages does not determine this question.[21]

73. Whether an amount described as damages would be regarded as consideration for a supply is determined having regard to all relevant factors. For example, the cancellation fee would be consideration if, having regard to industry practices and conventions, it is accepted as a normal incidence of business that the amount represents consideration for a supply associated with the cancellation.

Cancellation fees that are neither consideration for a supply nor damages or compensation

74. In a very limited number of cases, the facts of a case may establish that a customer made an ex gratia payment, for example, a payment with the expectation of maintaining a good relationship with the supplier in circumstances where the supplier is not obliged to do, or has not done, anything in connection with the payment.[22]

75. In the Commissioner's view, the payment made in these circumstances does not constitute consideration for a supply as there is no connection between the ex gratia payment and any supply.

Adjustment events upon cancellations

76. Prior to the cancellation of an intended supply, the supplier may have attributed the GST payable on the supply to the tax period in which part of the consideration was paid or when an invoice is issued. Conversely, the customer may have attributed the input tax credit on the acquisition on a similar basis.

77. The cancellation of an intended supply may give rise to an adjustment event. Subsection 19-10(1) states that an adjustment event is any event which has the effect of:

- cancelling a supply or an acquisition;
- changing the consideration for a supply or an acquisition; or
- causing a supply or acquisition to become, or stop being, a taxable supply or creditable acquisition.

[21] See paragraphs 100 to 105 of GSTR 2001/4.
[22] See paragraphs 102 to 111 of Goods and Services Tax Ruling GSTR 2006/9 Goods and services tax: supplies for a discussion on whether or not creation of expectations alone establishes a supply.

78. If an intended supply is cancelled, a supplier may have accounted for too much GST for that supply, or a customer may have accounted for too much input tax credit for a creditable acquisition. If this is the case, the supplier or the customer may have to make an adjustment.[23] Any decreasing adjustment for the supplier, or increasing adjustment for the customer upon cancellation of an intended supply is attributed to the tax period in which the supplier or the customer becomes aware of the adjustment.[24] This will normally be the tax period in which the cancellation occurs[25].

Security deposits as cancellation fees

79. Special rules in Division 99 provide that a deposit held as security for the performance of an obligation (security deposit) is not treated as consideration for a supply unless the security deposit is forfeited because of a failure to perform the obligation, or it is applied as all or part of the consideration for a supply.[26]

80. A contract may provide for the forfeiture of a security deposit if a customer cancels the contract. In these cases, under Division 99, the security deposit is treated as consideration for a supply when the deposit is forfeited.[27]

81. In *Federal Commissioner of Taxation v. Reliance Carpet Co Pty Ltd*[28] (*Reliance Carpet*), the High Court accepted the finding by the Administrative Appeals Tribunal that upon entry into the contract the taxpayer had entered into an obligation to do the things it was bound to do under the contract.[29] The High Court also found that, in that case, the supply had been made by the taxpayer before the forfeiture of the security deposit.[30] Further, the High Court accepted that the supply was made in advance of the failure by the purchaser in performance of the executory terms of the contract which led to the forfeiture of the security deposit to the taxpayer.[31]

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[23] See Goods and Services Tax Ruling GSTR 2000/19 Goods and services tax: making adjustments under Division 19 for adjustment events, and Goods and Services Tax Ruling GSTR 2000/29 Goods and services tax: attributing GST payable, input tax credits and adjustments and particular attribution rules made under section 29-25.

[24] For rules relating to the attribution of adjustments, see subsection 29-20(1) and GSTR 2000/29.

[25] Example 19 at paragraphs 205 to 208 in this draft Ruling provides an example of adjustments that may arise when an intended supply is cancelled.

[26] GSTR 2006/2 sets out the Commissioner's views on the GST treatment of security deposits. The Commissioner's views in GSTR 2006/2 is impacted by the High Court decision in *Reliance Carpet*. For a further discussion of the Commissioner's views of the impact of the decision see the Decision Impact Statement DIS M163/2007 for this case.

[27] See sections 99-5 and 99-10.

[28] [2008] HCA 22; (2008) 2008 ATC 20-028; (2008) 68 ATR 158.

[29] [2008] HCA 22 at paragraph 37.

[30] [2008] HCA 22 at paragraph 37.

[31] [2008] HCA 22 at paragraph 39.

82. The High Court found that the security deposit was consideration for the supply, as the connection between the payment of the security deposit and the entry into the contract could be 'readily seen' in the circumstances of the case.[32]

83. Although the decision in *Reliance Carpet* was made in the context of a formal contract for the sale of land, the Commissioner considers the position to be no different where a security deposit is forfeited under the terms of a cancellation clause in other arrangements. Upon entry into an arrangement involving the doing of things, the supplier enters into an obligation to do certain things (a paragraph 9-10(2)(g) supply). Alternatively, the supplier:

- provides services or things to facilitate the intended supply (facilitation supply); or
- agrees to release the customer from the performance of their obligations under the terms of the agreement; or arrangement (release supply).

84. Upon the cancellation of the intended supply, the forfeited security deposit can be consideration for one or more of these supplies or another supply. The supply may be taxable, GST-free or input-taxed.

85. If the security deposit is forfeited under the terms of a cancellation fee clause, then for the purposes of subsection 99-5(1), that deposit is treated as consideration for a supply when it is forfeited.[33]

Example 7: security deposit as cancellation fee – overseas package tour

86. *On 31 May 2009, Cyrus Travel and Tours (Cyrus) arranges a package tour for David for travel to the USA in July 2009. The arrangements include, air travel to and from the USA, accommodation and car hire in a number of cities. Cyrus checks the availability of airline seats, accommodation and car hire, the cost of each and makes all the necessary bookings. Upon confirmation of all the bookings at the time they are made, and in accordance with the requirements of Cyrus, David pays a security deposit of 10%. Cyrus requires payment of the balance 30 days before the date of departure.*

87. *Under the terms of its arrangement with the overseas hotel, Cyrus is required to pay a security deposit to the hotel. Cyrus is also liable to pay a cancellation fee to the hotel if there is a cancellation within 10 days of the intended stay.*

[32] [2008] HCA 22 at paragraph 33.
[33] See also paragraphs 123 and 124 of GSTR 2006/2.

88. *The contract between Cyrus and David has a cancellation clause in the following terms:*

> ***Deposits, Final Payments, Cancellations and Refunds***
>
> *(a) You must pay a deposit equal to 10% of the total cost at the time of booking your tour. If you cancel your booking prior to your final payment you will pay a cancellation fee equal to the amount of the deposit you have paid.*
>
> *(b) You must pay the balance of your tour cost 30 days before the date of your travel. If you cancel your booking after your final payment you will pay a cancellation fee as follows:*
>
> *For cancellations made:*
>
> - *15 to 30 days before date of travel: 40% of the total cost;*
> - *7 to 14 days before date of travel: 60% of the total cost; and*
> - *Within 7 days of the date of travel: 100% of the total cost.*

89. *Due to a serious illness in his family, David cancels his travel 35 days before the date of travel and incurs a cancellation fee equal to the amount of his security deposit.*

90. *The security deposit was held by Cyrus as security for the performance by David of his obligations (principally to pay the purchase price). Division 99 applies to the security deposit. When the deposit is forfeited, it is treated as consideration for a supply. The supply (which is a facilitation supply) consists of arranging for the making of supplies, the effective use or enjoyment of which is to take place outside Australia. This supply is made regardless of whether or not the travel takes place. This supply is GST-free under sections 38-355 (item 7) and 38-360.*

Explanation

Is there a supply for consideration?

91. The starting point for determining the GST consequences of a cancellation fee is to see whether a supply is made, and if one is, whether the cancellation fee is connected with the making of that supply such that it is consideration for that supply.

92. For there to be a supply for consideration, as required by paragraph 9-5(a), three main requirements must be met:

- the supplier must make a supply;

- there must be a payment;[34] and
- there must be a sufficient nexus between the supply and the payment such that the payment constitutes consideration for the supply.

What is a supply?

93. The term 'supply' is defined in subsection 9-10(1) in very wide terms as being 'any form of supply whatsoever'. Subsection 9-10(2) then, without limiting subsection (1), lists in paragraphs a number things that are specifically supplies, including services, rights created and obligations entered into. A supply includes 'any combination of any 2 or more of the matters' referred to in the paragraphs of subsection 9-10(2).[35]

94. The Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998 (the Explanatory Memorandum) that introduced the GST Act says, of the definition of supply in section 9-10, that it is 'defined broadly and is intended to encompass supplies as widely as possible'.[36] In *Saga Holidays Ltd v. Commissioner of Taxation,*[37] Stone J said[38] that the 'concept of supply in the GST Act is very wide'. Later, she said:[39]

> The first point to make about s 9-10 is that the definition of supply in s 9-10(1) is just about as wide as possible ('any form of supply whatsoever') and that the examples given in s 9-10(2) are inclusive not exhaustive.

What is consideration?

95. Consideration for a supply or acquisition is defined in section 195-1 to mean 'any consideration within the meaning given by section 9-15, in connection with the supply or acquisition'.

96. Subsection 9-15(1) provides that consideration includes any payment, or any act or forbearance if it is 'in connection with', 'in response to', or 'for the inducement of' a supply. Subsection 9-15(2) further provides that a payment, act or forbearance may be consideration for a supply even though it is made voluntarily, and regardless of whether it is made by a person other than the recipient of a supply.

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[34] The payment may be monetary or non-monetary, including any act or forbearance in connection with a supply of anything and any act or forbearance in response to or for the inducement of a supply of anything. See GSTR 2001/6.
[35] Paragraph 9-10(2)(h).
[36] Paragraph 3.6 of the Explanatory Memorandum.
[37] (2006) 156 FCR 256; [2006] FCAFC 191; (2006) 2006 ATC 4841; (2006) 64 ATR 602. .
[38] (2006) 156 FCR 256 at 265; [2006] FCAFC 191 at paragraph 35.
[39] (2006) 156 FCR 256 at 268; [2006] FCAFC at paragraph 46.

Is there a connection between a payment and a supply?

97. For paragraph 9-5(a) to be satisfied, it is necessary that the entity makes 'the supply for consideration'. Goods and Services Tax Ruling GSTR 2001/6, which is about non-monetary consideration, explains what consideration is. Paragraphs 49 to 72 of GSTR 2001/6 explain that a payment, act or forbearance is consideration for a supply if there is a sufficient nexus between the payment, act or forbearance and the supply.[40]

98. In *Reliance Carpet*[41] the High Court noted that, under section 9-15, consideration includes, among other things, any payment 'in connection with' a supply of anything. In analysing the decision of the European Court of Justice in *Société thermale d'Eugénie-les-Bains v. Ministère de l'Économie, des Finances et de l'Industrie*[42] (*Société thermale)*, the High Court gave some indication that the connection between consideration and a supply need not be direct, though it did not expand on what the extent of the connection needs to be.[43]

99. In determining whether a sufficient nexus exists between supply and consideration, regard needs to be had to the true character of the transaction. An arrangement between parties will be characterised not merely by the description which parties give to the arrangement, but by looking at all of the transactions entered into and the circumstances in which the transactions are made.

100. It can also be noted that in *Reliance Carpet*, the High Court made it clear that it is not appropriate to fix on one characteristic of a payment to suggest that it cannot be consideration for a supply. The High Court (Gleeson CJ, Gummow, Heydon, Crennan and Kiefel JJ) said:[44]

> The circumstance that the deposit forfeited to the taxpayer had various characteristics does not mean that the taxpayer may fix upon such one or more of these characteristics as it selects to demonstrate that there was no taxable supply. It is sufficient for the Commissioner's case that the presence of one or more of these characteristics satisfies the criterion of 'consideration' for the application of the GST provisions respecting a 'taxable supply'.

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[40] See also paragraphs 80 to 96 of GSTR 2001/4.
[41] [2008] HCA 22; (2008) 2008 ATC 20-028; (2008) 68 ATR 158.
[42] [2007] 3 CMLR 1003.
[43] [2008] HCA 22 at paragraph 30.
[44] [2008] HCA 22 at paragraph 28.

Contemplated supplies that do not proceed as originally intended

101. In *Reliance Carpet* the High Court considered a case where an intended supply did not proceed to completion. A contract for the sale of land was entered into and a deposit was paid by the purchaser to the vendor. The purchaser failed to complete resulting in the deposit being forfeited to the vendor. In deciding that the vendor had made a taxable supply to the purchaser, the High Court examined the events that actually occurred and asked whether they gave rise to something meeting the statutory definition of supply in section 9-10. As a result, they found that there was such a supply.

102. The High Court (Gleeson CJ, Gummow, Heydon, Crennan and Kiefel JJ) said:[45]

> The circumstance that the contract did not proceed to completion does not necessarily prevent there having been a 'supply' when the contract was entered into; the ultimate issue is whether there was a 'taxable supply' to which GST was attributed for the relevant tax period.

103. Accordingly, the fact that an arrangement contemplates a particular supply does not necessarily mean that there is no supply at all if the intended supply does not eventuate. Rather, the circumstances that actually occur need to be examined to determine if there is a supply in terms of section 9-10 and whether there is consideration for any such supply in terms of sections 9-15 and 195-1.

104. If the intended supply proceeds, the things done by the supplier to facilitate that supply can usually be seen as a part of the same supply. This is consistent with the principle referred to by the Full Federal Court in *Westley Nominees Pty Ltd v. Coles Supermarkets Australia Pty Ltd*[46] that '... [w]here one can identify a supply as incidental to a principal supply, courts have generally treated the transaction as giving rise to one supply'. Also, as mentioned above, paragraph 9-10(2)(h) provides that a supply includes 'any combination of any 2 or more of the matters' referred to in paragraphs 9-10(2)(a) to (g).[47]

105. Alternatively, if the intended supply does proceed, it may be that no separate consideration is provided for the facilitation supply because the consideration provided by the customer is most appropriately related to the intended supply. In that case, the things done to facilitate the intended supply are not a separate taxable supply. The High Court in *Reliance Carpet* made obiter comments indicating that such an approach is appropriate in security deposit cases where the intended supply is made and the deposit is applied as consideration for it.[48]

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[45] [2008] HCA 22 at paragraph 13.
[46] (2006) 152 FCR 461 at 472; [2006] FCAFC 115 at paragraph 35.
[47] See also Goods and Service Tax Ruling GSTR 2001/8 Goods and services tax: apportioning the consideration for a supply that includes taxable and non-taxable parts, (in particular paragraphs 19 to 20 and 40 to 42 of GSTR 2001/8).
[48] [2008] HCA 22 at paragraph 42.

Further examples

106. The following examples, although not exhaustive of all scenarios, demonstrate the application of the principles from the rulings section to common factual situations.

107. The common situations, addressed below, in which cancellation fees are charged include appointments, contractual agreements to provide services, hotel reservations, ticketed arrangements and travel arrangements, including package tours and airline tickets.

Appointments

108. Appointments[49] are commonly made to enable the provision of services of a personal nature, for example, the provision of medical services,[50] hairdressing, dental services and massages. A failure to attend an appointment (a no show) or a late cancellation may result in a cancellation fee being charged to the customer.

109. In the Commissioner's view, the fixing by mutual agreement of a time for the provision of services results in a supply being made. The making of an appointment itself may involve: the entry by the supplier into obligations; the allocation of resources by the supplier; the supplier refraining from entering into an arrangement with another customer for the same or a similar intended supply at the same or a similar time; and the recognition of the supplier's obligations in relation to the provision of the intended supply. These services, undertakings or obligations, which are regarded as a normal and necessary incidence of the enterprise carried on by the supplier, confer a real advantage or benefit to the customer and are therefore sufficient to amount to a supply made to the customer.

110. For example, when an appointment is made by a hairdressing salon, the salon allocates resources, including time and personnel, particular products and equipment for the making of the intended supply at or about the pre-arranged time. The salon also refrains from making an appointment to provide services to someone else at the same or a similar time.

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[49] The GST Act does not define what an appointment is. The *Macquarie Dictionary* (2001, Revised 3rd edition, The Macquarie Library Pty Ltd, NSW) defines an appointment as 'the act of fixing by mutual agreement; an engagement'.

[50] 'Medical services' is defined in section 195-1 as:
(a) a service for which medicare benefit is payable under Part II of the *Health Insurance Act 1973*; or
(b) any other service supplied by or on behalf of a medical practitioner or approved *pathology practitioner that is generally accepted in the medical profession as being necessary for the appropriate treatment of the *recipient of the supply.

111. If the appointment is kept, the intended supply is made. Any amount paid by the customer is consideration for this supply, which, in the case of a hairdressing salon, is a taxable supply.[51] The facilitation supply is subsumed into the intended supply that is made. Alternatively, as no separate consideration is paid for the facilitation supply, this supply is not taxable.

112. If the appointment is cancelled or there is a no show, the supplier is unable to make the intended supply. This is because the customer's attendance is integral to the making of that supply. The availability of the supplier to provide the services and of the customer to receive the services is a reciprocal arrangement.[52] Although the intended supply is not made, a facilitation supply is still made by the supplier. The Commissioner considers that any cancellation fee charged is consideration for the facilitation supply. The GST status of this supply is to be determined independently of the GST status of the intended supply.

113. However, where it can be demonstrated that the facilitation supply includes a right to receive a GST-free supply under Division 38 or another provision of another Act, (for example, where a patient and a medical practitioner had made a contract when the appointment was made which gave the patient an enforceable right to medical services that would be GST-free under section 38-7), and the patient subsequently cancels the appointment, the cancellation fee will be consideration for the right to receive GST-free supplies, which itself is a GST-free supply under paragraph 9-30(1)(b).

Example 8: cancellation fee for a cancelled appointment

114. *Tracey makes an appointment for a beauty treatment service with Pampered Chique Boutique (PCB). The fee for the beauty treatment service is $145. PCB arranges for specific beauty products and equipment to be made available or set aside and for one of its beauticians to be available at the pre-arranged time to provide the required service to Tracey, and refrains from booking another customer for that beautician at that time. Tracey is aware that PCB imposes a flat fee of $40 if a cancellation is made less than two hours before an appointment.*

115. *Tracey cancels one hour before her appointment. PCB is unable to make the intended supply and charges the fee of $40. However, PCB makes a facilitation supply for which the cancellation fee is consideration. The facilitation supply is a taxable supply.*

[51] In other cases, the supply may be GST-free or input taxed depending on the nature of the supply.
[52] For an example of a reciprocal arrangement see *Town & County Factors Ltd v. Customs & Excise Commissioners* [2002] BVC 645.

Example 9: cancellation fee for a no show if contract entered into at time appointment is made

116. *Hamish makes an appointment with Dr. Sasha, for a specialist consultation.*[53] *When making the appointment, Hamish is advised of a fee of $125 if he cancels less than one hour before the appointment or fails to show for it.*

117. *Hamish fails to turn up for the appointment and is charged the cancellation fee of $125. If it can be demonstrated on the facts that Dr Sasha and Hamish had made a contract when the appointment was made which gave Hamish an enforceable right to medical services, the facilitation supply would be GST-free if the medical services would have been GST-free under section 38-7. This would be by operation of paragraph 9-30(1)(b).*

Example 10: cancellation fee for a no show if no contract is entered into at time appointment is made

118. *Same facts as in Example 9, except that it cannot be demonstrated from the facts that a contract was entered into at the time that the appointment was made.*

119. *Dr. Sasha is unable to provide the intended supply of medical services. However, Dr. Sasha has allocated resources (including her time, consultation room, her diagnostic equipment and her assistant) at the pre-arranged time to provide the required services to Hamish. The appointment for Hamish at the time allotted for him ensures that an appointment is not made by Dr Sasha for someone else to see her during that time. In making these arrangements and in refraining to see someone else at the allotted time, Dr Sasha makes a facilitation supply and not a supply of medical services.*

120. *The cancellation fee charged by Dr. Sasha is consideration for the facilitation supply made by her. The facilitation supply is a taxable supply.*

Cancellation fees under a contract to provide services

121. In some cases, a supplier may enter into a contract with an entity for the provision of a block of time to provide a service to that entity. For example, a company may arrange for a medical specialist to see injured employees for compensation purposes.[54] If the specialist is paid on the basis of the number of appointments made, and an employee fails to attend, the Commissioner's view is that the specialist is still making a supply of services to the company.[55]

122. Any fee charged upon the failure to attend has sufficient nexus with the supply of services and is consideration for the supply. The supply is a taxable supply.

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[53] The intended supply of medical services may be GST-free under Subdivision 38-B.
[54] For a detailed discussion on tripartite arrangements see paragraphs 114 to 246 of GSTR 2006/9.
[55] This is similar to the situation in *British Telecommunications plc* [1997] BVC 2370.

Example 11: supply of services when there is a no show

123. *Dr. Whoose, a medical specialist in occupation overuse syndrome (OOS), enters into an agreement with the Injuries Cover Board (the Board) to examine those employees of a government department who have lodged compensation claims for OOS. As part of the agreement, the Board provides Dr. Whoose with case histories beforehand so that he can familiarise himself with each employee's issues. Dr. Whoose sees these employees and provides the Board with reports recommending rehabilitation programs for the employees. Doctor Whoose charges the department $200 for each person referred to him, regardless of whether or not that person shows up for their appointment.*

124. *If an employee attends the appointment, Dr. Whoose makes a supply of services to the Board. This is a taxable supply made to the Board and is not a supply of medical services to the employee.*

125. *If an employee fails to show up for an examination, there is still a supply of services to the Board. The fee charged in this case is consideration for that supply, which is a taxable supply.*

Hotel reservations

126. Under the Australian GST laws, the acceptance of a hotel reservation is a supply of real property. This is because the definition of real property in section 195-1 includes a contractual right exercisable over or in relation to land. It does not matter whether the right is exercisable immediately (for example, by a 'walk in' customer seeking immediate accommodation) or sometime in the future.[56] An amount payable by the customer for the reservation is consideration for the supply of real property.

127. If hotel accommodation is reserved, a customer is often asked to provide credit card details in order to guarantee their reservation. The terms of the reservation normally provide for a cancellation fee in the event of a cancellation at short notice or for a no show. The cancellation fee, often the cost of one night's accommodation, is usually charged to the customer's credit card account.

128. Notification of this fee may be given verbally when a reservation is made over the telephone, or it may be within the terms set out in electronic form, for example, on a hotel website if a reservation is made online.

129. Two examples of cancellation policies for hotel reservations are:

1. Cancellation policy:

Cancellation required by 6.00pm on day of arrival or a cancellation fee equal to the first night's room fee will be charged.

[56] See *Saga Holidays Ltd v. FC of T* (2006) 156 FCR 256 per Stone J at 266 to 267; [2006] FCAFC 191 per Stone J at paragraphs 37 to 40.

> 2. A non-refundable booking fee of $5 applies to each booking.
>
> A $20 administration charge applies to each booking change or cancellation. A minimum of 48 hours notice is required for cancellations. Cancellations made within 48 hours of check in time, will incur a fee equal to the first night's accommodation cost.

130. If a customer cancels a hotel reservation or fails to show up, it is the Commissioner's view that a supply of real property as defined in the GST Act is still made. When a reservation is accepted, the supplier grants a contractual right (in relation to land), even though a particular room is not specified.[57] In those cases where the reservation is cancelled, the supply is made up to the time of cancellation. It does not matter when the hotel reservation is cancelled. Any fee payable for a cancellation or a no show is consideration for the supply. The supply is a taxable supply.[58]

131. At first instance in *Saga Holidays Ltd v. FC of T*[59] Conti J stated:

> The acceptance of a hotel room or suite booking or reservation communicated by a hotelier … confers a personal right of a contractual nature in relation to the use and occupation of the hotel room for the duration of the booking or reservation …[60]

132. The Commissioner's view is also consistent with the UK decision in *Customs and Excise Commissioners v. Bass plc*[61]

133. The issue of cancelled hotel reservations was also discussed by the European Court of Justice in *Société thermale.*[62] In that case, the Court was considering the operation of the VAT system on deposits for hotel accommodation retained by the hotel owner upon cancellation of hotel reservations. The European Court of Justice concluded that the deposit was not subject to VAT because the sum was retained as compensation for the default by the customer.

134. In line with the comments made by the High Court in *Reliance Carpet*[63] the Commissioner considers the decision to have no relevance in the Australian GST system, which does not require a direct connection between a supply and consideration for the purposes of determining whether the supply is a taxable supply.

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[57] See *Saga Holidays Ltd v. FC of T* (2006) 156 FCR 256 per Stone J at 266; [2006] FCAFC 191 per Stone J at paragraph 38.
[58] See paragraphs 23 and 24 of this draft Ruling for a discussion on cancellation fees where the intended supply is not made.
[59] (2005) 149 FCR 41; [2005] FCA 1892; (2005) 2006 ATC 4001; (2005) 61 ATR 384.
[60] (2005) 149 FCR 41at 68; [2005] FCA 1892 at paragraph 57.
[61] [1993] STC 42.
[62] [2007] 3 CMLR 1003.
[63] [2008] HCA 22 at paragraph 30.

Example 12: cancellation fee charged for a no show at a hotel

135. *Anne books a hotel room for three nights with Whitewater Thrills Hotels Enterprises Ltd (Whitewater). She is advised by Whitewater of the following conditions at the time of booking:*

- *we will hold the booking for you until 6.00 pm on the day of your intended arrival;*
- *if you wish to cancel your booking you must tell us by 12.00 noon on the day of your intended arrival. If you cancel between 12.00 noon and 6.00pm on the day of your intended arrival a cancellation fee of $33 will be charged; or*
- *if you cancel after 6.00 pm on the day of your intended arrival or do not show up, a cancellation fee equal to one night's accommodation will be charged.*

136. *Whitewater takes details of Anne's credit card to guarantee her booking.*

137. *Anne fails to show up without cancelling her booking. However, Whitewater has still made a supply of real property. Anne is charged a cancellation fee equal to one night's accommodation. The cancellation fee is consideration for the supply. The supply is a taxable supply.*

Example 13: cancellation fee charged for a cancellation at short notice

138. *Following on from Example 12, Anne cancels her booking at 3.00 pm on the day of her intended arrival. In line with the hotel policy she is charged the cancellation fee of $33.*

139. *Whitewater makes a supply of real property until the time of cancellation. The cancellation fee is consideration for the supply. The supply is a taxable supply.*

Ticketed arrangements

140. A ticket evidences a right, entitlement or permission that the customer has to be supplied with something else.[64] For example, a ticket to attend a theatre to see a play grants to the customer permission to enter upon the land and occupy a particular seat and to receive the supply of the performance (which is the intended supply).[65]

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[64] The Commissioner considers that tickets under ticketed arrangements discussed in this draft Ruling are not vouchers for the purposes of Division 100.

[65] See paragraph 103 of Goods and Services Tax Ruling GSTR 2003/7: Goods and Services Tax: what do the expressions 'directly connected with goods or real property' and 'a supply of work physically performed on goods' mean for the purposes of subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*?

141. Under a ticketed arrangement, when a ticket is booked, the supplier makes a facilitation supply. This facilitation supply may include a right to receive another supply. If a customer fails to show up or cancels, the supplier still makes a facilitation supply. This supply may be taxable, GST-free[66] or input taxed.[67]

142. A ticket may be issued on the basis that the price paid for it is:

- fully refundable;
- partly refundable; or
- non-refundable.

143. Alternatively, a ticket may be issued on the basis that if the intended supply does not take place at the stipulated time (for example, airline travel on a particular flight at a particular time), provision may be made in the arrangement for all or part of the consideration for the ticket to be held as a credit against the cost of the intended supply at the same or different consideration. If the credit is not used by the customer, the credit retained by the supplier is consideration for a facilitation supply.

Fully refundable tickets

144. If a ticket is issued on a fully refundable basis, this does not involve the payment of a cancellation fee if the intended supply is cancelled.

145. However, on cancellation the supplier may have a decreasing adjustment. This decreasing adjustment is attributable to the tax period in which the supplier becomes aware of it. The customer may also have a corresponding increasing adjustment. The tax period to which these adjustments are attributed is usually the tax period in which the cancellation is made.

Partly refundable tickets

146. If a ticket is issued on a partly refundable basis, a term of the agreement may provide for the refund of a portion of the consideration paid for the ticket with the balance being retained by the supplier as a cancellation fee if the intended supply is cancelled. For example, a cancellation clause may provide for an amount equal to 50% of the ticket price as the cancellation fee. The balance of 50% is refundable to the customer.

147. Upon cancellation, the supplier does not make the intended supply but makes a different supply. If the cancellation fee is consideration for a different supply which is taxable, the GST payable on this supply is attributable under section 29-5.

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[66] See subsection 9-30(1) for circumstances in which the supply of a right to receive another supply that is GST-free is also GST-free.

[67] See subsection 9-30(2) for circumstances in which the supply of a right to receive another supply that is input taxed is also input taxed.

148. At the same time, the cancellation and refund of part of the consideration for the intended supply may give rise to a decreasing adjustment for the supplier and an increasing adjustment for the customer. These adjustments are in relation to the full consideration for the intended supply. The adjustments are attributable to the tax period in which the supplier and the customer become aware of those adjustments. This is usually the tax period in which the cancellation is made.

Non-refundable tickets

149. Often a ticket is issued on a non-cancellable and non-refundable basis. An example of a clause providing for no refund of the purchase price in relation to performances or events may be in the following terms:

> The ticket cannot be exchanged, returned, or refunded after purchase.

150. The supply of a ticket on a non-cancellable and non-refundable basis means that, although some variations at additional cost may be permitted, the intended supply cannot be cancelled, nor is the price paid for the ticket refunded if the ticket is not used by the customer.[68]

151. It is the Commissioner's view that, in these cases, a supply is made even though the customer does not use the ticket by not showing up for the intended supply.

GST consequences if an intended supply is cancelled or deferred by the supplier

152. It is often the case for events that the terms of the arrangement will provide for deferral or cancellation by the supplier of the intended supply. A condition that provides for this may be stated in the following terms:

> The ticket holder is entitled to attend a re-scheduled event. If an event is cancelled or abandoned by the event organiser, and if the ticket holder is unable to attend the re-scheduled event, or if the event is not re-scheduled, the event organiser must ensure that the ticket holder receives a full refund of the ticket price and other ticket charges.

153. In this case, the supplier does not make a supply when the event is cancelled or deferred by the supplier. The customer may be issued with a new ticket, be able to use the same ticket for the re-scheduled event or be entitled to a full refund.

[68] Unless the cancellation is made by the supplier.

154. If the event is cancelled and the customer chooses to obtain a full refund, the supplier has an adjustment event under subsection 19-10(1). The decreasing adjustment is attributable to the tax period in which the supplier becomes aware of the adjustment. The customer may have an increasing adjustment, which is attributable to the tax period in which the customer becomes aware of the adjustment.[69]

Example 14: no show for a concert

155. *Kalliani purchases a ticket for a concert from Screeching Galah Promotions Ltd (Screeching Galah) as agent for the presenter, Cheep Trills Entertainment Ltd (Cheep Trills). She is allocated seat number D20, which is printed on her ticket. The conditions of sale of the ticket include:*

- *the ticket cannot be exchanged, returned or refunded after purchase;*
- *the ticket cannot be cancelled; or*
- *if the concert is cancelled or abandoned, you may either receive a refund of the whole of the ticket price and other ticket charges, or, if the event is rescheduled, you can use your ticket to gain entry to the rescheduled event on the same terms and conditions.*

156. *On the day of the concert Kalliani travels interstate for work and is unable to attend.*

157. *Even though Kalliani does not attend the concert, Cheep Trills makes a supply. The amount paid by Kalliani is consideration for this supply. The supply is a taxable supply.*

Example 15: supplier cancels the concert

158. *Following on from Example 14 above, Kalliani is able to attend the concert but due to the illness of the cast, the concert is cancelled and not rescheduled.*

159. *In this case, Cheep Trills refunds the amount paid by Kalliani. Cheep Trills has a decreasing adjustment attributable to the tax period in which it becomes aware of the adjustment.*

Example 16: supplier re-schedules the concert – offer declined

160. *Following on from Example 14, due to a fire at the venue, the concert is postponed for two weeks. Kalliani is advised that her ticket can be used to watch the rescheduled concert on the same terms and conditions.*

---

[69] Subsection 29-20(1).

161. *Kalliani declines the offer to attend the rescheduled concert and obtains a full refund. In this case, Cheep Trills has a decreasing adjustment attributable to the tax period in which it becomes aware of the adjustment.*

Example 17: supplier re-schedules the concert – offer accepted

162. *Following on from Example 16, Kalliani instead accepts the offer, but still misses the concert.*

163. *In this instance, Cheep Trills does not have any adjustment event as it has made a supply to Kalliani to watch the concert. This supply is a taxable supply.*

Package tours

164. Package tour operators (which include package tour wholesalers) arrange and/or sell domestic or overseas tour packages, typically comprising travel, transport, accommodation and events. They make the necessary arrangements for customers, either directly or indirectly, for example, through the making of bookings for airlines, accommodation and other ground arrangements. They may also enter into arrangements with other travel agents or wholesalers to sell the tour packages.

165. The Commissioner takes the view that package tour operators are travel agents for the purposes of the GST Act.

166. Package tours involve a number of supplies. These supplies may include:

- travel (airline, cruise ship or train) tickets;
- accommodation bookings;
- car hire;
- reservations for special events; and
- reservations to undertake recreational and leisure activities.

167. When a tour operator arranges travel, books accommodation, guided tours and ground transportation, and makes reservations for special events, recreation and leisure activities as part of a package tour, the tour operator makes a facilitation supply. This supply is arranging for other supplies to be made to the customer.

168. The terms and conditions of a package tour may provide for the payment of a cancellation fee if the customer cancels the tour. This cancellation fee can vary depending on when the cancellation is made.

169. An example of a cancellation clause found in a tour package is:

> Cancellations
>
> If it is necessary to cancel your holiday, you should notify us immediately in writing and this will take effect the day it is received by us. All monies will be forfeited as follows:
>
> Number of days before departure:
>
> | | |
> |---|---|
> | More than 60 days | loss of deposit |
> | 60-41 days | 45% of fare |
> | 40-31 days | 65% of fare |
> | 30 days or less | no refund |

170. If the customer takes advantage of the package tour, the intended supply is made, and the consideration paid by the customer is for this supply.

171. However, if a customer cancels the package tour prior to departure, the Commissioner considers that the cancellation fee is consideration for the facilitation supply made by the tour operator in arranging for other supplies to be made. This facilitation supply is a taxable supply, unless it is GST-free or input taxed.[70] See Tables A and B in Attachment 1 of this draft Ruling for a summary of the GST consequences in relation to international and domestic tour packages.

172. If the facilitation supply made by a tour operator is a supply consisting of arranging for the making of a supply, the effective use or enjoyment of which is to take place outside Australia, the facilitation supply is GST-free under section 38-360.[71]

173. If the facilitation supply is of arranging transport of the kind covered by items 1 to 4 of the table in section 38-355, that facilitation supply is GST-free under item 7 of the table in section 38-355.[72]

Example 18: facilitation supply in relation to overseas package tour

174. *Sally purchases an African safari tour from a wholesaler, Serengetty Tours Ltd (Serengetty). The safari consists of flights to and from Australia and Africa, accommodation, ground transportation, food and drinks and various tours in Africa.*

---

[70] Subsections 9-30(1) and 9-30(2) deal with supplies that are GST-free or input taxed. In addition to those supplies which are GST-free under Division 38 or input taxed under Division 40, those subsections also provide that the supply of a right to receive a supply that would be GST-free under Division 38 is GST-free and that the supply of a right to receive a supply that would be input taxed under Division 40 is also input taxed.

[71] Under section 38-360, a supply is GST-free if the supplier makes the supply in the course of carrying on an enterprise as a travel agent and the supply consists of arranging for the making of a supply, the effective use or enjoyment of which is to take place outside Australia.

[72] Under item 7, arranging transport of passengers to, from or outside Australia or within Australia as part of international transport, international transport of goods and international transport insurance is GST-free. See the table in section 38-355 for all the requirements that have to be met for the supply under item 7 to be GST-free.

175. *The tour agreement has a cancellation clause in the following terms:*

> *Cancellations*
>
> *If it is necessary to cancel your holiday, you should notify us immediately in writing and this will take effect the day it is received by us. All monies will be retained by Serengetty Tours Ltd as follows:*
>
> *Number of days before departure:*

More than 60 days	*loss of deposit*
60-41 days	*45% of fare*
40-31 days	*65% of fare*
30 days or less	*no refund*

176. *Unfortunately, 51 days prior to her departure Sally has to cancel her holiday and, under the terms and conditions of her tour arrangement, loses 45% of her fare.*

177. *The amount retained by Serengetty is consideration for a facilitation supply made by Serengetty in arranging Sally's booking. As the safari was to take place outside Australia, the facilitation supply is GST-free under item 7 of the table in section 38-355 (arranging transport to and from Australia) and section 38-360.*

178. Alternatively, if the cancellation fee is not consideration for a facilitation supply and the agreement for the package tour contains an option to terminate the agreement, the exercise of that option may result in the supplier releasing the customer from its obligations under the agreement upon payment of the cancellation fee. In this case, the cancellation fee is consideration for a release supply.[73] This supply is a taxable supply.

Airline and other travel tickets

179. This part of the draft Ruling generally discusses airline ticketing arrangements. However, the principles are equally applicable to other ticketing arrangements for travel to the extent that those arrangements reflect the airline ticketing arrangements discussed below.

180. Tickets for domestic or international transport (travel) may be purchased directly from an airline or through a travel agent. In booking the travel, the airline or travel agent arranges travel and in doing so makes a facilitation supply to the customer. For example, the airline or travel agent:

- checks the availability of seats on flights;
- checks the range of air fares available;

[73] Release supplies are discussed in paragraphs 59 to 69 of this draft Ruling. For an example of an option to terminate an agreement see paragraph 61 of this draft Ruling.

- informs the customer about available seats and fares;
- makes the relevant booking or reservation;
- if payment is not made immediately, holds the booking pending payment;
- where applicable, issues the ticket upon payment of the full price; and
- makes other arrangements to facilitate the travel.

181. In addition, an airline enters into various obligations under a contract of carriage with the customer (such as to allow a re-booking of travel in certain circumstances).

182. In the case of airline tickets, the supply of travel usually occurs some time after the issue of the ticket.[74] When an airline ticket is issued and the terms and conditions of the ticket are accepted by the customer, the supplier (usually the entity operating the airline service) enters into an executory contract of carriage under which the customer has a right to receive a future supply of travel. However, the supply of actual travel may or may not take place at the time indicated on the ticket[75] and may be subject to various conditions such as the passenger not being intoxicated or under the influence of drugs at the time of travel.

183. The terms and conditions of travel typically include cancellation clauses. Typical cancellation clauses for airline tickets are as follows:

> 1. Cancellations (including no shows)
>
> **Before departure**
>
> Cancellation fees of A$220 per person apply. Except if upgraded to a higher fare.
>
> **After departure**
>
> No refund
>
> This fare may be used as credit towards the payment of any higher fare from the point of origin, provided the new fare conditions are met. If the new fare is cancelled the original fare cancellation conditions will apply. This credit must be used within 12 months of the original ticket's date of issue.

[74] In some cases, an actual ticket is not issued, for example if you book your travel online. In these instances, you may get a receipt or an itinerary with a booking reference that evidences your booking. In this draft Ruling a reference to a ticket being issued includes these circumstances.

[75] This is similar to booking for hotel reservations made through a tour operator where, under the terms of its contractual obligations, the tour operator can substitute one hotel for another, or change dates of the reservations based on the customer's arrivals or departures or changes in itinerary as part of the package. See *Saga Holidays Ltd v. FC of T* (2006) 156 FCR 256 per Young J at 273; [2006] FCAFC 191 per Young J at paragraph 69.

> 2. Cancellations permitted up to 30 minutes prior to your flight's scheduled departure time…
>
> When cancelling flights, the amount paid is held in credit to be used within 12 months from the date of first purchase…
>
> If you do not fly and do not notify us at least 30 minutes prior to the flight's scheduled departure time, you will forfeit any fare paid…
>
> This fare is non-refundable.
>
> 3. No refunds will be given for unused or partly used fares unless specified under the airline's terms and conditions. We will permit some changes to the booking provided sufficient notice is given. A charge may be applicable. Failure to travel on a booking will result in the fare being forfeited.
>
> **Check-in Deadline**
>
> All passengers must check in at least 60 minutes before the scheduled departure. You will not be able to check-in after these check-in deadlines. Arrival after these check-in deadlines may result in you forfeiting the entire fare paid. The aircraft will not be held for you if you arrive late at the boarding gate.
>
> **Arrive late**
>
> If you arrive late at check-in or the boarding gate, you will forfeit your booking and no refund will be paid.

184. When a customer cancels or does not show up for their travel, a cancellation fee may be payable (for example by forfeiting the entire fare paid) or the fare or balance of the fare may be refundable. Whether this happens depends on the terms and conditions of the ticket, the type of fare that a customer obtains (for example, discounted, fully flexible or business class) and the intended destination.

185. If the customer cancels their booking, an airline, under the terms of their agreement with the customer, often holds the fare as a credit to be used against another fare. The airline's entitlement to hold the credit is under the terms and conditions of the original booking. The Commissioner, therefore, takes the view that, until the credit is used, the amount paid (as reduced by the cancellation fee) remains connected with the executory contract for the supply of travel as originally agreed.[76]

[76] See generally paragraphs 191 to 220 of this draft Ruling for a discussion of the GST consequences of fares held as a credit against another fare.

186. If the supply of travel is not made, either through a cancellation by the customer or a no show, the airline has still made a facilitation supply because it has done all or some of the things referred to in paragraph 180 of this draft Ruling. If this supply is made in facilitating domestic travel, the supply is a taxable supply. If the supply is made in facilitating international travel as described in items 1 to 4 of the table in section 38-355, the supply is of arranging transport which is GST-free under item 7 of that table.[77]

187. If the customer alters their travel – that is, the customer cancels the originally booked travel and then immediately rebooks – the Commissioner accepts that the services provided to effect this change constitutes a facilitation supply.

188. Alternatively, if a customer cancels the travel and obtains a refund (as reduced by the cancellation fee), the Commissioner considers that the services provided to give effect to the cancellation constitute a cancellation supply, which may be a taxable supply. See Tables C and D in Attachment 1 of this draft Ruling for a summary of the GST consequences in relation to international and domestic transport of passengers.

Where travel is cancelled or deferred and the fare is held as a credit

189. If there is a cancellation of, or a no show for, travel at the stipulated time as initially arranged, the arrangement for the supply of travel may provide for all or part of the fare paid to be held as a credit. This credit is held until the customer undertakes travel within a period of time as defined in the arrangement, usually 12 months from the date of issue of the original ticket. If the travel is not undertaken within that period, the amount held as a credit expires and there is no refund.

190. An example of a condition found in the airline industry that permits the supplier to hold all or part of the fare for an intended supply as a credit is as follows:

> After departure – no refund
>
> This fare may be used as credit towards the payment of any higher fare from the point of origin, provided the new fare conditions are met. If the new fare is cancelled the original fare cancellation conditions will apply. This credit must be used within 12 months of the original ticket's date of issue.

[77] Under item 7 of the table in section 38-355, arranging transport of passengers to, from or outside Australia or within Australia as part of international transport, international transport of goods and international transport insurance is GST-free. See the table in section 38-355 for all the requirements that have to be met for the supply under item 7 to be GST-free.

Consequences for the supply of travel

191. The Commissioner takes the view that the application of the credit against the cost of another fare does not give rise to a new executory contract for a supply of travel.

192. If the customer uses the credit and rebooks for the same type of travel as originally booked, the GST consequences do not change. For example, if the original booking and the rebooking are for domestic travel, the GST status of the travel remains the same – it is a taxable supply. If the rebooking is at a higher fare, an adjustment event arises for the airline as the consideration for the supply of travel has changed.

193. However, if the rebooking is changed from domestic to international travel or from international to domestic travel, the GST status of the supply changes. In this case there is an adjustment event under section 19-10.[78]

194. If the original booking was for international travel and the rebooking is for domestic travel, the airline will have an increasing adjustment as the supply of domestic travel is a taxable supply.

195. Conversely, if the original booking was for domestic travel and the rebooking is for international travel, the airline will have a decreasing adjustment as the supply of international travel is GST-free if the requirements of section 38-355 are met.

196. In the circumstances described in the last two paragraphs, if the customer makes a creditable acquisition of the facilitation of travel or the travel itself, the customer may also have adjustment events.

Consequences if rebooked travel is cancelled or there is a no show

197. In rebooking travel for a customer, an airline or a travel agent makes a facilitation supply.[79] If the rebooked transport is cancelled or there is a no show, in the Commissioner's view, any cancellation fee payable is consideration for the facilitation supply made on rebooking, provided that the balance of the fare would be held as a credit to be used against another fare rather than refunded to the customer.

198. If the facilitation supply is made in arranging international travel, the supply is GST-free provided the requirements of item 7 of the table in section 38-355 are met. Conversely, if the rebooking is for a supply of domestic travel, the cancellation fee, in the Commissioner's view, is consideration for a facilitation supply made for domestic travel. This is a taxable supply.

[78] See paragraphs 76 to 78 of this draft Ruling for discussion of adjustment events upon cancellations.
[79] See paragraph 180 of this draft Ruling for the kinds of services that an airline provides in booking travel.

199. If the original credit is not used within the stipulated timeframe and no travel is rebooked, the credit is connected with the facilitation supply made for the original booking. If the credit expires and the credit arose from a cancellation of an intended supply of travel covered by section 38-355, the facilitation supply of arranging transport is GST-free if the requirements of item 7 of the table in section 38-355 are met.[80]

200. For example, if the booking was for the supply of domestic transport, the credit remains consideration for a taxable supply. Conversely, if the booking was for the supply of international transport, the credit remains consideration for a GST-free supply.

201. However, if there is a rebooking which changes the GST status of the travel, a cancellation of the rebooked travel will result in the credit, if it is not subsequently used, being regarded as consideration for the facilitation supply made on the rebooking. For example, if the initial booking was for domestic travel and the rebooking was for international travel, a cancellation of the rebooked international travel will mean that any expired credit is consideration for a facilitation supply for international travel, which is GST-free if the requirements of item 7 of the table in section 38-355 are met.

202. Conversely, if the initial booking was for international travel and the rebooking was for domestic travel, a cancellation of the rebooked domestic travel will mean that any expired credit is consideration for a facilitation supply for domestic transport, which is a taxable supply.

203. In each of the circumstances outlined in the last two paragraphs, an adjustment event will arise at the time of rebooking in respect of the application of the credit against the fare for the rebooked flight.

204. If, following a cancellation or no show, a credit that is held by an airline is applied in part towards the cost of another fare, the airline has an adjustment event in relation to the rebooked flight if it involves a change in the GST status of the supply. For example, if a credit is held as a consequence of the cancellation of a GST-free supply of international transport and a portion of that credit is applied towards the fare for a taxable supply of domestic travel, the airline has an increasing adjustment in respect of the GST payable on the cost of the domestic travel. No adjustment event arises at that time in respect of the balance of the credit.

Example 19: cancellation fee charged for a partly refundable ticket

205. *Linda buys a ticket from Fallskye Airways for $2,000. The ticket is a domestic return ticket from Dullsville to Funsville. Business commitments mean that Linda has to cancel the return leg of her journey. She surrenders the ticket to Fallskye Airways for a refund.*

[80] Alternatively, if it is accepted that the facilitation supply consists of only the right to receive that supply of travel, the supply may be GST-free under paragraph 9-30(1)(b).

206. *Upon cancellation, under its terms and conditions, Fallskye Airways retains 50% of the pre-paid fare as a cancellation fee and refunds the balance. This fee is for the supply of facilitating Linda's travel.*

207. *The full cost of the return leg is $1,000. Fallskye Airways therefore pays $500 to Linda being the refund of $1,000 for the return leg less the 50% cancellation fee ($500).*

208. *The GST consequences for Fallskye Airways are as follows:*

- *the $2,000 paid by Linda is consideration for a supply. This is a taxable supply and Fallskye Airways accounts for the GST payable (1/11th of $2,000) in the tax period in which Linda buys the ticket (that is, in the tax period in which any consideration is received or an invoice is issued);*
- *the cancellation fee of $500 for cancelling the return leg of Linda's journey remains consideration for a supply that is a taxable supply. As such, there is no adjustment in relation to the cancellation fee.; and*
- *the $500 refund means that Fallskye Airways has a decreasing adjustment in respect of the $500 attributable to the tax period in which the refund is made.*

Example 20: no show at an airport – non-refundable ticket

209. *Adam purchases a discount airfare ticket from Sydair Airlines (Sydair) for $330 to travel from Sydney to Cairns subject to a number of terms and conditions including:*

- *the fare is non-refundable;*
- *the booking cannot be cancelled within 24 hours of the scheduled departure time;*
- *if the flight is missed the fare is forfeited; and*
- *if bookings are changed or cancelled 24 hours or more before the scheduled flight, Sydair charges a $50 administration fee for administrative services in making the cancellation and holds the balance as a credit for Adam to make another booking at the same or higher fare. The credit must be used within 12 months of the date of purchase of the initial ticket and may be used against any other flight.*

210. *Adam is delayed on the way to the airport and misses the flight. His fare is forfeited. Even though Adam did not catch his flight, Sydair makes a facilitation supply in arranging Adam's travel. The amount that Adam paid is consideration for this supply. The supply is a taxable supply.*

Example 21: credit given against cancellation

211. *Following on from Example 20, Adam instead cancels his booking 48 hours before the scheduled departure time. The airline charges Adam the $50 fee and gives Adam a credit of $280. Two months later Adam books another flight to Cairns. The fare for this flight is $450. Adam used the credit of $280 and pays an additional amount of $170 for this flight.*

212. *The fee of $50 charged by Sydair is consideration for a cancellation supply. This supply is a taxable supply.*

213. *The rebooked flight is not a new supply by Sydair but gives rise to an adjustment event for Sydair. As the consideration for the supply of transport has increased, Sydair has an increasing adjustment of $170 $\times$ 1/11th.*

Example 22: credit applied towards higher international fare

214. *Following on from Example 21, two months after cancelling his flight to Cairns, Adam instead rebooks and takes a flight from Sydney to New Zealand for $550. He applies the credit from the cancelled domestic travel booking towards the fare for New Zealand and pays the additional amount of $270 to Sydair. This time Adam makes the flight.*

215. *At the time of booking the original ticket, Sydair agrees to make a supply of transport which would have been a taxable supply. However, when the rebooking is made for a flight to New Zealand, the supply of transport stops being a taxable supply. The supply of the transport from Sydney to New Zealand is a supply within item 1 of the table in section 38-355 and is a GST-free supply.*

216. *As the supply stops being a taxable supply and becomes a GST-free supply, Sydair has a decreasing adjustment in respect of the credit of $280.*

Example 23: no show – non-refundable international ticket

217. *Marilyn purchases a discount air ticket of $2,850 from Aus Air to travel from Canberra to Nairobi subject to a number of terms and conditions including:*

- *the fare is non-refundable;*
- *cancellations are permitted up to 4 hours prior to the flight's scheduled departure time;*
- *a cancellation fee of $220 applies except if you upgrade to a higher fare; and*
- *on cancellation and after deduction for the cancellation fee, the balance of the fare may be used as a credit towards the payment of an equal or higher fare. The credit must be used within 12 months of the original ticket date of issue.*

218. *Due to unforseen circumstances, Marilyn cancels her booking 2 days before the date of departure. She is charged the cancellation fee of $220. AusAir holds the balance of the fare ($2,630) as a credit as she does not rebook immediately.*

219. *Six months later, instead of travelling overseas, Marilyn decides to travel to all the major cities in Australia. She uses the credit of $2,630 towards the cost of the domestic travel, which is the same amount as the credit.*

220. *For Aus Air the GST consequences are:*

- *as the supply to which the cancellation fee of $220 relates is arranging the transport to and from Australia and which would have been GST-free, this supply is GST-free under item 7 of the table in section 38-355; and*
- *when Marilyn books and takes her flights for domestic travel, the supply of transport by Aus Air to Marilyn stops being a GST-free supply and becomes a taxable supply. Aus Air has an increasing adjustment for this taxable supply.*

Example 24: expiry of credit

221. *Following on from Example 23, instead of using the credit towards the cost of the domestic travel, Marilyn does not rebook within the 12 month timeframe allowed for the use of the credit.*

222. *The expired credit is consideration for the facilitation supply of arranging international transport. This supply is GST-free under item 7 of the table in section 38-355 if the requirements of that item are met.*

Alternative view

223. As set out earlier in this draft Ruling, the Commissioner takes the view that the GST consequences of cancellation fees must be analysed by first determining whether a supply is made on cancellation or no show and then determining whether any cancellation fee payable is consideration for that supply.

224. An alternative view is that when an intended supply is cancelled no supply is made on cancellation. Under this view, a cancellation fee cannot be consideration for the intended supply nor consideration for a different supply but is an amount of damages (in the form of liquidated damages), a penalty, compensation or an ex gratia payment.

225. Under this alternative view, any activities or things that the Commissioner considers to be a facilitation supply as discussed in paragraphs 25 to 39 of this draft Ruling are merely business inputs or in-house activities of the supplier and are not supplies made to a customer. It is said that this is the case as the inputs or activities are not provided to the customer nor do they confer an advantage or benefit on the customer. These inputs and activities are, therefore, said not to fall within the meaning of 'supply' for GST purposes.

226. The view expressed in the last two paragraphs has been raised particularly in relation to those situations in which no enforceable obligations are entered into, for example, in the case of some appointments.

227. For the reasons expressed in earlier parts of this draft Ruling, the Commissioner does not agree with this view. In relation to appointments, the Commissioner considers that this alternative view does not correctly analyse the arrangements that are entered into when an appointment is made.[81]

Your comments

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

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

- provide responses to persons providing comments; and
- publish on the Tax Office website at www.ato.gov.au.

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

Due date:	**10 December 2008**
Contact officer:	**Mae Ling Yii**
E-mail address:	**maeling.yii@ato.gov.au**
Telephone:	**(03) 9215 3277**
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Address:	**Australian Taxation Office** **PO Box 9977** **Dandenong VIC 3175**

[81] See paragraphs 108 to 120 of this draft Ruling for a discussion of the application of the principles expressed in this draft Ruling to appointments.

Detailed contents list

230. Below is a detailed contents list for this draft Goods and Services Tax Ruling:

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Commissioner of Taxation
29 October 2008

Previous drafts:

Not previously issued as a draft

Related Rulings/Determinations:

GSTR 1999/1; GSTR 2000/19; GSTR 2000/29; GSTR 2001/4; GSTR 2001/6; GSTR 2001/8; GSTR 2003/7; GSTR 2003/11; GSTR 2006/2; GSTR 2006/9; GSTD 2005/6

Subject references:

- adjustment events
- airline and other travel tickets
- appointments
- cancellation fees
- consideration
- Damages
- GST-free supply
- hotel reservations
- liquidated damages
- package tours
- release supply
- supply
- taxable supply
- ticketed arrangements

Legislative references:

- ANTS(GST)A 1999
- ANTS(GST)A 1999 9-5
- ANTS(GST)A 1999 9-5(a)
- ANTS(GST)A 1999 9-10
- ANTS(GST)A 1999 9-10(1)
- ANTS(GST)A 1999 9-10(2)
- ANTS(GST)A 1999 9-10(2)(a)
- ANTS(GST)A 1999 9-10(2)(b)
- ANTS(GST)A 1999 9-10(2)(c)
- ANTS(GST)A 1999 9-10(2)(d)
- ANTS(GST)A 1999 9-10(2)(e)
- ANTS(GST)A 1999 9-10(2)(f)
- ANTS(GST)A 1999 9-10(2)(g)
- ANTS(GST)A 1999 9-10(2)(h)
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Attachment 1

231. The following tables are a summary of the GST consequences of cancellation fees for: package tour operators (travel agents) arranging international and domestic tours; and airlines and travel agents of international and domestic transport of passengers.

Table A: Summary of GST consequences of cancellation fees for package tour operators (travel agent) arranging international tours

Booking cancelled?	**Consideration, e.g. deposit paid, part or full payment made**	**Cancellation fee paid?**	**Supply for GST purposes?**	**GST status of supply**
Yes cancellation before departure	Security deposit paid	Yes the amount of the security deposit paid	Yes	GST-free
Yes cancellation before departure	Part or full payment made	Yes a % of total cost depending on number of days before departure OR a specified cancellation fee	Yes	GST-free
No Show	Full payment made	Yes as per terms and conditions of particular tour package	Yes	GST-free
Yes but international tour of passenger rebooked	Pre-specified rebooking or administration fee under the terms and conditions	No	Yes	GST-free

Table B: Summary of GST consequences of cancellation fees for package tour operators (travel agent) arranging domestic tours

Booking cancelled?	**Consideration, e.g. security deposit paid, part payment made or full payment made**	**Cancellation fee paid?**	**Supply for GST purposes?**	**GST status of supply**
Yes cancellation before departure	Security deposit paid	Yes the amount of the security deposit paid	Yes	Taxable supply
Yes cancellation before departure	Part or full payment made	Yes a % of total cost depending on number of days before departure OR a specified cancellation fee	Yes	Taxable supply
No Show	Full payment made	Yes as per terms and conditions	Yes	Taxable supply
Yes but domestic tour rebooked	Pre-specified rebooking or administration fee under the terms and conditions	No	Yes	Taxable supply

Table C: Summary of GST consequences of cancellation fees for airlines and travel agents – international transport of passengers[82]

Booking cancelled?	**Consideration, e.g. deposit paid, part or full payment made**	**Cancellation fee paid?**	**Supply for GST purposes?**	**GST status of supply**
Yes cancellation before departure	Security deposit paid	Yes the amount of the security deposit paid	Yes	GST-free
Yes cancellation before departure	Part or full payment made	Yes % of total cost depending on number of days before departure OR a specified cancellation fee	Yes	GST-free
No Show	Full payment made	Yes as per terms and conditions	Yes	GST-free
Yes but international transport of passenger rebooked	Pre-specified rebooking or administration fee under the terms and conditions	No	Yes	GST-free

[82] Includes domestic air travel of non-residents provided the supply was purchased while outside Australia.

Table D: Summary of GST consequences of cancellation fees for airlines and travel agents – domestic transport of passengers[83]

Booking cancelled?	**Consideration, e.g. security deposit paid, part payment made or full payment made**	**Cancellation fee paid?**	**Supply for GST purposes?**	**GST status of supply**
Yes cancellation before departure	Security deposit paid	Yes the amount of the security deposit paid	Yes	Taxable supply
Yes cancellation before departure	Part or full payment made	Yes % of total cost depending on number of days before departure OR a specified cancellation fee	Yes	Taxable supply
No Show	Full payment made	Yes as per terms and conditions	Yes	Taxable supply
Yes but domestic transport of passenger rebooked	Pre-specified rebooking or administration fee under the terms and conditions	No	Yes	Taxable supply

[83] Does not include domestic air travel of non-residents provided the supply was purchased while outside Australia.