



# ***GSTR 2003/8DA - Draft Addendum - Goods and services tax: supply of rights for use outside Australia - subsection 38-190(1), item 4, paragraph (a) and subsection 38-190(2)***

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This document has been finalised.

 View an illustrative document containing a consolidated version of [GSTR 2003/8](#) that incorporates the proposed changes in this draft addendum. This document has been developed for illustrative purposes only and has been prepared solely for the purposes of assisting readers to understand the context of the proposed amendments outlined in GSTR 2003/8DA.

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## Draft Addendum

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### Goods and Services Tax Ruling

#### Goods and services tax: supply of rights for use outside Australia – subsection 38-190(1), item 4, paragraph (a) and subsection 38-190(2)

This Draft Addendum, when finalised, will amend Goods and Services Tax Ruling GSTR 2003/8 to reflect: the Commissioner's view on the types of supplies that fall within the expression 'a supply that is made in relation to rights' in item 4 in the table in subsection 38-190(1) of the GST Act. These supplies are GST-free if the rights are for use outside Australia.

#### **GSTR 2003/8 is to be amended as follows:**

**1. Paragraph 13**

After the paragraph insert:

13A. A supply that would be both GST-free and input taxed is GST-free unless the provision under which it is input taxed requires the supplier to have chosen for its supplies of that kind to be input taxed.<sup>7A</sup>

**2. Paragraphs 20 and 21**

Omit the paragraphs.

**3. Paragraph 25**

Omit the paragraph; substitute:

25. The word 'right' is not defined for GST purposes and has a very broad meaning under the general law. A 'right' has been defined as 'Generally, a benefit or claim entitling a person to be treated in a certain way'.<sup>10B</sup>

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<sup>7A</sup> Section 9-30(3).

<sup>10B</sup> *Australian Legal Dictionary*, Butterworths, 1997.

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## 4. Paragraph 27

Omit the paragraph; substitute:

27. There is further discussion of the meaning of 'right' at paragraphs 50 to 53 of this Ruling.

## 5. Paragraph 28 and 29

Omit the paragraphs, insert:

27A. A supply of a thing is a 'supply that is made in relation to rights' if it fits within one of the following three categories.

### *Category 1 – Supplies identified in paragraph 9-10(2)(e)*

27B. The creation, grant, transfer, assignment or surrender of a right is a supply that is made in relation to rights for the purposes of item 4.

27C. While many transactions involve rights being supplied, a supply will only fit within Category 1 if the essential character or substance of the supply, or of a separately identifiable part of the supply, is one of rights. Category 1 does not cover a supply if the supply of rights is merely integral, ancillary or incidental to another dominant part of the supply where the supply is characterised by the dominant part.

27D. Determining whether a supply is a single supply, a composite supply that is treated as a supply of a single thing, or a supply comprising separately identifiable parts that retain their own identity, is considered in more detail at paragraphs 66 to 72 of this Ruling and in Goods and Services Tax Ruling GSTR 2001/8.<sup>10C</sup>

### *Category 2 – Supplies of things that derive their value solely from rights*

27E. A supply of a thing is a supply that is made in relation to rights for the purposes of item 4 if:

- the thing supplied derives its value solely from rights; and
- through the supply, the supplier either supplies the rights to the recipient or surrenders the rights.

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<sup>10C</sup> GSTR 2001/8 Goods and services tax: apportioning the consideration for a supply that includes taxable and non-taxable parts.

27F. For this purpose, it does not matter whether the supply of a thing is properly characterised as a supply of rights for GST purposes or whether the supply is a supply under paragraph 9-10(2)(e). The supply must, however, encompass rights and the value of the supply must be in the rights. For this to occur, any tangible thing that passes between supplier and recipient which evidences the rights (such as a bank note) must, without those rights, be worthless or of negligible worth.

28. A supply of services (including provision of advice or information)<sup>10D</sup> that has a relevant connection with rights is a supply that is made in relation to rights for the purposes of item 4. A supply of services has a relevant connection with rights if:

- the service facilitates a dealing in or exercise of the rights; or
- the service affects (or its purpose is to affect) or protects or concerns the nature or value (including indemnity against loss) of the rights.

28A. Item 4 only applies to a service that facilitates a dealing in rights if the essential character or substance of the dealing is one of rights. Similarly, item 4 only applies to services that affect or protect or concern the nature or value of a thing if the essential character or substance of that thing is rights.

29. Examples of supplies that fit within the three categories outlined at paragraphs 27B to 28 of this Ruling include supplies of intellectual property rights (category 1), supplies of shares (category 2) and supplies of brokerage services in relation to shares (category 3).

## **6. Paragraph 43**

Omit the paragraph (including the subheading); substitute:

### **Supplies that are capable of being covered by item 4**

43. Subsection 38-190(1) applies only to supplies that are not supplies of goods or real property. Item 4 applies to supplies that are made in relation to rights. To determine whether a supply is capable of coming within the scope of item 4, it is necessary to determine the true character of the supply.<sup>12</sup>

<sup>10D</sup> In listing the various types of supplies, subsection 9-10(2) refers to the 'provision of advice or information' separately from 'services', but in this section of the Ruling the term 'service' is, for simplicity, used to cover both.

<sup>12</sup> [Omitted.]

## 7. Paragraphs 44 to 80

Omit the paragraphs; insert:

44. A supply of goods is outside the scope of subsection 38-190(1) and therefore cannot be covered by item 4.

45. Section 195-1 defines 'goods' as 'any form of tangible personal property'. 'Tangible' connotes a physical existence. Thus, a supply of goods is a supply of any form of personal property that has a physical existence, but does not include a supply of intangible personal property, such as intellectual property rights (for example, copyright).

### ***A supply of real property***

46. A supply of rights which is a supply of 'real property' for GST purposes is outside the scope of section 38-190 and therefore cannot be covered by item 4.<sup>13</sup>

47. 'Real property' is defined in section 195-1 to include:

- (a) any interest in or right over land;
- (b) a personal right to call for or be granted any interest in or right over land; or
- (c) a licence to occupy land or any other contractual right exercisable over or in relation to land.

48. This definition of real property for GST purposes has a broad ambit. It extends the meaning of what is real property under the general law. For example, under the general law, 'a licence to occupy land' is a personal right and not real property. However, a licence to occupy land is real property under the section 195-1 definition.<sup>14</sup>

49. If a supply of rights is a supply of real property for GST purposes, the supply is outside the operation of section 38-190. Therefore, supplies such as leases and licences to occupy property are not capable of being GST-free under item 4.<sup>14AA</sup>

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<sup>13</sup> [Omitted.]

<sup>14</sup> [Omitted.]

<sup>14AA</sup> For example in *Saga Holidays Limited v. Commissioner of Taxation* [2006] FCAFC 191 it was held that the supply of the accommodation component of an Australian tour package by a United Kingdom tour operation (Saga) to non-residents was a contractual right exercisable over or in relation to land and thus a taxable supply of real property connected with Australia. Such a supply would not be covered by item 4.

***What is a right?***

50. The word 'right' is not defined for GST purposes and has a very broad meaning under the general law. A 'right' has been defined as 'Generally, a benefit or claim entitling a person to be treated in a certain way'.<sup>14AB</sup>

***Alternative view***

51. Some commentators have raised whether supplies of rights for GST purposes should be restricted to supplies of proprietary rights.<sup>14AC</sup> Reference has been made to cases decided in a stamp duty context where personal rights have been held not to be 'property' as defined under the relevant legislation.

52. In our view, there is no basis for limiting the operation of item 4 to supplies of proprietary rights. The stamp duty cases were decided in the context of provisions containing specific references to property and against the background of conveyance duty applying generally to instruments transferring interests in property.

53. For instance, under the general law certain licences (such as grocer, tavern and fishing licences) have been held to involve merely personal rights.<sup>14AD</sup> Supplies of these types of licences in our view would involve supplies of rights for the purposes of item 4.

***What is 'a supply that is made in relation to rights'?***

54. The meaning of the phrase 'in relation to' and similar phrases has been considered by the courts in a large number of cases across a wide range of legislation. While the courts have said that the words are of wide import, they have also made it clear that the context determines the scope of such phrases.

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<sup>14AB</sup> *Australian Legal Dictionary*, Butterworths, 1997.

<sup>14AC</sup> See R Cordara QC and P Gallagher, "Supply of Rights and Rights to a Supply", VAT Monitor July/August 2011 pp161 – 175, and C James and P Stacey, "The Limits of Supply", (2002) 2 AGSTJ 41.

<sup>14AD</sup> For example, in *Jack v. Smail* (1905) 2 CLR 684 it was held that a grocer's licence conferred a personal right to carry on a business of a grocer at specified premises. In *Burns Philip Trustee Company Ltd v. Ironside Investments Pty Ltd* [1984] VR Natham J held that licences under the Victorian *Fisheries Act* were personal in nature.

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55. In *Hatfield v. Health Insurance Commission*<sup>14AE</sup> Davies J stated:

Expressions such as 'relating to', 'in relation to', 'in connection with' and 'in respect of' are commonly found in legislation but invariably raise problems of statutory interpretation. They are terms which fluctuate in operation from statute to statute... The terms may have a very wide operation but do not usually carry the widest possible ambit, for they are subject to the context in which they are used, to the words with which they are associated and to the object or purpose of the statutory provision in which they appear.<sup>14AF</sup>

56. This passage was approved by the Full Federal Court in *Burswood Management Ltd v. Attorney-General*.<sup>14A</sup>

57. Prior to the High Court's decision in *Travelex Ltd v Commissioner of Taxation (Travelex)*,<sup>15</sup> the Commissioner considered that the expression 'a supply that is made in relation to rights' in item 4 encompassed only those supplies referred to in paragraph 9-10(2)(e). Paragraph 9-10(2)(e) lists various ways in which an entity can deal in rights.

58. The key question in *Travelex* was whether the supply of Fijian currency by the appellant (Travelex) on the departures side of the Customs barrier at Sydney International Airport to an individual travelling to Fiji was a 'supply made in relation to rights' for the purposes of item 4. It was common ground that the currency was for use outside Australia and that the supply was not a supply of goods.<sup>16</sup>

59. The High Court, by majority (French CJ and Hayne and Heydon JJ, with Crennan and Bell JJ dissenting), found that the supply of Fijian currency was a supply made in relation to rights for the purposes of item 4. It followed that the supply was GST-free under subsection 38-190(1).<sup>17</sup>

60. In their joint judgement, French CJ and Hayne J found that the supply was a supply that is made in relation to rights because:

- the currency derived its value solely from the rights that attach to it<sup>17A</sup>; and
- through the supply of the currency, the acquirer obtained those rights.<sup>17B</sup>

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<sup>14AE</sup> (1987) 15 FCR 487.

<sup>14AF</sup> (1987) 15 FCR 487 at 491.

<sup>14A</sup> (1990) 23 FCR 144..

<sup>15</sup> [2010] HCA 33 at 31 and 45.

<sup>16</sup> [Omitted.]

<sup>17</sup> [Omitted.]

<sup>17A</sup> [2010] HCA 33 at 26.

<sup>17B</sup> [2010] HCA 33 at 27.

61. Heydon J found that the supply of the foreign currency should be characterised as a supply of rights and that, as such, the supply fell within the wider expression 'supply that is made in relation to rights'.<sup>18</sup>

62. Following *Travellex*, the Commissioner considers that that the term 'supply that is made in relation to rights' in item 4 is capable of covering the following three categories of supplies (each of which is discussed in more detail at paragraphs 64 to 79C of this Ruling):

- supplies identified in paragraph 9-10(2)(e);
- supplies of things that derive their value solely from rights; and
- supplies of services relevantly connected with rights.

63. The view that any supply that fits within one of these three categories is a supply that is made in relation to rights is reasonably open as a matter of textual analysis. The Commissioner considers that, once the view that item 4 *only* covers the supplies identified in paragraph 9-10(2)(e) is dismissed (as required by *Travellex*), there is little contextual support for reading item 4 in a way that would preclude it from covering a supply which fits within any of the three categories listed at paragraph 62.<sup>19 20</sup>

#### *Category 1 – Supplies identified in paragraph 9-10(2)(e)*

64. The creation, grant, transfer, assignment or surrender of any right is a supply that is made in relation to rights for the purposes of item 4.<sup>21</sup>

65. Where a transaction comprises a bundle of features and acts, you must consider all of the circumstances of the transaction to ascertain its essential character.<sup>21A</sup> While many transactions involve rights being supplied, Category 1 only covers a supply if:

- the essential character or substance of the supply, or the dominant part of a composite supply, is one of rights; or
- the essential character of a separately identifiable part of the supply is one of rights.

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<sup>18</sup> [Omitted.]

<sup>19</sup> [Omitted.]

<sup>20</sup> [Omitted.]

<sup>21</sup> [Omitted.]

<sup>21A</sup> See GSTR 2001/8: apportioning the consideration for a supply that includes taxable and non-taxable parts.

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66. Where rights are merely integral, ancillary or incidental to another dominant part of the supply, the supply is characterised by the dominant part.

67. All the circumstances of a supply need to be considered to work out whether the supply is a supply that is made in relation to rights. As explained in GSTR 2001/8, a supply may comprise one or more parts. Where the parts are separately identifiable, distinct or recognisable or have an aim in themselves, you need to consider how the GST Act applies to each part. In GSTR 2001/8, a 'mixed supply' is regarded as a supply that has to be separated or unbundled, as it contains separately identifiable taxable and non-taxable parts that need to be individually recognised. Where a supply comprises parts that are separately identifiable, distinct or recognisable or have an aim in themselves, and one of those parts is a supply that is made in relation to rights, item 4 may apply. There may be other parts such as supplies of services to which other items in the table in subsection 38-190(1) apply.

68. If you make a supply that contains a dominant part and the supply includes something that is integral, ancillary or incidental to that part, the supply is a composite supply. A composite supply is a supply of a single thing. Where the dominant part of a supply is a supply that is made in relation to rights and the other parts are integral, ancillary or incidental to the supply of rights, the supply is a composite supply and can be treated as a supply of a single thing. Where the supply of rights is integral, ancillary or incidental to another dominant part of the supply, the supply is a composite supply. This composite supply is a supply of a single thing to which item 4 cannot apply (unless the supply is covered by category 2 outlined at paragraphs 64 and 73 or category 3 outlined at paragraphs 75 to 79 of this Ruling).<sup>22 23</sup>

69. Paragraph 59 of GSTR 2001/8 states the following:

No single factor (by itself) will provide the sole test you use to determine whether a part of a supply is integral, ancillary or incidental to the dominant part of the supply.<sup>23A</sup> Having regard to all the circumstances, indicators that a part may be integral, ancillary or incidental include where:

- you would reasonably conclude that it is a means of better enjoying the dominant thing supplied, rather than constituting for customers an aim in itself; or
- it represents a marginal proportion of the total value of the package compared to the dominant part; or

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<sup>22</sup> [Omitted.]

<sup>23</sup> [Omitted.]

<sup>23A</sup> See Lord Hope of Craighead in *Customs and Excise Commissioners v. British Telecommunications plc* (1999) 3 All ER 961 at 970; [1999] BVC 306 at 314.

- it is necessary or contributes to the supply as a whole, but cannot be identified as the dominant part of the supply; or
- it contributes to the proper performance of the contract to supply the dominant part.

That is, we consider that a part of a supply will be integral, ancillary or incidental where it is insignificant in value or function, or merely contributes to or complements the use or enjoyment of the dominant part of the supply. It is a question of fact and degree whether a supply is mixed or composite.

70. Rights are created under executory contracts and although the creation of such rights is supported by valuable consideration, the supply may not be characterised as a supply that is made in relation to rights if, for example, those rights contribute to the supply as a whole but cannot be identified as the dominant part of the supply.

71. For example, under an agreement for the sale of goods, a right to the title to the goods may be created in return for consideration. In determining whether this is treated as a single supply or as separate supplies of goods and rights, it is useful to apply the indicators set out in GSTR 2001/8. Applying paragraph 59 of GSTR 2001/8, the rights are regarded as integral, ancillary or incidental to the dominant part of the supply. The supply is a supply of goods.<sup>23B</sup>

72. There are cases where it is clear that the parties to a transaction intend to supply rights and other things, such as services, and each of those separately identifiable parts is significant on its own. For example, under a franchising arrangement there may be supplies of rights to use a name and to market certain products, as well as supplies of marketing and administrative services. In this case, the supply is a supply of separately identifiable parts. The rights may be covered by item 4 or other items in the table in subsection 38-190(1). The supply of the services is only covered by item 4 if it falls within Category 3 which is outlined at paragraphs 75 to 79 of this Ruling. If it is not covered by item 4, the supply may nevertheless be covered by another item in the table in subsection 38-190(1).

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<sup>23B</sup> This approach to rights under executory contracts is consistent with the analysis of a supply of real property under a standard land contract in Goods and Services Tax Ruling GSTR 2000/28. The supply of an equitable interest in the land upon entry into the contract is ancillary to what is the substance of the transaction – the transfer of title and delivery of possession at settlement.

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*Category 2 – Supplies of things that derive their value solely from rights*

73. A supply of a thing is a 'supply that is made in relation to rights' for the purposes of item 4 if:

- the thing supplied derives its value solely from rights; and
- through the supply, the supplier either supplies the rights to the recipient or surrenders the rights.<sup>24</sup>

74. For this purpose, it does not matter whether the supply of a thing is properly characterised as a supply of rights for GST purposes or whether the supply is a supply under paragraph 9-10(2)(e). The supply must, however, encompass rights and the value of the supply must be in the rights. For this to occur, any tangible thing that passes between supplier and recipient which evidences the rights (such as a bank note) must, without those rights, be worthless or of negligible worth.

*Category 3 – Supplies of services relevantly connected with rights*

75. A supply of services (including the provision of advice or information<sup>25</sup>) that has a relevant connection with rights is a supply that is made in relation to rights for the purposes of item 4.

76. We consider that the context and the broad policy to tax domestic consumption expenditure both suggest that a reasonably close relationship must exist between a service and a right for the service to be covered by item 4. If this were not the case, and a more remote connection were sufficient, services supplied between Australian residents that would ordinarily be thought of as being consumed in Australia could, because of the remote connection, be exempted from GST. Additionally, if a more remote connection were sufficient, there would be a disparity between services that are connected with tangible property (which would only be GST-free if they are directly connected with that property<sup>25A</sup>) and services connected with intangible property (which may be GST-free on the basis of the more remote connection).

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<sup>24</sup> [Omitted.]

<sup>25</sup> In listing the various types of supplies, subsection 9-10(2) refers to the 'provision of advice or information' separately from 'services', but in this section of the Ruling the term 'service' is, for simplicity, used to cover both.

<sup>25A</sup> By virtue of item 1 in the table in subsection 38-190(1).

77. With this in mind, we consider that a supply of services is a 'supply that is made in relation to rights' for the purposes of item 4 if:

- the service facilitates a dealing in or exercise of the rights; or
- the service affects (or its purpose is to affect) or protects or concerns the nature or value (including indemnity against loss) of the rights

78. Item 4 only applies to a service that facilitates a dealing in rights if the essential character or substance of the dealing is one of rights. Similarly, item 4 only applies to a service that affects or protects the nature or value of a thing if that the essential character or substance of that thing is rights.

79. While these services may be supplies that are 'made in relation to rights', they are only GST-free under item 4 if the rights are for use outside Australia (this is discussed at paragraphs 108 to 126 of this Ruling).

79A. Some examples of supplies of services that we consider fit within Category 3 are included in the following table:

<b>Service</b>	<b>Our view on why these services fall within item 4</b>
Legal services for the preparation for a contract for the sale of copyright.	The services facilitate a change in the ownership of the rights.
The filing, prosecution, granting, maintenance, transfer, assignment, licensing or enforcement of intellectual property rights.	The services facilitate the dealing in the intellectual property rights.
Legal service of preparing and lodging an application for registration of a trademark, including the preparation of the patent specification.	The services relate to the creation of a right.
Brokerage services in relation to the sale of shares.	The services affect the ownership of the shares.

79B. We consider that services which relate to an outcome of the exercise of rights, rather than to the exercise of the rights itself, are not relevantly connected with rights for the purposes of item 4. For example, if the exercise of rights produces assessable income, tax return preparation services which (in part) relate to the reporting of that income are not covered by item 4.

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79C. The following table provides further examples of services that we consider are not covered by item 4 and the reasons for this. These services may, however, be covered by other items in the table in subsection 38-190(1):

<b>Service</b>	<b>Our view on why these services do not fall within item 4</b>
Technical support services, in relation to the development of software.	The services are related to the creation of the software and not to the rights associated with the software
Legal services to establish an entity that will subsequently hold the rights.	The services are related to the establishment of the entity and not to the rights that the entity will hold.
Advice about the taxation implications of buying or selling particular rights.	The advice relates to an outcome of dealing with rights (and does not facilitate a dealing in the rights).
Demographic study or market research, for example, to determine the economic viability of exercising rights in a particular region or site.	The services are connected with the various proposals which are being contemplated (they do not themselves facilitate a dealing in or exercise of the rights).
Advice concerning foreign ownership requirements which may impact on the possible purchase of overseas shares.	The advice is connected with a proposal which is being contemplated (and does not itself facilitate a dealing in or exercise of the rights).

*Alternative view*

79D. Under an alternative view, services that indirectly relate to rights (including, for example, the tax return preparation services discussed at paragraph 79B of this Ruling) are also supplies that are made in relation to rights for the purposes of item 4. Proponents of this view would note that the relationship between services and rights that the Commissioner considers must exist is a relatively direct one and would argue that, had such a relationship been intended, item 4 would have used the term 'directly related' or 'directly connected' (as item 1 does).

79E. We consider that the absence of the word 'directly' in item 4 does not, of itself, lead to the conclusion that the item must also cover indirect relationships. Item 4 is different from item 1 in that it covers not only services, but also supplies of rights themselves and supplies that fall within Category 2 outlined at paragraphs 73 and 74 of this Ruling. The phrase 'made in relation to rights' might have been adopted because a phrase such as 'directly connected with rights' would not have been suitable to describe these other supplies. We also consider that the broad objective to tax domestic consumption expenditure and the absence of any express indication in the law or extrinsic material which suggests item 4 is intended to cover indirect relationships (in contrast with subsection 38-190(2A)), point to a closer relationship between the supply and the right.

80. One of the consequences of the alternative view would be that issues of apportionment might arise where the service also relates to other matters. For example, a taxation return being prepared for an Australian resident may include income from rights that were used overseas. If this part of the service is GST-free, the total fee will need to be apportioned between the taxable part and the GST-free part.<sup>26</sup>

#### **8. Paragraph 81**

Omit the first heading; substitute:

***Some examples of characterising supplies that are made in relation to rights and other supplies***

#### **9. Paragraph 108**

After the paragraph; insert:

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

#### **10. Paragraph 111**

Omit the paragraph. Omit footnote 43.

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<sup>26</sup> [Omitted.]

## 11. Paragraphs 112 and 113

Omit the paragraphs; substitute:

112. Support is also found in the United Kingdom VAT Tribunal decision, *IDS Aircraft Ltd.*<sup>44</sup> The Tribunal had to decide whether the lease of an aircraft was 'for use' in a place outside any European Union ('EU') country throughout the period of the lease and therefore zero-rated.<sup>45</sup>

113. In deciding whether the dry leasing of the aircraft was made 'for use' in a place outside any country of the EU 'throughout the period' of the dry leasing, the Tribunal stated:

What I have to determine in this case is whether the company let the Cessna on hire under the dry lease for use outside the EU throughout the period of the hiring. This in my judgment means that I am required to consider the intended purpose of the hiring. That dry lease was agreed by telephone without documentation and without any express agreement or term as to where it should be used or not used. The Cessna has a range well beyond the Channel Islands. On any objective basis it must have appeared likely to people in the aircraft chartering business that the Cessna would be used by Beauport for a significant period of the hiring in flights to and from, or over, countries of the EU. It is for the company to satisfy me that its appeal is justified. It has not satisfied me that on the balance of probabilities the charter was entered into for use only in the Channel Islands or elsewhere outside the EU.<sup>46</sup>

## 12. Paragraph 114

Omit the paragraph.

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<sup>44</sup> [1995] BVC 1126.

<sup>45</sup> Item 2 Grp 9 of Schedule 5, *Value Added Tax Act 1983* (UK).

<sup>46</sup> [1995] BVC 1126 at 1132.

**13. Paragraph 116**

After the paragraph; insert:

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

**14. Paragraph 123**

After the paragraph; insert:

***Supplies of services made in relation to rights that a recipient already owns***

123A If a supply of services is made to a recipient in relation to rights that the recipient already owns, we consider that it is the intended use of the rights at the time the services are provided that is relevant. The previous use of the rights is not relevant, other than as potential evidence of the intended use. Accordingly, a supply of a service is not GST-free if it is made in relation to rights that, before the supply of the service, were used offshore, but following the supply are intended to be used in Australia.

This draft Addendum is intended to reflect the law as enacted at the time of issue.

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<sup>48A</sup> [2010] HCA 33 at 35.

<sup>48B</sup> [2010] HCA33 at 56.

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## Your comments

You are invited to comment on this draft Addendum.

Please forward your comments to the contact officer by the due date.

A compendium of comments is prepared for the consideration of the relevant Rulings Panel or relevant tax officers.

An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments; and
- publish on the Australian Taxation Office website at [www.ato.gov.au](http://www.ato.gov.au)

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

**Due date:** 30 September 2011  
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## Commissioner of Taxation

31 August 2011

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### ATO references

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