GSTR 2007/2 - Goods and services tax: in the application of paragraph (b) of item 3 in the table in subsection 38-190(1) of the A New Tax System (Goods and Services Tax) Act 1999 to a supply, when does 'effective use or enjoyment' of the supply 'take place outside Australia'?

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This document has changed over time. This is a consolidated version of the ruling which was published on *24 April 2007*

Generated on: 22 November 2026, 11:51:46 PM

Goods and Services Tax Ruling

Goods and services tax: in the application of paragraph (b) of item 3 in the table in subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999* to a supply, when does 'effective use or enjoyment' of the supply 'take place outside Australia'?

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Preamble

This document is a ruling for the purposes of section 105-60 of Schedule 1 to the ***Taxation Administration Act 1953****. You can rely on the information presented in this document which provides advice on the operation of the GST system.*

What this Ruling is about

1. This Ruling examines the circumstances in which the effective use or enjoyment of a supply takes place outside Australia for the purposes of paragraph (b) of item 3 in the table in subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). It is only necessary to consider whether paragraph (b) of item 3 is satisfied if paragraph (a) of item 3 is satisfied.[1]

2. Subsection 38-190(1) sets out supplies of things (other than goods or real property) that are GST-free. Under item 3 supplies of things (other than goods or real property) made to an entity who is not in Australia when the thing supplied is done are GST-free if certain requirements are met. Unlike item 2 in the table in subsection 38-190(1), item 3 is not restricted to non-resident entities and applies to an entity irrespective of its residence status.

3. In this Ruling we explain in particular:

- how to determine when effective use or enjoyment of a supply takes place, or does not take place, outside Australia; and

[1] Refer to GSTR 2004/7 which explains when the requirement in paragraph (a) of item 3, (that is, a supply is made to a recipient who is not in Australia when the thing supplied is done), is satisfied.

- what apportionment is required if effective use or enjoyment of the supply takes place in part outside Australia.

4. We give many examples illustrating the application of paragraph (b) of item 3. The examples are not intended to create principles to be applied generally. Rather, the examples show how, by examining the facts and circumstances of the supply in question, you can determine where effective use or enjoyment of that supply takes place. It is always necessary to examine the particular circumstances of each case to determine the place where a supply is used or enjoyed.

5. We discuss and illustrate in this Ruling the application of paragraph (b) of item 3 to certain subcontract and global supply arrangements.

6. As item 3 applies to supplies made to all entities, including non-residents, supplies made to non-residents may be considered under item 2 or item 3. The GST treatment is typically the same under both items taking into account the application of subsection 38-190(3) to supplies covered by item 2. We illustrate this by including in the Ruling examples drawn from GSTR 2005/6[2] and comparing the outcomes under items 2 and 3. There may be a difference in outcome between items 2 and item 3 if the supply fails paragraph (a) of item 2 but is covered by paragraph (b) of item 2 and subsection 38-190(3) does not apply. That supply is not GST-free under item 3 as the supply is either a supply of work physically performed on goods situated in Australia or a supply directly connected with real property. However, for supplies made on or after 1 April 2005 subsection 38-190(2A) must also be considered as it may apply to negate the GST-free status of the supply under paragraph (b) of item 2. (See Example 30 at page 97).

7. Where relevant this Ruling also makes mention of subsection 38-190(4). However, this Ruling does not otherwise address the operation of the provisions of subsection 38-190(1).

8. Unless otherwise stated, all legislative references in this Ruling are to the GST Act and all references to an item number are to an item in the table in subsection 38-190(1).

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[2] Goods and services tax: the scope of subsection 38-190(3) and its application to supplies of things (other than goods or real property) made to non-residents that are GST-free under item 2 in the table in subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*.

Date of effect

9. This Ruling explains the Commissioner's view of the law as it applies both before and after its date of issue. You can rely upon this Ruling on and from its date of issue for the purposes of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953*. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and our view of when you can rely on our interpretation of the law in GST public and private rulings.

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

Background

11. This Ruling is the final ruling in a series of foundation rulings (see related rulings below) published by the Australian Taxation Office on the interpretation and application of section 38-190 as enacted and effective from 1 July 2000.

Related Rulings

12. The suite of other GST public rulings which explain the operation of section 38-190 are:

Public Ruling No.	Title: Goods and services tax:
GSTR 2003/7	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*?
GSTR 2003/8	supply of rights for use outside Australia – subsection 38-190(1), item 4, paragraph (a) and subsection 38-190(2)
GSTR 2004/7	in the application of items 2 and 3 and paragraph (b) of item 4 in the table in subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*: when is a 'non-resident' or other 'recipient' of a supply 'not in Australia when the thing supplied is done'? when is 'an entity that is not an Australian resident' 'outside Australia when the thing supplied is done'?

Public Ruling No.	Title: Goods and services tax:
GSTR 2005/2 (replacing GSTR 2003/2)	supplies of goods and services in the repair, renovation, modification or treatment of goods from outside Australia whose destination is outside Australia
GSTR 2005/6	the scope of subsection 38-190(3) and its application to supplies of things (other than goods or real property) made to non-residents that are GST-free under item 2 in the table in subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*

13. GSTR 2005/6, which discusses the application of subsection 38-190(3), is particularly relevant to this Ruling because of the approach we take in determining whether use or enjoyment of a supply takes place outside Australia. GSTR 2005/6 is therefore referred to throughout this Ruling.

Important changes from the previous draft ruling

14. A draft ruling about the interpretation and application of paragraph (b) of item 3 issued on 1 March 2006 for industry and professional comment (see GSTR 2006/D2). That Ruling represented the preliminary, though considered, views of the Tax Office.

15. In response to feedback that we received on GSTR 2006/D2, we have explained more fully the basis that underpins our approach for determining where effective use or enjoyment of a supply takes place. (Refer Part I of the Explanation section of the Ruling at paragraphs 180 to 207).

16. We have amended our view on apportionment for a supply that is provided to an entity in Australia and an entity outside Australia in circumstances where it is not possible to identify separate parts of the supply flowing to each entity; that is, each entity uses or enjoys the supply. In draft Ruling GSTR 2006/D2 we concluded that apportionment was not appropriate, on the basis that the supply was provided to an entity in Australia, and therefore the supply was not GST-free under item 3. We now consider that apportionment on some fair and reasonable basis is required and thus the supply may be partly GST-free if the other requirements of item 3 are met. See paragraph 139 in the Ruling section and paragraphs 502 to 514, Part VI of the Explanation section (which includes Example 57).

17. We have clarified further when the need for the supply arises from an individual's presence at a particular location. See paragraph 110 in the Ruling section and paragraphs 298 and 299, Part III of the Explanation section. As a result we have changed the outcome in Example 8, paragraphs 307 to 311 of GSTR 2006/D2. Certain services provided to a sole trader[3] are no longer considered integral to the individual's presence outside Australia and thus the effective use or enjoyment of the supply does not take place outside Australia – see now Example 16, paragraphs 383 to 386, Part III of the Explanation section of this Ruling.

18. With respect to other examples we have:

- made minor amendments to the facts in Example 3 to make it clearer; and
- deleted some examples from Tables 1 (page 94) and 2 (page 98), which summarise examples from GSTR 2005/6, as similar examples are included elsewhere in this Ruling.

19. Though there were some requests for additional examples to be included, we have not added any further examples in the final ruling. It is considered that the examples in the Ruling provide sufficient illustration of the concepts explained in the ruling. If there is any uncertainty as to how paragraph (b) applies in a particular fact situation this can be progressed through the private ruling system or other industry specific products, if necessary.

How to read this Ruling

20. In the Ruling section (paragraphs 37 to 165, pages 9 to 32) we set out in summary form what you need to consider to determine whether effective use or enjoyment of a supply takes place outside Australia for the purposes of paragraph (b) of item 3.

21. This includes four flowcharts (pages 33 to 36) which summarise the application of paragraph (b) of item 3 as explained in the Ruling section.

22. If you require a more detailed analysis and explanation of the issues covered in the Ruling section you should refer to the Explanation section. That section commences with a discussion of item 3 and some policy considerations underlying item 3. This is followed by a detailed explanation of the operation of paragraph (b) of item 3. For ease of reference, we have divided the detailed explanation into seven separate parts set out at the end of this section.

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[3] In the example an Australian entity provides the sole trader with the service of taking messages, handling telephone calls, mail and faxes on the sole trader's behalf while the sole trader is overseas on holiday.

23. It is important to understand the significance of Part I in particular. In that Part we explain why we have taken the approach used in this Ruling to determine where effective use or enjoyment of a supply takes place.

24. Parts II to IV inclusive explain how to apply our approach in determining where effective use or enjoyment of a supply takes place. The approach requires that it be determined whether there is provision of a supply to an entity in Australia or outside Australia. We determine whether there is provision of a supply to an entity in Australia in the same way as it is determined in GSTR 2005/6 (for the purposes of subsection 38-190(3)). Therefore, the explanation and examples in GSTR 2005/6 may also be referred to for the purposes of determining whether a supply is provided to an entity in Australia (and thus is not used or enjoyed outside Australia).

25. We set out in Part V examples drawn from GSTR 2005/6 and demonstrate that the GST treatment of a supply made to a non-resident who is not in Australia when the thing supplied is done is the same (except for Example 30 at page 97)[4] under items 2 and 3 taking into account the operation of subsection 38-190(3) and paragraph (b) of item 3 respectively.

26. In Part VI, we discuss apportionment and in Part VII we consider the application of paragraph (b) of item 3 to certain complex arrangements.

PART	TOPIC
Part I *(paragraphs 180 to 207)*	Our approach to determining where effective use or enjoyment of a supply takes place.
Part II *(paragraphs 208 to 267)*	How to determine to which entity the supply is provided – it is the providee entity that actually uses or enjoys the supply.
Part III *(paragraphs 268 to 395)*	The providee is an individual – determining whether effective use or enjoyment of a supply by the individual takes place outside Australia.
Part IV *(paragraphs 396 to 466)*	The providee is a company, partnership, corporate limited partnership or trust – determining whether effective use or enjoyment of a supply by that entity takes place outside Australia.
Part V *(paragraphs 467 to 469)*	Further examples – the GST treatment of various supplies under item 3 (and item 2 for comparative purposes) drawing on examples from GSTR 2005/6.
Part VI *(paragraphs 470 to 550)*	When apportionment may be required.
Part VII *(paragraphs 551 to 622)*	The application of paragraph (b) of item 3 to subcontract arrangements and global supplies.

[4] The difference in outcome for Example 30 is explained at paragraph 6 of this Ruling.

Legislative context

27. Under section 9-5 of the GST Act a supply is not a taxable supply to the extent that it is GST-free or input taxed.

28. A supply is GST-free if it is GST-free under Division 38 or under a provision of another Act.[5]

29. Subdivision 38-E sets out when exports of goods and other supplies for consumption outside Australia are GST-free. The Subdivision comprises:

- section 38-185 – exports of goods;
- section 38-187 – lease or hire of goods for use outside Australia;
- section 38-188 – tooling used by non-residents to manufacture goods for export; and
- section 38-190 – supplies of things, other than goods or real property, for consumption outside Australia.

30. The relevant section for the purposes of this Ruling is section 38-190.

31. Subsection 38-190(1) comprises five items which set out supplies of things, other than goods or real property, that are for consumption outside Australia and therefore GST-free. A supply that is not GST-free under one item in subsection 38-190(1) may be GST-free under one of the other items. If the requirements of one of those items are met, the supply is GST-free, provided subsection 38-190(2), (2A) or (3) does not negate that GST-free status.

32. Subsection 38-190(2) provides that a supply covered by any of items 1 to 5 in the table in subsection 38-190(1) is not GST-free if it is the supply of a right or option to acquire something the supply of which would be connected with Australia and would not be GST-free.[6]

33. Subsection 38-190(2A) provides that a supply covered by any of items 2 to 4 in the table in subsection 38-190(1) is not GST-free if the acquisition of the supply relates (whether directly or indirectly, or wholly or partly) to the making of a supply of real property situated in Australia that would be, wholly or partly, input taxed under Subdivision 40-B or 40-C.

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[5] Paragraph 9-30(1)(a).
[6] See GSTR 2003/8 which explains the operation of subsection 38-190(2).

34. Subsection 38-190(3), which is expressed to not limit subsection 38-190(2) or (2A), provides that a supply covered by item 2 is not GST-free if:

(a) it is a supply under an agreement entered into, whether directly or indirectly, with a non-resident; and

(b) the supply is provided, or the agreement requires it to be provided, to another entity in Australia.

35. Subsection 38-190(4), (in contrast to subsection 38-190(3) as it applies to item 2), extends the scope of item 3. Subsection 38-190(4) provides that a supply is taken, for the purposes of item 3, to be a supply made to a recipient who is not in Australia if:

(a) it is a supply under an agreement entered into, whether directly or indirectly, with an Australian resident; and

(b) the supply is provided, or the agreement requires it to be provided, to another entity outside Australia.

36. This Ruling is about determining when, for the purposes of paragraph (b) of item 3, effective use or enjoyment of a supply takes place outside Australia. The expression appears in item 3 in the table in subsection 38-190(1) as follows:

Supplies of things, other than goods or real property, for consumption outside Australia		
Item	**Topic**	**These supplies are GST-free**[7]
3	Supplies used or enjoyed outside Australia	a supply: (a) that is made to a recipient who is not in Australia when the thing supplied is done; and (b) the **effective use or enjoyment** of which takes place outside Australia; [emphasis added] other than a supply of work physically performed on goods situated in Australia when the thing supplied is done, or a supply directly connected with real property situated in Australia.

[7] Except to the extent that they are supplies of goods or real property.

Ruling

Item 3

37. A supply of a thing (other than goods or real property) is GST-free under item 3 if:

- the recipient entity is not in Australia when the thing supplied is done;[8] and
- the effective use or enjoyment of the supply takes place outside Australia; and

the supply is neither a supply of work physically performed on goods situated in Australia when the work is done nor a supply directly connected with real property situated in Australia.[9]

38. It is only necessary to consider paragraph (b) of item 3 if paragraph (a) of item 3 is satisfied.

Our approach to determining the place of effective use or enjoyment of a supply

39. Paragraph (b) of item 3 requires the place of effective use or enjoyment of a supply to be determined (that is, whether the place is outside Australia). As paragraph (b) refers to the 'effective' use or enjoyment of the supply, it is necessary to inquire as to the entity that has the actual use or enjoyment of the supply.

40. The requirement in paragraph (a) of item 3 refers to the recipient of the supply. The recipient of the supply is the entity to which the supply is made. A supply that is made to a recipient entity may be provided to another entity. If a supply is made to a recipient and provided to another entity, the entity that actually uses or enjoys the supply is that other entity. For example, if a supply of travel services is made to a company (recipient) and the travel is undertaken by an employee of the recipient, the supply is provided to the employee and it is the employee that actually uses or enjoys the supply.

41. A supply is made to a recipient and provided to another entity if in the performance of a service (or in the doing of some thing) the actual flow of that supply is to an entity that is not the recipient entity with which the supplier made the agreement for the supply. That is, while the contractual flow of the supply is to the recipient entity, the actual flow of the supply is to another entity.

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[8] Refer to GSTR 2004/7 which explains when an entity is not in Australia for the purposes of paragraph (a) of item 3.
[9] Refer to GSTR 2003/7 which explains the application of this requirement.

42. Thus in determining where a supply is used or enjoyed it is first necessary to establish the entity to which the supply is provided (the providee entity). The providee entity is also the recipient if the supply is not provided to some other entity. However, if the supply is provided to some other entity that other entity is the providee entity.

43. Having determined the providee entity it is then necessary to consider whether use or enjoyment of the supply by that providee entity takes place outside Australia.

44. Both the heading to section 38-190 and the table in subsection 38-190(1) refer to '[s]upplies of things…for consumption outside Australia'. Thus in the context of subsection 38-190(1) use or enjoyment of a supply takes place outside Australia if the supply is for consumption by an entity outside Australia.

45. In our view, a supply is for consumption, and thus used or enjoyed, outside Australia if there is provision of the supply to the providee entity outside Australia.

46. On the other hand, effective use or enjoyment of a supply does not take place outside Australia, if there is provision of the supply to the providee entity in Australia.

47. This approach gives effect to the legislative purpose as evidenced by the heading to section 38-190 and the language of section 38-190. Items 2 and 3 and subsections 38-190(3) and (4), which affect the application of items 2 and 3 respectively, evidence Parliament's intention that if a supply is provided to an entity at a particular location, the supply is for consumption at that location and the GST consequences are determined accordingly.

48. Extrinsic material also supports this approach. The Explanatory Memorandum accompanying the Bill[10] that inserted subsection 38-190(4) explains that a supply that is made to an entity in Australia but provided to another entity outside Australia should be GST-free as 'the effective use and enjoyment of the supply is outside Australia'. Further, and, in particular, as the effective use or enjoyment requirement in paragraph (b) of item 3 pre-dates the EM explaining subsection 38-190(4), it is reasonable to conclude, in our view, that Parliament's intention is that provision of a supply to an entity at a particular location is the same as 'effective use or enjoyment' of the supply at that place. (See further paragraphs 180 to 207, Part I of the Explanation section of the Ruling where we discuss our approach more fully).

[10] Indirect Tax Legislation Amendment Bill 2000 at paragraph 3.25.

49. Thus to work out whether effective use or enjoyment of a supply takes place outside Australia we take a two step approach. First, we determine the entity to which the supply is provided – the providee entity (we explain how to determine this at paragraphs 52 to 81). We then determine whether provision of the supply to the providee entity is outside Australia (we explain how to determine this at paragraphs 82 to 136). Effective use or enjoyment of the supply takes place outside Australia if there is provision of the supply to the providee entity outside Australia. This two step approach is summarised in flowchart form at pages 33 to 36.

50. Sometimes, as a result of the application of paragraph (b) of item 3, apportionment arises. We discuss apportionment at paragraphs 137 to 145.

51. We also discuss the application of this approach to subcontract arrangements and global supplies at paragraphs 146 to 159.

Identifying the entity to which the supply is provided – the providee entity

52. A supply may be made and provided to the same entity, or may be made to one entity but be provided to another entity (or entities). Such circumstances are provided for in the legislation by subsections 38-190(3)[11] and (4).[12] (See Flowchart 1, page 33.)

53. The entity to which the supply is made is the recipient. The supplier may provide the supply to that recipient entity (in which case the recipient is also the providee) or may provide the supply to another entity (in which case the other entity is the providee).

54. A supply is provided to another entity if, in the performance of a service (or in the doing of some thing), the actual flow of that supply is to an entity that is not the recipient. The contractual flow is to the recipient and the actual flow of the supply is to another entity and thus the other entity is the providee.

55. For example, if a supply of entertainment services is made to a recipient that is a company and in the performance of that service the employees are the entities that are entertained, the actual flow of that service is to another entity, each employee. The supply is made to the non-resident employer company and provided to another entity, each employee (thus each employee is a providee).

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[11] As explained in GSTR 2005/6.
[12] As explained at paragraphs 186 to 197 in GSTR 2004/7.

How to determine whether a supply, which is made to one entity (recipient) is provided to another entity

56. We determine whether a supply is made to one entity but provided to another entity in the same way as it is determined in GSTR 2005/6. That Ruling explains when a supply is provided to another entity for the purposes of subsection 38-190(3). As explained in that Ruling it is necessary to establish the exact nature of the supply.[13]

57. A clear understanding of the exact nature of the supply is essential to determining whether the supply is a supply of a service, right or some other thing and whether it is provided to another entity. It is only by having regard to what is in substance and reality being supplied that it is possible to identify to which entity that supply is provided.

58. The exact nature of a supply in any given situation depends on the facts and circumstances of the supply and the agreement made between the parties. In this regard, it is necessary to look at the whole arrangement for the supply (including the contractual arrangement) and the way in which the supply is carried out.

59. If there is no written contract, other documents such as correspondence between the parties may be useful in establishing the nature of the supply.

60. Thus, the focal point in working out whether a supply is provided to another entity is the facts and circumstances of the doing of the thing supplied. By the supplier examining what it is required to do and in what circumstances, the supplier is able to objectively determine whether the supply is a supply of a service, right or some other thing and to whom the supply is provided.

61. In some instances, it is inherent in the nature of the supply that the supply is to be provided to a particular entity. For example travel, training or entertainment services are, by their very nature, provided to the individual that travels, or is trained or entertained respectively.

[13] See paragraphs 66 to 82 and 261 to 322 in GSTR 2005/6.

62. In the case of delivery or freight services, if goods from one entity are addressed for delivery to another entity, we accept that the delivery or freight services are provided to that addressee entity.[14] See Example 10 (paragraphs 341 to 353, Part III, of the Explanation section) for delivery or freight services provided to an individual. See Example 20 (paragraphs 444 to 458, Part IV, of the Explanation section) for delivery or freight services provided to an entity other than an individual. Example 11 (paragraphs 354 to 358, Part III, of the Explanation section) illustrates the outcome if a resident company contracts another Australian entity to deliver goods to the public at large outside Australia.[15]

63. In the case of other supplies, for example, supplies that involve the supply of legal, accounting, auditing or advertising services, the question of whether the supply is provided to another entity depends on the facts and circumstances in any given case.

64. If a supply is the provision of advice or information which involves work to create, develop or produce that advice or information, (for example, a legal opinion or an audit report), the supply is the performance of services.[16] Thus, in determining whether a supply is provided to another entity regard is had to the performance of the services in creating, developing or producing the opinion or audit report.

65. For example, consider the supply of auditing services to a resident parent company that has a subsidiary in New Zealand. If services effecting compliance by the New Zealand subsidiary with its legal or reporting obligations are supplied, the supply is provided to the New Zealand subsidiary. On the other hand, if services effecting compliance by the resident parent company with its legal or reporting obligations are supplied, the supply is provided to the resident parent company. (Refer Examples 32 and 33, Table 2, pages 98 and 99 respectively, Part V of the Explanation section.)

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[14] This does not, however, include the delivery of goods that are generically addressed, for example, to 'The Householder' or are for delivery to the public at large. It also does not include the situation where an entity's goods are simply freighted or moved from one location to another location. In the latter case the circumstances of the particular supply in question must be considered to determine whether the supply is provided to another entity.

[15] See also Example 28, Table 1, page 96, Part V of this Ruling and Examples 10 (paragraphs 380 to 391), 13 (paragraphs 419 to 430) and 14 (paragraphs 431 to 435) in GSTR 2005/6.

[16] As explained in GSTR 2000/31 if a supply is the provision of advice or information and the supply involves work to create, develop or produce that information or advice for the recipient, the supply is one of performance of services.

66. If the contractual flow of the supply is to an entity, (other than an individual), and it is necessary to determine whether the actual flow of the supply is to another entity (other than an individual), we consider that a strong indicator that the supply is provided to another entity is that the contracting entity has no further interaction with, or participation in, the provision of the supply beyond contracting and paying for the supply. However, this is subject to the facts and circumstances of the supply not indicating to the contrary. (Refer Examples 36 and 46, Table 2, pages 100 and 105 respectively, Part V of the Explanation section.)

67. It is only in limited circumstances that any one fact, or particular combination of facts, means or indicates that a supply is provided to another entity. Accordingly, we give many examples in this Ruling and GSTR 2005/6 which illustrate when a supply is provided to an entity other than the recipient (that is, the entity to which the supply is made).[17]

68. The examples illustrate when we consider a supply is provided to another entity in a given fact situation. In particular, the examples show how, by examining the facts and circumstances of the supply in question, you can determine whether that supply is provided to the recipient entity or to another entity. It is always the entity to which the supply is provided that is the relevant entity for the purposes of determining where effective use or enjoyment of the supply takes place. The examples do not create principles to be applied generally. It is always necessary to examine the particular circumstances of each case to determine the entity to which a supply is provided.

69. Further explanation and examples are provided at paragraphs 208 to 267, Part II of the Explanation section.

Determining whether a supply made to an employer is provided to an employee

70. To determine whether a supply, which is made to an employer, is provided to an employee it is essential to examine the nature of the supply closely. By examining what is really being supplied and how that supply is carried out, it is possible to establish to whom the service or other thing is provided, that is, the employer or another entity, the employee. If the supply is provided to the employee, it is the employee that is the relevant entity for the purposes of determining where effective use or enjoyment of that supply takes place.

[17] We summarise many of the examples from GSTR 2005/6 in two tables in Part V of the Explanation section of this Ruling. See Table 1 (pages 94 to 97) for examples which illustrate when the supply is provided to an individual. See Table 2 (pages 98 to 108) for examples which illustrate when the supply is provided to an entity other than an individual. For each example we compare the outcomes under items 2 and 3.

71. Although an employee may be involved with the provision of a supply and be in contact with the supplier, this is not determinative of whether the supply is provided to the employee. In all cases it is necessary to consider the exact nature and circumstances of the supply to determine if the supply is provided to the employee or if the employee's involvement with the supply is to facilitate provision of the supply to the employer. For example, if an employee interacts with a law firm in circumstances where the firm is providing legal advice concerning a business venture of the employer, the employee merely facilitates provision of the service to the employer. This can be contrasted with the examples set out below.

72. In each of the following examples, the supply is made to the employer but is, in our view, provided to the employee. The employee is therefore the relevant entity for the purposes of determining where effective use or enjoyment of the supply takes place. The examples are as follows:

- the employer contracts with an entity to provide training to its employees. See Example 8, paragraphs 325 to 329, Part III, and Examples 24 and 25, Table 1, page 95, Part V, of the Explanation section;
- the employer purchases tickets to entertainment or sporting events for its employees. See Example 8, paragraphs 325 to 329, Part III, and Example 23, Table 1, page 94, Part V, of the Explanation section;
- the employer contracts with an entity to provide travel services to its employees. See Example 8, paragraphs 325 to 329, Part III, of the Explanation section;
- the employer contracts with an accounting firm to provide tax return preparation services to its employees. See Example 7, paragraphs 314 to 320, Part III, of the Explanation section; and
- the employer contracts for an employee's goods to be stored. See Example 14, paragraphs 371 to 378, Part III, of the Explanation section.

Determining whether a supply is provided to an agent

73. Sometimes an entity makes an acquisition through an agent (that is, the agent enters into the contract with the supplier on the entity's behalf). If all the agent does is effect on behalf of the entity for the supply to be made and provided to the entity, the supply is not provided to the agent.[18] (See Example 22, Table 1, page 94, Part V of the Explanation section.)

[18] See paragraphs 471 to 481 in GSTR 2005/6 for a discussion regarding supplies provided to agents.

Determining whether a supply is provided to a partner

74. A partnership, although not a separate legal entity from the persons that form the partnership, is treated for GST purposes as if it were a separate entity.[19] Pursuant to section 184-5 an acquisition made by or on behalf of a partner in his or her capacity as partner in a partnership is taken to be an acquisition made by the partnership and is not taken to be an acquisition made by that partner (or any other partner of the partnership). Therefore the supply is taken to be made to the partnership (that is, the partnership is the recipient).

75. However, partners in a partnership are typically individuals and companies and while a supply may be taken to be made to a partnership the nature of the supply may nonetheless mean it is provided to, for example, an individual partner.

76. Referring to the examples listed at paragraph 72, just as the supplies contracted for by an employer are provided to the employee so too are such supplies provided to an individual partner, although they may be taken to be made to the partnership. The individual partner would therefore be the relevant entity for the purposes of determining where effective use or enjoyment of the supply takes place. (Compare Example 26, page 95, Table 1 with Example 34, page 99, Table 2, Part V, of the Explanation section.)

The supply is made and provided to the same entity (the recipient is the providee)

77. If it is determined that a supply is made and provided to the same entity (that is, the recipient), the recipient is the providee entity. We determine whether effective use or enjoyment of the supply takes place outside Australia with reference to the recipient/providee entity. (See Flowchart 1 on page 33.)

78. The recipient entity must satisfy paragraphs (a) and (b) of item 3 if the supply is to be GST-free under item 3.[20]

The supply is made to one entity (recipient) but is provided to another entity (the other entity is the providee)

79. If a supply is made to one entity (that is, the recipient) but is provided to another entity, that other entity is the providee entity. We determine whether effective use or enjoyment of the supply takes place outside Australia with reference to the providee entity and not the recipient entity. (See Flowchart 1 on page 33.)

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[19] Refer to paragraph 184-1(1)(e).

[20] The supply must also satisfy the other requirements of item 3. That is, it must not be a supply of work physically performed on goods situated in Australia when the thing supplied is done, or a supply directly connected with real property situated in Australia.

80. If the supply is to be GST-free under item 3, the entity to which the supply is made (the recipient) must satisfy paragraph (a) of item 3 and the other entity to which the supply is provided (the providee) must satisfy paragraph (b) of item 3.[21]

Supply is provided to more than one entity

81. If a supply is provided to more than one entity, each entity is a providee for that supply. It is necessary to determine where each providee entity uses or enjoys the supply. Apportionment is required if some, but not all, providee entities use or enjoy the supply outside Australia. We discuss apportionment at paragraphs 137 to 145.

Determining whether effective use or enjoyment of a supply by the providee entity takes place outside Australia

82. Having identified the providee entity, it is then necessary to consider whether effective use or enjoyment of the supply by that providee entity takes place outside Australia and thus whether paragraph (b) of item 3 is satisfied.

83. This requires determination of whether there is provision of the supply to the providee in Australia or outside Australia. Effective use or enjoyment of the supply only takes place outside Australia, and thus paragraph (b) of item 3 is only satisfied, if there is provision of the supply to the providee entity outside Australia.

84. We explain below (paragraphs 88 to 90) *when* provision of a supply to the providee entity occurs as this is the relevant time for determining whether there is provision of the supply to the providee in Australia or outside Australia.

85. If the providee entity is an individual, we then explain at paragraphs 91 to 115 how to determine whether there is provision of the supply to the individual in Australia or outside Australia and thus whether or not effective use or enjoyment of the supply takes place outside Australia.

86. If the providee entity is an entity other than an individual we explain at paragraphs 116 to 128 how to determine whether there is provision of the supply to that entity in Australia or outside Australia and thus whether or not effective use or enjoyment of the supply takes place outside Australia.

87. In this Ruling we determine whether there is provision of a supply to the providee entity in Australia consistent with the approach taken in GSTR 2005/6. Therefore, the explanation and examples in GSTR 2005/6 may also be referred to for the purposes of determining whether a supply is provided to an entity in Australia (and therefore is not used or enjoyed outside Australia).

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[21] Ibid.

Provision of the supply to the providee occurs as and when the thing supplied is done

88. A supply is provided as and when the thing supplied is done. This is the relevant time for determining whether a supply is provided to an entity in Australia or outside Australia and thus whether effective use or enjoyment of the supply takes place outside Australia.

89. Consistent with the views expressed in GSTR 2004/7 and GSTR 2000/31[22] as to when the thing supplied is done we consider that:

- *if the thing provided is a service* – the provision of that service occurs during the period of time when the service is performed;
- *if the thing provided is advice or information and the supply involves work to create, develop or produce that information or advice for the other entity* – the thing provided is the performance of services. The provision of that thing occurs when the service is performed and includes the period of time during which the advice is prepared, produced or created, as the case may be;
- *if the thing provided is an instantaneous provision of advice or information* – the provision of that thing occurs at the time at which the advice or information is instantaneously provided;
- *if the thing provided is the creation, grant, transfer, assignment or surrender of a right* – the provision of that thing occurs at the time that the right is created, granted, transferred, assigned or surrendered; and
- *if the thing provided is the entry into, or release from, an obligation to do anything, or refrain from an act, or to tolerate an act or situation* – the provision of that thing occurs at the time at which the obligation is entered into or the release is affected.

90. Thus, in the case of a service performed over time, for example, provision of advice or information created, developed or produced over time, the relevant period for determining whether any part of the supply is provided to an entity in Australia or outside Australia, (and thus whether it is effectively used or enjoyed outside Australia), is the period during which the advice or information is created, developed or produced.

[22] Goods and services tax: supplies connected with Australia.

Providee is an individual – when effective use or enjoyment of the supply takes place outside Australia

91. To determine whether effective use or enjoyment of a supply by a providee that is an individual takes place outside Australia, we determine whether there is provision of the supply to the individual in Australia or outside Australia. Only if there is provision of the supply to the individual outside Australia does effective use or enjoyment take place outside Australia.

92. To determine whether there is provision of a supply to an individual in Australia or outside Australia we distinguish between resident and non-resident individuals and whether they are physically in or outside Australia when the thing supplied is done. Distinguishing between individuals on the basis of their residency status and physical presence at a location is consistent with the approach taken for individuals in GSTR 2004/7 and GSTR 2005/6.

Resident individual physically in Australia when the thing supplied is done

93. If a supply is provided (or is required to be provided) to a resident individual who is physically in Australia when the thing supplied is done, the supply is provided to that individual in Australia.

94. As the supply is provided to the individual in Australia, effective use or enjoyment of the supply does not take place outside Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3. (See Flowchart 2, page 34.)

Resident individual not physically in Australia when the thing supplied is done

95. If a supply is provided (or is required to be provided) to a resident individual who is not physically in Australia when the thing supplied is done, it is necessary to determine whether the presence of the resident individual outside Australia is integral to, as distinct from being merely coincidental with, the provision of the supply. (We explain at paragraphs 105 to 115 when a resident individual's presence outside Australia is integral to the provision of the supply.)

96. If a resident individual's presence outside Australia is integral to, as distinct from being merely coincidental with, the provision of the supply, we consider that the supply is provided to that individual outside Australia. As the supply is provided to the individual outside Australia, effective use or enjoyment of the supply takes place outside Australia. Paragraph (b) of item 3 is satisfied. The supply is GST-free under item 3 if the other requirements of item 3 are satisfied. (See Flowchart 2, page 34.)

97. Conversely, if a resident individual's presence outside Australia is not integral to the provision of the supply, we consider that the supply is provided to the individual in Australia. As the supply is provided to the individual in Australia, effective use or enjoyment of the supply does not take place outside Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3. (See Flowchart 2, page 34.)

98. Apportionment is required if, for part of the time when the thing supplied is done, a resident individual is physically outside Australia and that individual's presence outside Australia is integral to the provision of the supply. That part of the otherwise taxable supply[23] is GST-free. Apportionment is discussed at paragraphs 137 to 145.

Non-resident individual not physically in Australia when the thing supplied is done

99. If a supply is provided (or is required to be provided) to a non-resident individual who is not physically in Australia when the thing supplied is done, the supply is provided to that individual outside Australia.

100. As the supply is provided to the individual outside Australia, effective use or enjoyment of the supply takes place outside Australia. Paragraph (b) of item 3 is therefore satisfied and the supply is GST-free under item 3 if the other requirements of item 3 are satisfied. (See Flowchart 3, page 35.)

Non-resident individual physically in Australia when the thing supplied is done

101. If a supply is provided (or is required to be provided) to a non-resident individual who is physically in Australia when the thing supplied is done, it is necessary to determine whether the presence of the non-resident individual in Australia is integral to, as distinct from being merely coincidental with, the provision of the supply. (We explain at paragraphs 105 to 115 when a non-resident individual's presence in Australia is integral to the provision of the supply.)

102. If a non-resident individual's presence in Australia is integral to, as distinct from being merely coincidental with, the provision of the supply, we consider that the supply is provided to that individual in Australia. As the supply is provided to the individual in Australia, effective use or enjoyment of the supply does not take place outside Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3. (See Flowchart 3, page 35.)

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[23] Assuming that the requirements of section 9-5 are otherwise satisfied.

103. Conversely, if a non-resident individual's presence in Australia is not integral to the provision of the supply, we consider that the supply is not provided to that individual in Australia; it is provided to the non-resident individual outside Australia. As the supply is provided to the non-resident individual outside Australia, effective use or enjoyment of the supply takes place outside Australia. Paragraph (b) of item 3 is therefore satisfied and the supply is GST-free under item 3 if the other requirements of item 3 are satisfied. (See Flowchart 3, page 35.)

104. Apportionment is required if, for part of the time when the thing supplied is done, a non-resident individual is physically in Australia and that individual's presence in Australia is integral to the provision of the supply. That part of the otherwise GST-free supply is a taxable supply.[24] Apportionment is discussed further at paragraphs 137 to 145.

How to determine whether an individual's presence at a particular location (that is outside Australia if a resident or in Australia if a non-resident) is integral to the provision of a supply

105. It is necessary to consider this section where a supply is provided to:

- a resident individual who is physically outside Australia when the thing supplied is done;[25] or
- a non-resident individual who is physically in Australia, when the thing supplied is done.[26]

106. A supply is provided to an individual at a particular location (that is, outside Australia if a resident or in Australia if a non-resident), if the individual's presence at that location is integral to, as distinct from being merely coincidental with, the provision of the supply.

107. Determining whether an individual's presence at a particular location is integral to the provision of the supply requires an examination of the facts and circumstances of the supply. However, some indicators that an individual's presence at a particular location is integral to the provision of the supply, and is not merely coincidental, include:

- the need for the supply arises from the individual's presence at that location; or
- the presence of the individual at that location is integral to the performance, receipt or delivery of the supply.

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[24] Assuming that the requirements of section 9-5 are otherwise satisfied.
[25] See paragraphs 95 to 98 of this Ruling.
[26] See paragraphs 101 to 104 of this Ruling.

108. If the need for a supply to be provided to an individual arises from the individual's presence at a particular location we consider that the supply is provided to the individual at that location.

109. Some examples of supplies where the need for the supply arises from an individual's presence at a particular location are as follows:

- a supply of immigration advice to a non-resident individual who wants to extend his or her stay in Australia;
- a supply of customs broker services to a non-resident individual who is in Australia and requires the services of a customs broker to enter goods for home consumption in Australia; and
- a supply of legal services which are provided to an individual at a location in relation to an offence committed by that individual while at that location (see Examples 4 (paragraphs 301 to 304), 5 (paragraphs 305 to 310) and 6 (paragraphs 311 and 312), Part III of the Explanation section.

110. The need for a supply does not arise from an individual's presence outside Australia (in the case of a resident individual), or in Australia (in the case of a non-resident individual), where the facts indicate that the supply is necessitated by the individual's absence from his or her usual place of residence and not by circumstances that arise from the individual's presence at that location.

111. For example, if a resident individual is on an overseas holiday or business trip, and a supply of services is made to that individual to manage his or her private or business affairs in Australia during that time, the need for that supply does not arise from the individual's presence overseas. Rather, the need for the supply arises from the individual's absence from Australia. (See also Example 16, paragraphs 383 to 386, Part III of the Explanation section).

112. A further indicator that an individual's presence at a particular location is integral to, and is not merely coincidental with, the provision of the supply is that the individual's presence at a location is integral to the performance, receipt or delivery of the supply. Some examples of such supplies are as follows:

- supply of training or entertainment – the services are to be received by the individual at that location (see Example 8, paragraphs 325 to 329, Part III of the Explanation section);
- supply of travel – the travel is to be undertaken by the individual at that location (see Example 8, paragraphs 325 to 329, Part III of the Explanation section);

- supply of hairdressing or other similar services applied to the person – the services are to be performed on the individual at that location; and
- supply of assessment services – the assessment of the individual is undertaken at that location and the individual is required to be present for the assessment.

113. In the case of delivery or freight services which are provided to an individual in the circumstances described at paragraph 62, we accept those services are provided to the individual in Australia, if the goods are addressed to that individual in Australia. Alternatively, if the goods are addressed to the individual outside Australia, we accept that those services are provided to that individual outside Australia. This outcome is not dependent upon the residency status of the individual to whom the goods are addressed.[27] (See Example 10, paragraphs 341 to 353, Part III of the Explanation section which illustrates this approach.)

114. The following are examples or circumstances in which we consider that the individual's presence at a particular location is not integral to the provision of the supply:

- while a resident individual is on holiday outside Australia, the individual has a graphic design artist in Australia prepare designs for promotional material for the individual's business in Australia;
- while a resident individual is on holiday outside Australia the individual has his or her tax return prepared by an agent in Australia (see Example 13, paragraphs 366 to 370, Part III of the Explanation section);
- a service is provided to an individual who is a resident of Australia and, during the period when those services are performed, the individual goes overseas on holiday. While on holiday outside Australia the resident individual checks on the progress of the supply of services or the supplier contacts the resident individual to update the individual on the progress. The need for the supply does not arise from the individual's presence outside Australia and the individual's presence outside Australia is not integral to the performance, receipt or delivery of the supply (a similar example is Example 12, paragraphs 361 to 365 Part III of the Explanation section); and

[27] This does not, however, include the delivery of goods that are generically addressed to 'The Householder' or are for delivery to the public at large. See Example 11, paragraphs 354 to 358, Part III of the Explanation section.

- a service is provided to an individual who is a non-resident and, during the period when those services are performed, the individual comes to Australia on holiday. While on holiday in Australia the non-resident individual takes the opportunity to visit the supplier to check on the progress of the supply of services or the supplier contacts the non-resident individual to update the individual on the progress. The need for the supply does not arise from the non-resident individual's presence in Australia and the individual's presence in Australia is not integral to the performance, receipt or delivery of the supply. (A similar example is Example 14, paragraphs 371 to 378, Part III of the Explanation section.)

115. Further explanation and examples about whether an individual's presence at a particular location is integral to the provision of a supply or is merely coincidental are provided at paragraphs 293 to 386, Part III of the Explanation section.

Providee is a company, partnership, corporate limited partnership or trust – when effective use or enjoyment of the supply takes place outside Australia

116. To determine whether effective use or enjoyment of a supply by a providee that is a company, partnership, corporate limited partnership or trust takes place outside Australia, we determine whether there is provision of the supply to that entity in Australia or outside Australia. Only if there is provision of the supply to the entity outside Australia does effective use or enjoyment take place outside Australia.

117. To determine whether there is provision of a supply to a company, partnership, corporate limited partnership or trust in Australia or outside Australia we consider whether that entity has a presence in Australia.

118. If a company, partnership, corporate limited partnership or trust does not have a presence in Australia (that is, it only has a presence outside Australia), the supply is provided to that entity outside Australia and effective use or enjoyment of the supply takes place outside Australia. Paragraph (b) of item 3 is satisfied and the supply is GST-free under item 3 if the other requirements of item 3 are satisfied.

119. If a company, partnership, corporate limited partnership or trust only has a presence in Australia (that is, it has no presence such as a branch office outside Australia), the supply is provided to that entity in Australia and effective use or enjoyment of the supply takes place in Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3.

Determining whether a company, partnership, corporate limited partnership or trust has a presence in Australia

120. Unlike an individual, a company, partnership, corporate limited partnership or trust can be present both in Australia and outside Australia at the same time.

121. A *company, corporate limited partnership or trust* is in Australia (irrespective of its residency status) if the entity carries on business (or in the case of an entity that does not carry on business, carries on activities) in Australia at or through a fixed and definite place of its own, or through an agent at a fixed and definite place, for a sufficiently substantial period of time.[28]

122. Additionally a *company or corporate limited partnership* is in Australia if it is incorporated or formed in Australia respectively.[29]

123. A *partnership* is in Australia if the entity carries on business (or in the case of a partnership that is in receipt of ordinary income or statutory income jointly, other activities which generate that income) in Australia at or through a fixed and definite place of its own, or through an agent at a fixed and definite place, for a sufficiently substantial period of time.[30]

When effective use or enjoyment of a supply takes place outside Australia if the entity has a presence both in Australia and outside Australia

124. If a company, partnership, corporate limited partnership or trust has a presence in Australia and outside Australia, we consider that effective use or enjoyment of the supply by the entity takes place outside Australia if the supply is provided to that entity outside Australia. The supply is provided to that entity outside Australia if the supply is for the purposes of the entity's presence outside Australia. Paragraph (b) of item 3 is satisfied and the supply is GST-free under item 3 if the other requirements of item 3 are satisfied. (See Flowchart 4, page 36.)

125. If the supply is provided to that entity in Australia, effective use or enjoyment of the supply by that entity does not take place outside Australia. The supply is provided to that entity in Australia if the supply is for the purposes of the entity's presence in Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3. (See Flowchart 4, page 36.)

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[28] Refer to GSTR 2004/7 – paragraphs 230 to 346 (company); paragraphs 412 to 416 (corporate limited partnership); paragraphs 422 to 429 (trust).
[29] Refer to GSTR 2004/7 – paragraphs 335 to 339 (companies) and paragraphs 415 and 416 (corporate limited partnerships).
[30] Refer to GSTR 2004/7 – paragraphs 381 to 397.

126. Apportionment is required if the supply is for the purposes of an entity's Australian presence and also for the purposes of the entity's presence outside Australia, whether separate parts of the supply are attributable to each presence or the supply is provided to both presences and the provision of the supply services both presences indifferently. Apportionment may similarly be required if a supply is provided to different entities. Apportionment is discussed further at paragraphs 137 to 145.

127. In the case of delivery or freight services which are provided to a company, partnership, corporate limited partnership or trust in the circumstances described at paragraph 62, we accept those services are provided to that entity in Australia, if the goods are addressed to that entity in Australia. Alternatively, if the goods are addressed to that entity outside Australia, we accept those services are provided to that entity outside Australia. This outcome is not dependent upon the residency status of the entity to which the goods are addressed.[31] (See Example 20, paragraphs 444 to 458, Part IV of the Explanation section which illustrates this approach.[32])

128. Further explanation and examples of when a supply is provided to a company, partnership, corporate limited partnership or trust outside Australia and is effectively used or enjoyed outside Australia is provided at paragraphs 396 to 466, Part IV of the Explanation section.

Later use of a supply by an entity

129. If the nature of a supply is such that the supply is provided to an entity outside Australia and thus effectively used or enjoyed outside Australia, the fact that the results or outcomes of the supply are later used in Australia does not alter the outcome that effective use or enjoyment of the supply takes place outside Australia.

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[31] This does not, however, include the delivery of goods that are generically addressed to 'The Householder' or are for delivery to the public at large. See Example 11 paragraphs 354 to 358, Part III of this Ruling. It also does not apply to circumstances where an entity's own goods are freighted or moved from one location to another location. In that case, the circumstances of the particular supply in question must be considered to determine whether the supply is provided to another entity and whether the supply is provided to that other entity in Australia.

[32] See also Example 13, paragraphs 419 to 430, in GSTR 2005/6.

130. For instance, if training services are provided to employees of a resident company who are outside Australia attending the training course, the later use in Australia of the skills and knowledge gained by the employees from those training services does not alter the fact that the training services are provided to the employees outside Australia and thus effective use or enjoyment of those services takes place outside Australia.[33]

131. Similarly, if a supply is provided to an entity in Australia, and that supply is later used outside Australia, that later use does not alter the fact that the supply is provided to that entity in Australia and thus effective use or enjoyment of the supply does not take place outside Australia.

132. The enquiry is one of determining the exact nature of the supply having regard to all the facts and circumstances and then whether that supply, as properly described, is provided to an entity outside Australia or in Australia.

Another entity benefits from the supply

133. If the nature of the supply is such that the supply is provided to an entity outside Australia and thus effective use or enjoyment of the supply takes place outside Australia, this outcome is not altered even if another entity in Australia benefits from the supply.

134. Similarly, if a supply is provided to an entity in Australia, and another entity outside Australia benefits from that supply this does not alter the outcome that the supply is provided to an entity in Australia and thus effective use or enjoyment of the supply does not take place outside Australia.

135. This can occur with, for example, the supply of advertising services. If the advertising services are made and provided to an entity in Australia, the fact that another entity outside Australia also derives a benefit from that supply does not alter the fact that the advertising services are provided to the entity in Australia and effective use or enjoyment of those services does not take place outside Australia.[34]

136. As stated at paragraph 132, the enquiry is one of determining the nature of the supply having regard to all the facts and circumstances of the supply, and then whether the supply, as properly described, is provided to an entity outside Australia or in Australia.

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[33] See the United Kingdom (UK) VAT case of *Customs and Excise Commissioners v. G & B Practical Management Development Ltd* [1979] STC 280 as an example of the application of the distinction between the supply of training services to employees in the UK and the later use outside the UK of the skills and knowledge gained by the employees from those training services.

[34] See Examples 44, 45 and 46, Table 2, pages 104 and 105, Part V of the Explanation section.

Apportionment

137. A supply (or part of a supply),[35] which otherwise satisfies the requirements of item 3, may be partly GST-free and partly taxable[36] because of the application of paragraph (b) of item 3.

138. Apportionment may arise for the purposes of paragraph (b) of item 3 if a supply is partly provided to an entity in Australia and partly provided to an entity outside Australia (whether the same entity or a different entity). In such cases, the effective use or enjoyment of the supply takes place outside Australia to the extent the supply is provided to the entity outside Australia. To work out the value of the taxable part of the supply, the consideration is apportioned to each of the parts (that is, the GST-free and taxable parts) to find the consideration for the taxable part of the supply. The supplier can use any reasonable method that is supportable in the particular circumstances to apportion the consideration.[37]

139. Apportionment also arises, for the purposes of paragraph (b) of item 3, if a supply is provided to an entity in Australia and an entity outside Australia (whether the same entity or a different entity) and it is not possible to identify separate parts of the supply flowing to the entity in Australia and the entity outside Australia. To work out the value of the taxable part of the supply it is necessary to apportion the consideration between the GST-free and taxable parts of the supply on some fair and reasonable basis taking into account the particular circumstances of the supply. See Example 57, paragraphs 508 to 513, Part VI of the Explanation section.

140. The supplier should keep records that explain the method used to apportion a supply.[38]

Apportionment when a supply is provided on a periodic or progressive basis

141. Under Division 156, if a taxable supply is made for a period or on a progressive basis and the consideration is provided on a periodic or progressive basis, the GST payable is attributed as if each progressive or periodic component of the supply were a separate supply.[39]

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[35] For example, only part of a supply may satisfy the requirements in paragraph (a) of item 3. That part of the supply may be further apportioned under paragraph (b) of item 3.
[36] Assuming that the requirements of section 9-5 are otherwise satisfied.
[37] Refer to paragraphs 92 to 113 of GSTR 2001/8 Goods and services tax: apportioning the consideration for a supply that includes taxable and non-taxable parts.
[38] Refer to paragraphs 25 to 30 of GSTR 2001/8 and paragraph 70(1)(d) of the *Taxation Administration Act 1953*.
[39] Section 156-25 provides that Division 156 does not apply to a supplier who accounts on a cash basis.

142. If a supply is provided for a period with consideration given on a periodic basis and, for part of the time when the thing supplied is done, the supply is provided to an entity in Australia and thus is effectively used or enjoyed in Australia, it may not be possible for the supplier to identify the taxable part of the supply at the beginning of the period over which the thing is provided. This is because there is no way for the supplier to determine in advance whether, and to what extent, the supply is provided to an entity in Australia (and thus effectively used or enjoyed in Australia) during the period over which the supply is provided. However, it is possible for the supplier to identify this in relation to the periodic components of the supply. Accordingly, we accept that this is the basis on which GST payable on the supply (and input tax credits on the creditable acquisition) is attributable to tax periods. See Example 58, paragraphs 521 to 534, Part VI of the Explanation section.

Supplier accounts on a cash basis

143. If a supplier, who accounts on a cash basis, makes a supply for a period or on a progressive basis and the consideration is given on a periodic or progressive basis, similar issues may arise to those referred to at paragraph 142. Example 59, paragraphs 536 to 548, Part VI of the Explanation section illustrates how to attribute GST payable in these circumstances.

Apportionment where the supply is performed over more than one tax period but consideration is paid in earlier tax period

144. If a supply is performed over more than one tax period and the GST (if any) on the supply is attributable to a tax period before the completion of the supply (for example, consideration is fully paid in one tax period but the supply is spread across two or more later tax periods), the supplier must use a reasonable basis for determining the extent to which the supply is taxable. That is, the supplier must use a reasonable basis to determine the extent to which the supply is provided to another entity in Australia and thus effectively used or enjoyed in Australia.

145. If there is a change in circumstance such that the supply is taxable to a greater or lesser extent than determined in an earlier tax period, the supplier has an adjustment event. The adjustment may be either an increasing or a decreasing adjustment depending upon whether the corrected GST amount is greater than, or less than, the previously attributed GST amount.[40]

[40] Refer to paragraphs 12 to 15 and 72 to 87 in GSTR 2000/19 Goods and services tax: making adjustments under Division 19 for adjustment events.

Application of paragraph (b) of item 3 to certain complex arrangements

Subcontract arrangements

146. Sometimes a supplier (first supplier) subcontracts the provision of services for one of its customers to another supplier (second supplier). There may be various reasons for subcontracting the service. For example, the first supplier may not have the necessary capabilities to perform the service itself.

Supply by the first supplier

147. If the first supplier subcontracts the provision of a particular service to another supplier, that subcontract arrangement does not alter the nature of the supply by the first supplier. That is, if the nature of the supply by the first supplier is one of a service, the supply by the first supplier to the customer is not transformed from the supply of a service to the supply of a right; nor is it changed from the supply of an actual service to that of an arranging service.

148. We consider that a supply that is an arranging service typically involves the first supplier arranging for the second supplier to enter into a contract of supply with the customer for the supply of the required thing.

149. If the supply of the service by the first supplier to the customer is provided to that customer in Australia, effective use or enjoyment of the supply does not take place outside Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3.

150. If, however, the supply of the service by the first supplier to the customer is provided to that customer outside Australia, effective use or enjoyment of the supply takes place outside Australia. Paragraph (b) of item 3 is satisfied and the supply is GST-free under item 3 if the other requirements of that item are satisfied.[41]

Supply by the second supplier

151. The second supplier makes a supply of services to the first supplier and those services are provided to the customer. The customer is the providee entity and is the entity that uses or enjoys the supply. It is then necessary to determine where use or enjoyment of the supply by the providee takes place. (See paragraphs 91 to 115 of the Ruling section if the providee customer is an individual; see paragraphs 116 to 128 of the Ruling section if the providee customer is an entity other than an individual.)

[41] To satisfy paragraph (a) of item 3 the customer must not be in Australia in relation to the supply when the thing supplied is done as explained in GSTR 2004/7.

152. If the supply by the second supplier is provided to the customer in Australia, effective use or enjoyment of the supply does not take place outside Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3.

153. If, however, the supply by the second supplier is provided to the customer outside Australia, effective use or enjoyment of the supply takes place outside Australia. Paragraph (b) of item 3 is satisfied and the supply is GST-free under item 3 if the other requirements of that item are satisfied.[42]

154. For further explanation and examples refer to paragraphs 551 to 591, Part VII of the Explanation section. You may also wish to refer to GSTR 2005/6 (Part VIII, paragraphs 713 to 755) which also provides a detailed discussion of subcontract arrangements.

Global supplies

155. In many multi-national groups, a range of services are made available to group members through an internal service provider – typically the parent company or a separate dedicated entity. Such services include accounting, auditing, legal, information technology, research and development and financial services. Group members for which these services are performed are sometimes directly charged a fee by the group entity that provides the service or in other cases a cost is allocated. The fee or cost allocation may be separately identified or part of a bundled charge or cost allocation, sometimes incorporated into a management fee.

156. Sometimes the internal service provider contracts with an external service provider to perform the services for the group. In that case, there is typically a head agreement between the internal service provider and the external provider (the head supplier) and a range of subcontracting agreements to enable the head supplier to fulfil its obligations to provide services to members of the global group.

157. If services are subcontracted by the internal service provider to a head supplier, the nature of the supply made and provided by the internal service provider to the group member does not alter. The supply by the internal service provider is and remains a supply of a service to the group member.

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[42] The supply by the second supplier is made to the first supplier. To satisfy paragraph (a) of item 3 the first supplier must not be in Australia in relation to the supply when the thing supplied is done as explained in GSTR 2004/7.

158. Similarly, subsequent subcontracting arrangements do not alter the nature of the supply made, or provided. The supply by the head supplier remains the supply of a service as does the supply by an entity that the head supplier may subcontract. Regardless of whether the supply is being made by the head supplier to the internal service provider, or by a subcontractor to the head supplier, the supply is required to be provided to the group member. If that supply is provided to the group member outside Australia, effective use or enjoyment takes place outside Australia. If that supply is provided to the group member in Australia, effective use or enjoyment does not take place outside Australia.

159. For further explanation and examples refer to paragraphs 592 to 622 Part VII of the Explanation section. You may also wish to refer to GSTR 2005/6 (Part VIII, paragraphs 756 to 859) which provides a more detailed discussion of global supplies.

Application of paragraph (b) of item 3

160. The following flowcharts illustrate, in broad terms, the application of paragraph (b) of item 3 to a supply made to an entity that is not in Australia when the thing supplied is done, as explained in this Ruling.

161. Flowchart 1, page 33, illustrates how to determine to which entity the supply is provided (the providee) – this is the entity that actually uses or enjoys the supply.

162. Flowchart 2, page 34, illustrates how to determine when effective use or enjoyment of a supply provided to a providee that is a resident individual takes place outside Australia.

163. Flowchart 3, page 35, illustrates how to determine when effective use or enjoyment of a supply provided to a providee that is a non-resident individual takes place outside Australia.

164. Flowchart 4, page 36, illustrates when effective use or enjoyment of a supply provided to a providee that is an entity other than an individual takes place outside Australia.

165. The flowcharts should be read in conjunction with the relevant paragraphs in this Ruling.

Flowchart 1 – determining the providee entity – the entity that uses or enjoys the supply

Q 1: **To which entity is the supply made?**

[This is the recipient entity for the purposes of paragraph (a) of item 3.].

Having determined the recipient entity consider:

Q 2: **To which entity is the supply provided? (This entity is referred to as 'the providee')**

[Is the supply as properly described, provided to the recipient entity or is it provided to another entity?]

A supply is provided to another entity if the contractual flow is to one entity (the recipient) while the actual flow of that supply (for example, the performance of a service), is in whole or in part, to another entity that is not the entity with which the supplier made the agreement for the supply. Refer paragraphs 208 to 267, Part II of the Explanation section.

How to determine whether the supply is provided to another entity

A clear understanding of the exact nature of the supply based on the facts and circumstances is essential to determining whether the supply is a supply of a service, right or some other thing and whether it is provided to another entity. Refer paragraphs 220 to 224, Part II of the Explanation section.

In the case of freight or delivery services, if goods from one entity are addressed for delivery to another entity, we accept that the delivery or freight services are provided to that addressee entity. Refer paragraph 225, Part II of the Explanation section.

[Whether a supply is provided to an entity other than the recipient entity to which the supply is made is also discussed in GSTR 2005/6 at paragraphs 66 to 82 and 258 to 322. The principles discussed in that Ruling are applicable to this Ruling.]

The providee entity is the entity that actually uses or enjoys the supply and is therefore the relevant entity for the purposes of determining where use or enjoyment of a supply takes place.

See paragraphs 208 to 215, Part II of the Explanation section.

If the providee entity is:

- a **resident individual** go to **Flowchart 2** on page 34;
- a **non-resident individual** go to **Flowchart 3** on page 35;
- an **entity other than an individual** go to **Flowchart 4** on page 36.

Flowchart 2 – the providee is *a resident individual* - how to determine whether effective use or enjoyment of the supply takes place outside Australia

Following on from Flowchart 1

Q 3: When the thing supplied is done, is the supply provided to the resident individual in Australia or outside Australia?

When the thing supplied is done

A supply is provided as and when the thing supplied is done. Therefore, this is the relevant time for determining whether a supply is provided to a resident individual in Australia or outside Australia. Refer paragraphs 272 to 274, Part III of the Explanation section for when different types of supplies, eg supplies of services, supplies of advice etc., are provided to an entity.

When a supply is provided to a resident individual in Australia or outside Australia

- A supply is provided to a resident individual *in Australia* if that individual:
  - is physically in Australia when the thing supplied is done (refer paragraphs 277 to 279, Part III of the Explanation section); or
  - is physically outside Australia when the thing supplied is done but that presence outside Australia is not integral to, but is merely coincidental with, the provision of the supply (refer paragraphs 280 to 284, Part III of the Explanation section).
- A supply is provided to a resident individual *outside Australia* if that individual is physically outside Australia when the thing supplied is done and that presence outside Australia is integral to, as distinct from being merely coincidental with, the provision of the supply (refer paragraphs 280 to 284, Part III of the Explanation section).

Determining whether a resident individual's presence outside Australia is integral to the provision of the supply requires an examination of the facts and circumstances of the supply. However, indicators that the presence of the individual outside Australia is integral to the provision of the supply include:

- the need for the supply arises from the resident individual's presence outside Australia; for example, a supply of legal services in relation to an offence committed by that individual while outside Australia; or
- the presence of the resident individual outside Australia is integral to the performance, receipt or delivery of the supply; for example, training, entertainment or travel services.

Refer paragraphs 293 to 386, Part III of the Explanation section.

In the case of delivery or freight services if goods from an entity are addressed for delivery to an individual, we accept those services are provided to the individual in Australia, if the goods have an Australian address, and outside Australia, if the goods have an address outside Australia. Refer paragraphs 337 to 358, Part III of the Explanation section.

Apportionment

To the extent that the supply is provided to a resident individual in Australia effective use or enjoyment of the supply does not take place outside Australia and the supply is not GST-free. To the extent that the supply is provided to a resident individual outside Australia effective use or enjoyment of the supply takes place outside Australia and the supply is GST-free (if the other requirements of item 3 are met and subsections 38-190(2) and (2A) do not apply). The supplier is required to apportion the consideration between the GST-free and taxable parts of the supply. Refer paragraphs 470 to 550, Part VI of the Explanation section.

The supply is provided to the resident individual **in Australia**

The supply is provided to the resident individual **partly in Australia** and **partly outside Australia**

The supply is provided to the resident individual **outside Australia**

To the extent that the supply…

is provided to the resident individual *in Australia*

is provided to the resident individual *outside Australia*

Effective use or enjoyment of the supply does not take place outside Australia.

The supply is not GST-free under item 3.

Effective use or enjoyment of the supply takes place outside Australia.

The supply is GST-free if the other requirements of item 3 are met and subsections 38-190(2) and (2A) do not negate the GST-free status of the supply.

Flowchart 3 – the providee is *a non-resident individual* - how to determine whether effective use or enjoyment of the supply takes place outside Australia

Following on from Flowchart 1

Q 3: When the thing supplied is done, is the supply provided to the non-resident individual outside Australia or in Australia?

When the thing supplied is done

A supply is provided as and when the thing supplied is done. Therefore, this is the relevant time for determining whether a supply is provided to a non-resident individual in Australia or outside Australia. Refer to paragraphs 272 to 274, Part III of the Explanation section for when different types of supplies, eg supplies of services, supplies of advice etc., are provided to an entity.

When a supply is provided to a non-resident individual outside Australia or in Australia

- A supply is provided to a non-resident individual *outside Australia* if that individual:
  - is physically outside Australia when the thing supplied is done (refer paragraphs 285 to 287, Part III of the Explanation section); or
  - is physically in Australia when the thing supplied is done but that presence in Australia is not integral to, but merely coincidental with, the provision of the supply (refer paragraphs 288 to 292, Part III of the Explanation section).
- A supply is provided to a non-resident individual *in Australia* if that individual is physically in Australia when the thing supplied is done and that presence in Australia is integral to, as distinct from being merely coincidental with, the provision of the supply (refer paragraphs 288 to 292, Part III of the Explanation section).

Determining whether a non-resident individual's presence in Australia is integral to the provision of the supply requires an examination of the facts and circumstances of the supply. However, indicators that the presence of the individual in Australia is integral to the provision of the supply include:

- the need for the supply arises from the non-resident individual's presence in Australia; for example, a supply of legal services in relation to an offence committed by that individual while in Australia; or
- the presence of the non-resident individual in Australia is integral to the performance, receipt or delivery of the supply; for example training, entertainment or travel services.

  Refer to paragraphs 293 to 386, Part III of the Explanation section.

In the case of delivery or freight services if goods from an entity are addressed for delivery to an individual, we accept those services are provided to the individual in Australia, if the goods have an Australian address, and outside Australia, if the goods have an address outside Australia. Refer to paragraphs 337 to 358, Part III of the Explanation section.

Apportionment

To the extent that the supply is provided to a non-resident individual in Australia effective use or enjoyment of the supply does not take place outside Australia and the supply is not GST-free. To the extent that the supply is provided to a non-resident individual outside Australia effective use or enjoyment of the supply takes place outside Australia and the supply is GST-free (if the other requirements of item 3 are met and subsections 38-190(2) and (2A) do not apply). The supplier is required to apportion the consideration between the GST-free and taxable parts of the supply. Refer to paragraphs 470 to 550, Part VI of the Explanation section.

The supply is provided to the non-resident individual **in Australia**

The supply is provided to the non-resident individual **partly in Australia** and **partly outside Australia**

The supply is provided to the non-resident individual **outside Australia**

To the extent that the supply…

is provided to the non-resident individual *in Australia*

is provided to the non-resident individual *outside Australia*

Effective use or enjoyment of the supply does not take place outside Australia.

The supply is not GST-free under item 3.

Effective use or enjoyment of the supply takes place outside Australia.

The supply is GST-free if the other requirements of item 3 are met and subsections 38-190(2) and (2A) do not negate the GST-free status of the supply.

Flowchart 4 – the providee is *a company, partnership, corporate limited partnership or trust* - how to determine whether effective use or enjoyment of the supply takes place outside Australia

Following on from Flowchart 1

Q 3: When the thing supplied is done, is the supply provided to the company, partnership, corporate limited partnership or trust entity in Australia or outside Australia?

When the thing supplied is done

A supply is provided as and when the thing supplied is done. Therefore, this is the relevant time for determining whether a supply is provided to an entity in Australia or outside Australia. Refer to paragraph 400, Part IV of the Explanation section for when different types of supplies, eg supplies of services, supplies of advice etc., are provided to an entity.

In Australia (that is, has a presence in Australia)

A *company, corporate limited partnership or trust* is in Australia (irrespective of its residency status) when the thing supplied is done, if the entity carries on business, (or in the case of an entity that does not carry on business, carries on activities), in Australia at or through a fixed and definite place of its own, or through an agent at a fixed and definite place, for a sufficiently substantial period of time.

Also a *company or corporate limited partnership* is in Australia if it is incorporated or formed in Australia respectively.

A *partnership* is in Australia if the entity carries on business (or in the case of a partnership that is in receipt of ordinary income or statutory income jointly, other activities which generate that income) in Australia at or through a fixed and definite place of its own, or through an agent at a fixed and definite place, for a sufficiently substantial period of time.

Refer to paragraphs 415 to 418, Part IV of the Explanation section.

When a supply is provided to the entity in Australia or outside Australia

A supply is provided to a company, partnership, corporate limited partnership or trust in Australia if the supply is for the purposes of the entity's Australian presence (for example, an Australian branch, representative office or agent if it is a non-resident company; or the Australian head office if it is an Australian incorporated company). Refer to paragraphs 419 to 458, Part IV of the Explanation section.

In the case of delivery or freight services if goods from an entity are addressed for delivery to another entity, we accept those services are provided to that other entity in Australia, if the goods have an Australian address, and outside Australia, if the goods have an address outside Australia. Refer to paragraphs 440 to 458, Part IV of the Explanation section of this Ruling.

Note: If the entity only has a presence in Australia, the supply is provided to that entity in Australia. If the entity only has a presence outside Australia the supply is provided to that entity outside Australia (see paragraphs 403 and 404, Part IV of the Explanation section).

Apportionment

To the extent that the supply is provided to the presence of a company, partnership, corporate limited partnership or trust in Australia, effective use or enjoyment of the supply does not take place outside Australia and the supply is not GST-free. To the extent that the supply is provided to the presence of a company, partnership, corporate limited partnership or trust outside Australia, effective use or enjoyment of the supply takes place outside Australia and the supply is GST-free (if the other requirements of item 3 are met and subsections 38-190(2) and (2A) do not apply). The supplier is required to apportion the consideration between the GST-free and taxable parts of the supply. Refer to paragraphs 470 to 550, Part VI of the Explanation section.

The supply is provided to the entity in Australia – for example

the entity *only* has a presence in Australia;

or

the entity has a presence outside Australia but *at all times* the supply is for the purposes of its presence in Australia

The supply is provided to an entity in Australia and an entity outside Australia (whether the same entity with a presence in and outside Australia or two different entities and whether or not it is possible to identify separate parts of the supply flowing to each presence of each entity).

The supply is provided to the entity outside Australia – for example

the entity *does not* have a presence in Australia;

or

the entity has a presence in Australia but *at no time is* the supply for the purposes of its presence in Australia.

To the extent that the supply…

is provided to an entity *in Australia*

is provided to an entity *outside Australia*

Effective use or enjoyment of the supply <u>does not</u> take place outside Australia.

The supply is not GST-free under item 3

Effective use or enjoyment of the supply takes place outside Australia.

The supply is GST-free if the other requirements of item 3 are met and subsections 38-190(2) or (2A) do not negate the GST-free status of the supply.

Explanation (this forms part of the Ruling)

Item 3 and subsection 38-190(4)

166. Section 38-190 applies to supplies of things, other than goods or real property, for consumption outside Australia. The table in subsection 38-190(1) comprises five items that set out supplies of things, other than goods or real property, that are GST-free.

167. The policy intention, as evidenced by the heading to section 38-190 and the table in subsection 38-190(1), is to treat supplies of services or things, other than goods or real property, as GST-free supplies if those supplies are for consumption outside Australia.[43]

168. For a supply to be GST-free under item 3, paragraphs (a) and (b) of item 3 must be satisfied and the supply must not be 'a supply of work physically performed on goods situated in Australia when the thing supplied is done, or a supply directly connected with real property situated in Australia'.[44]

169. Paragraph (a) of item 3 requires the supply to be made to 'a recipient[45] who is not in Australia when the thing supplied is done'.[46] Item 3, like item 2, is formulated such that the location of the recipient, (that is, the entity to which the supply is made), is the basis for determining whether a supply is for consumption outside Australia. The presumption underlying paragraph (a) of item 3 (and item 2) is that a supply is for consumption outside Australia if the supply is made to a recipient who is not in Australia when the thing supplied is done. Unlike item 2, the residency status of the recipient is not relevant for the purposes of item 3. That is, item 3 may apply to a supply made to either a resident or a non-resident entity.

170. If the recipient of a supply does not satisfy the requirements of paragraph (a) of item 3, subsection 38-190(4) may treat a supply as made to a recipient who is not in Australia. Subsection 38-190(4) recognises, in relation to item 3, (as does subsection 38-190(3) in relation to item 2[47]), that focussing solely on the location of the entity to which the supply is made does not always produce an outcome consistent with the policy intention to treat as GST-free those supplies that are for consumption outside Australia.

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[43] Refer to the Explanatory Memorandum to the Indirect Tax Legislation Amendment Bill 2000 at paragraph 3.30.
[44] For further guidance refer to GSTR 2003/7.
[45] 'Recipient, in relation to a supply, means the entity to which the supply was made': section 195-1.
[46] The requirement that the recipient is not in Australia when the thing supplied is done (the 'not in Australia' requirement) is explained in GSTR 2004/7 according to entity type.
[47] Subsection 38-190(3) negates the GST-free status of certain supplies that are GST-free under item 2.

171. Subsection 38-190(4) applies to extend the application of paragraph (a) of item 3 if a supply is made to an entity that is in Australia in relation to the supply but is provided to another entity outside Australia. In this circumstance, the supply is taken to be made to a recipient who is not in Australia and therefore satisfies paragraph (a) of item 3.[48]

172. To illustrate the application of subsection 38-190(4), the following two examples of the types of supplies provided to another entity outside Australia are given in the Explanatory Memorandum:[49]

- a supply of mobile telephone roaming to an Australian business with an employee overseas; and
- a supply to an Australian business of a training course to be conducted overseas.

173. In each of these examples, the supply is covered by subsection 38-190(4) because the supply is made to a resident entity (the Australian business) but is provided to another entity (the employee or person being trained), outside Australia. The supply is therefore taken to satisfy paragraph (a) of item 3.

174. Subsection 38-190(4), similar to subsection 38-190(3),[50] is about identifying where a supply is for consumption by reference to the location of an entity other than the recipient. If subsection 38-190(4) applies, it is the location of the entity to which the supply is provided, not the location of the entity to which the supply is made, that is the basis for identifying whether the supply is for consumption outside Australia.

175. If paragraph (a) of item 3 is satisfied, or is taken to be satisfied because of the application of subsection 38-190(4), it is necessary to consider paragraph (b) of item 3.

176. Paragraph (b) of item 3 requires that the effective use or enjoyment of the supply takes place outside Australia. This requirement recognises that paragraph (a) of item 3 may be satisfied in certain circumstances where the supply is not for consumption outside Australia.

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[48] For a supply covered by subsection 38-190(4) to be GST-free all of the requirements of item 3 must be satisfied.
[49] To the Indirect Tax Legislation Amendment Bill 2000 at paragraph 3.27.
[50] However, in contrast to subsection 38-190(4), the purpose of subsection 38-190(3) is to negate the GST-free status of certain supplies that are otherwise GST-free under item 2. The application of subsection 38-190(3) is explained in GSTR 2005/6.

177. Consider a supply that is made (and provided) to an individual who resides in Australia and which is for use or enjoyment by that individual in Australia. If that individual is outside Australia on holidays when the services are performed, paragraph (a) of item 3 is satisfied even though the supply to that individual is not for consumption outside Australia. Paragraph (a) of item 3 is satisfied merely because that individual just happens to be physically outside Australia when the thing supplied is done. Paragraph (b) of item 3 ensures that the supply is not GST-free as the use or enjoyment of the supply does not take place outside Australia.

178. Another example is a supply made to a non-resident company that is not in Australia when the thing supplied is done but the supply is for use or enjoyment by another entity in Australia (for example an employee of that company). As the entity to which the supply is made – the non-resident company – is not in Australia when the thing supplied is done paragraph (a) of item 3 is satisfied. However, paragraph (b) of item 3 ensures that the supply is not GST-free as the use or enjoyment of the supply does not take place outside Australia. The application of paragraph (b) of item 3 in this case achieves a similar outcome to the application of subsection 38-190(3), which applies to deny GST-free status of a supply under item 2, if the supply is made to a non-resident entity that is not in Australia but is provided to another entity in Australia.

How the requirements and application of paragraph (b) of item 3 are discussed in the Explanation section of this Ruling

179. We have divided the Explanation section into seven parts as follows:

PART	**TOPIC**
Part I *(paragraphs 180 to 207)*	Our approach to determining where effective use or enjoyment of a supply takes place.
Part II *(paragraphs 208 to 267)*	How to determine to which entity the supply is provided (the providee)– it is the providee entity that actually uses or enjoys the supply.
Part III *(paragraphs 268 to 395)*	The providee is an individual – determining whether effective use or enjoyment of a supply by that individual takes place outside Australia.
Part IV *(paragraphs 396 to 466)*	The providee is a company, partnership, corporate limited partnership or trust – determining whether effective use or enjoyment of a supply by that entity takes place outside Australia.

PART	**TOPIC**
Part V *(paragraphs 467 to 469)*	Further examples – the GST treatment of various supplies under item 3 (and item 2 for comparative purposes) drawing on examples from GSTR 2005/6.
Part VI *(paragraphs 470 to 550)*	When apportionment may be required.
Part VII *(paragraphs 551 to 622)*	The application of paragraph (b) of item 3 to subcontract arrangements and global supplies.

Part I – our approach to determining where effective use or enjoyment of a supply takes place

180. Item 3 covers supplies made to resident and non-resident entities. Paragraph (b) of item 3 requires the place where the supply is effectively used or enjoyed to be established.

181. As a supply is effectively used or enjoyed by an entity there is, in our view, two aspects to establishing where effective use or enjoyment takes place. First it is necessary to determine the entity that effectively uses or enjoys the supply. Secondly, it is necessary to determine the place where use or enjoyment of the supply by that entity takes place. We set out below our approach to these two aspects.

Our approach to determining the entity that effectively uses or enjoys the supply

182. Paragraph (b) of item 3 refers to the 'effective', that is, the real or actual, use or enjoyment of the supply. Thus in determining where effective use or enjoyment of the supply takes place it is necessary, in our view, to first establish the entity that actually uses or enjoys the supply.

183. The recipient of a supply is the entity that actually uses or enjoys the supply unless that supply is provided to another entity, in which case that other entity actually uses or enjoys the supply.

184. A supply which is made to a recipient is provided to another entity if, in the performance or doing of that supply, the actual flow of the service or thing being supplied is to that other entity.

185. We determine whether a supply is provided to another entity consistently with the approach in GSTR 2005/6.[51] That is, by examining the facts and circumstances of the supply it can be determined if the actual flow of the supply is also to the recipient entity or if the actual flow of the supply is to some other entity.

186. Once the entity to which the supply is provided has been determined, (that is, either the recipient entity or some other entity is the providee), it is necessary to consider whether effective use or enjoyment of the supply by the providee takes place outside Australia.

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[51] In GSTR 2005/6 we explain in detail how to determine if a supply is provided to an entity that is not the recipient. This is also discussed further in Part II of the Explanation section of this Ruling.

Our approach to determining whether use or enjoyment of the supply by the providee entity takes place outside Australia

187. We consider that, in the context of section 38-190 and for the reasons outlined below, the place where a supply is used or enjoyed is the place where the supply is provided to the entity. Thus if the supply is provided to an entity outside Australia effective use or enjoyment of the supply takes place outside Australia.

188. We consider that the legislative framework of section 38-190 supports this approach. Items 2 and 3 and subsections 38-190(3) and (4), which affect the application of items 2 and 3 respectively, evidence Parliament's intention that if a supply is provided to an entity outside Australia, the supply is for consumption outside Australia and the GST consequences are determined accordingly.

189. Our approach is supported by the Explanatory Memorandum (EM) to the Bill[52] that inserted subsection 38-190(4). The EM explains that a supply that is made to an entity in Australia but provided to another entity outside Australia should be GST-free as the 'the effective use and enjoyment of the supply is outside Australia'. This explanation links not only the provision of the supply to an entity with that entity effectively using or enjoying the supply but it also links the place of provision with the place of effective use or enjoyment of the supply.

190. Notably the effective use or enjoyment requirement pre-dates the EM explaining subsection 38-190(4) and thus it would be difficult to conclude that Parliament intended anything other than alignment between the place of provision of a supply to an entity and the place of effective use or enjoyment of the supply by that entity. Thus we consider that the EM confirms the approach that if a supply is provided to an entity outside Australia, effective use or enjoyment of the supply by that entity also takes place outside Australia.

191. As stated by Hill J in *HP Mercantile Pty Ltd v. Federal Commissioner of Taxation*:[53]

> It is clear, both having regard to the modern principles of interpretation as enunciated by the High Court in cases such as *CIC Insurance Ltd v. Bankstown Football Club Ltd (*1997) 187 CLR 384; 71 ALJR 312; 141 ALR 618 and s 15AA of the Acts Interpretation Act 1901 (Cth) that the court will prefer an interpretation of a statute which would give effect to the legislative purpose, as opposed to one that would not. This requires the court to identify that purpose, both by reference to the language of the statute itself and also any extrinsic material which the court is authorised to take into account.[54]

192. We are of the view that our approach would be supported by the Court on the grounds that it promotes the legislative purpose and is supported by both the language of section 38-190 and extrinsic material.

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[52] Indirect Tax Legislation Amendment Bill 2000 at paragraph 3.25.
[53] [2005] FCAFC 126; 219 ALR 591.
[54] 219 ALR 591 at 602.

Alternative approach

193. An alternate approach is to apply the words 'effective use or enjoyment' in item 3 as appropriately as possible to the facts of each supply to determine the place where that particular supply is used or enjoyed. This approach entails working out how the particular supply is used or enjoyed, by whom and when.

194. Consider the seemingly straightforward example of the supply of hairdressing services. On one view the effective use or enjoyment of the supply is immediate and thus occurs at the place where the person receives the haircut. On another view the use or enjoyment of the haircut lasts for a longer period of time or perhaps until the next haircut and thus use or enjoyment takes place wherever the individual is located between haircuts.

195. This example raises two issues which are particularly subjective. How is it that the supply is used or enjoyed by the individual? And is the use or enjoyment of the supply immediate or does it take place over a period of time?

196. What approach would a supplier take in the following example?

197. A supply of storage services is made to a non-resident individual and involves the storage of the individual's goods in Australia. Is that supply effectively used or enjoyed where the goods are physically stored (that is, in Australia); or is the supply used or enjoyed where the individual is located during the period over which the goods are stored (that is, outside Australia)? Both outcomes are credible creating uncertainty as to the correct outcome. Under the Commissioner's approach this uncertainty is resolved by establishing whether the supply is provided to the non-resident outside Australia. Effective use or enjoyment of a supply takes place outside Australia, if the supply is provided to the non-resident individual outside Australia (see Example 14 at paragraphs 371 to 378, Part III of the Explanation section of this Ruling).

198. The practical difficulties illustrated by the storage and hairdressing examples are not isolated events. This is borne out by overseas experience.

199. The Canadian GST legislation in its early years provided that a supply of a service that is primarily for consumption, use or enjoyment in Canada would not be zero-rated (that is, it would be subject to GST). However, due to practical difficulties with applying this provision, Canada amended its GST legislation to delete this provision and to replace it with a new concept similar to subsection 38-190(3). As explained in the explanatory notes accompanying the amendment:

> Existing paragraph 7(*a*), which excludes from zero-rating under section 7 a service that is primarily for consumption, use or enjoyment in Canada, is replaced with new paragraph 7(*a*.1). Difficulties have arisen in the determination of where certain services are primarily consumed, used or enjoyed. New paragraph 7(*a*.1) excludes from section 7 a supply of a service that is 'rendered' to an individual while that individual is in Canada.[55]

200. More recently the European Commission commented when reviewing place of supply rules for services made to end consumers:

> One option was to tax services at the place where they are actually used and enjoyed, which would best assure taxation at the place of actual consumption. However, discussions in the VAT Committee have shown that in many cases it is very difficult to determine where the actual use and enjoyment of a service takes place. This is the reason why the Commission would not favour using this specific criterion, even if, from a strict theoretical VAT point of view, it may be the most accurate way to achieve taxation of consumption at the place of consumption.[56]

201. In the Commissioner's view it is unlikely that Parliament, having avoided these kinds of practical difficulties in section 38-190 by relying on whether the supply is made or provided to an entity at a particular location, intended to approach the interpretation and application of paragraph (b) of item 3 on a different basis and one that invites subjectivity and practical difficulty.

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[55] See page 381, *Amendments to the Excise Tax Act, the Income Tax Act and Related Acts*, Notice of Ways and Means Motion, Draft Regulations and Explanatory Notes, available at: http://www.fin.gc.ca/drleg/96-034e.pdf.

[56] See page 6, *Consultation Paper VAT – The Place of Supply of Services to Non-Taxable Persons*, Brussels 2005, available at http://europa.eu.int/comm/taxation_customs/common/consultations/tax/index_en.htm.

202. The alternate approach may also undermine the legislative purpose to only treat as GST-free those supplies that are for consumption outside Australia. For example, if a supply is made to a non-resident entity (and is GST-free under item 2) but is provided to another entity in Australia, subsection 38-190(3) negates the GST-free status of that supply. If provision to another entity in Australia establishes that a supply is for consumption in Australia and thus is not GST-free under item 2, it would be anomalous if that supply is nonetheless GST-free under item 3 as, on some other basis, it is considered to be for consumption outside Australia. We consider it unlikely that Parliament intended a different test to be applied to the same supply under item 3, particularly given the EM that accompanied subsection 38-190(4) (as explained at paragraph 189 of this Ruling).

203. Similarly to satisfy paragraph (a) of item 3 the supply must be made to a recipient (either a resident or non-resident) who is not in Australia when the thing supplied is done or, if made to an entity in Australia it must be provided to another entity outside Australia (see subsection 38-190(4)).

204. If a supply is made to a resident entity that is in Australia in relation to the supply, but is provided to another entity outside Australia, subsection 38-190(4) applies with the effect that the supply is taken to be made to an entity that is not in Australia and paragraph (a) of item 3 is therefore considered to be satisfied. In this case, we consider that the supply should not be denied GST-free status under paragraph (b) of item 3. Again it would, in our view, be anomalous if, having determined that a supply is provided to an entity outside Australia, we then determine on some other basis that effective use or enjoyment of that supply does not take place outside Australia. This could result if the test for determining the place of effective use or enjoyment differs from determining where provision of a supply to an entity takes place.

In summary

205. We therefore consider that effective use or enjoyment of a supply takes place outside Australia, if the supply is provided to that entity outside Australia; effective use or enjoyment of a supply does not take place outside Australia if the supply is provided to that entity in Australia.

206. The approach in this Ruling to determining whether a supply is provided to an entity in Australia is consistent with the approach in GSTR 2005/6 which is similarly concerned, for the purposes of subsection 38-190(3), with determining whether a supply is provided to an entity in Australia.[57]

207. Our approach to working out whether a supply is used or enjoyed outside Australia (that is, whether the supply is provided to an entity outside Australia) is discussed fully at paragraphs 268 to 395, Part III of the Explanation section (if the supply is provided to an individual) and paragraphs 396 to 466, Part IV of the Explanation section (if the supply is provided to an entity other than an individual).

[57] See paragraphs 66 to 129 in the Ruling section and paragraphs 258 to 498 in the Explanation section of GSTR 2005/6.

Part II – how to determine to which entity the supply is provided (the providee) – it is the providee entity that actually uses or enjoys the supply

The meaning of a supply is provided to an entity

208. For the reasons explained at paragraphs 180 to 207, Part I of the Explanation section, the entity that actually uses or enjoys the supply is the entity to which the supply is provided (that is, the providee).

209. A supply is provided to an entity if in the performance or doing of the supply, the service or thing supplied flows to that entity. For example, a supply of travel services is provided to the entity that undertakes the travel. The actual flow of the travel service is to that entity.

210. If a supply is made and provided to the same entity (that is, the recipient), the actual flow of the supply is to the recipient entity. If a supply is made to one entity (the recipient) and provided to another entity (or entities), such as in the circumstances outlined in subsections 38-190(3)[58] and (4)[59], the contractual flow is to one entity (the recipient) and the actual flow of the supply is to another entity.

211. Thus, the entity to which the supply is provided (that is, the providee) may be the same entity to which the supply is made (that is, the recipient) or, a different entity. This is discussed below. (Refer also Flowchart 1 at page 33 of the Ruling section.)

212. For the reasons explained at paragraphs 180 to 207, Part I of the Explanation section, we determine whether effective use or enjoyment of a supply takes place outside Australia with reference to the providee entity.

Supply is made and provided to the same entity (the recipient is the providee)

213. If it is determined that the supply is made, and provided, to the same entity, this entity is the recipient and also the providee and we determine whether effective use or enjoyment of the supply takes place outside Australia with reference to that entity. The recipient/providee entity must satisfy paragraphs (a) and (b) of item 3 if the supply is to be GST-free under item 3.[60]

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[58] See paragraph 34 of this Ruling and explanation of this provision in GSTR 2005/6.
[59] See paragraph 35 of this Ruling and explanation of this provision at paragraphs 186 to 197 in GSTR 2004/7.
[60] The supply must also satisfy the other requirements of item 3. That is, it must not be a supply of work physically performed on goods situated in Australia when the thing supplied is done, or a supply directly connected with real property situated in Australia.

Supply is made to one entity (recipient) but is provided to another entity (the other entity is the providee)

214. If a supply is made to one entity (that is, the recipient) but is provided to another entity, that other entity is the providee entity. We determine whether effective use or enjoyment of the supply takes place outside Australia with reference to the providee entity and not the recipient entity.

215. If the supply is to be GST-free under item 3, the entity to which the supply is made (the recipient) must satisfy paragraph (a) of item 3 and the entity to which the supply is provided (the providee) must satisfy paragraph (b) of item 3.[61]

How to determine whether a supply that is made to one entity (recipient) is provided to another entity

216. GST Ruling GSTR 2005/6 comprehensively explains, for the purposes of subsection 38-190(3), when a supply is made to one entity but is 'provided to another entity'. As we are seeking to determine in this Ruling if a supply, which is made to one entity (the recipient), is in fact provided to some other entity, the explanation in GSTR 2005/6 as to when a supply is provided to another entity is equally applicable for the purposes of this Ruling.

217. As explained in GSTR 2005/6, a supply, which is made to an entity (the recipient) is provided to another entity if, and to the extent that, in the performance of a service (or in the doing of some other thing), the actual flow of the supply is to that other entity. That is, the actual flow of the supply is to another entity (the providee).[62]

218. To determine for the purposes of paragraph (b) of item 3 whether a supply is provided to an entity other than the recipient entity, another entity includes an individual (for example, an employee or a partner), a company, a partnership, a corporate limited partnership or a trust.[63]

Determining whether the supply is provided to another entity

219. To determine whether a supply made to a recipient is provided (or is required to be provided) to another entity, it is necessary to establish the exact nature of the supply. That is, what is really being supplied (sometimes a shorthand or colloquial description of the supply does not reflect what is really being supplied).

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[61] Ibid.
[62] See paragraphs 59 to 62 and 66 to 82 in the Ruling section and paragraphs 220 to 225 and 258 to 322 in the Explanation section of GSTR 2005/6.
[63] See paragraphs 54 to 58 in the Ruling section and paragraphs 226 to 240 in the Explanation section of GSTR 2005/6.

The exact nature of the supply

220. A clear understanding of the exact nature of the supply is essential to determining whether the supply is a supply of a service, right or some other thing and whether it is provided to another entity. By determining what is in substance and reality being supplied, it is possible to identify to which entity the supply is provided.

221. The exact nature of a supply in any given situation depends on the facts and circumstances of the supply and the agreement made between the parties. In this regard, it is necessary to look at the whole arrangement for the supply (including the contractual arrangements) and the way in which the supply is carried out. If there is no written contract, other documents such as correspondence between the parties may be useful in establishing the nature of the supply.

222. If a supply is the provision of advice or information which involves work to create, develop or produce that advice or information, (for example, a legal opinion or an audit report), the supply is the performance of services.[64] Thus, in determining whether a supply is provided to another entity regard is to be had to the performance of the services in creating, developing or producing the opinion or audit report and whether those services are provided to another entity.

223. The focal point in working out whether a supply is provided to another entity is the facts and circumstances of the doing of the thing supplied. By the supplier examining what it is required to do and in what circumstances, the supplier is able to objectively determine whether the supply is a supply of a service, right or some other thing and to whom the supply is provided.

224. With some supplies, it is inherent in the nature of the supply that the supply is provided to a particular entity. For example travel, training or entertainment services are, by their very nature, provided to the individual who travels, or is trained or entertained, respectively.

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[64] As explained in GSTR 2000/31 if a supply is the provision of advice or information and the supply involves work to create, develop or produce that information or advice for the recipient, the supply is one of performance of services.

225. In the case of delivery or freight services, if goods from one entity are addressed for delivery to another entity, we accept that the delivery or freight services are provided to that addressee entity.[65] We provide examples which illustrate this approach – see Example 10 (paragraphs 341 to 353, Part III) for freight or delivery services provided to an individual. See Example 20 (paragraphs 444 to 458, Part IV) for freight or delivery services provided to an entity other than an individual. Example 11 (paragraphs 354 to 358, Part III) illustrates the outcome if a resident company contracts another Australian entity to deliver goods to the public at large outside Australia. As illustrated by the examples, this is a consistent application of our approach to paragraph (b) of item 3 and recognises the inherent practical difficulties in determining the place where use or enjoyment of the supply occurs in these circumstances. This approach is consistent with that taken in GSTR 2005/6 to determine if the supply is provided to another entity for the purposes of paragraph 38-190(3)(b).[66]

226. In the case of other supplies, for example, supplies that involve the supply of legal, accounting, auditing or advertising services, the question of whether the supply is provided to another entity depends on the facts and circumstances in any given case.

227. For example, consider a supply of tax return preparation services made to a company that is not in Australia in relation to the supply for the purposes of paragraph (a) of item 3. If services are being supplied to complete tax returns for particular employees to meet their personal tax obligations, those services are provided to each employee. On the other hand, if the tax return services are to complete the company's tax return, meeting its tax obligations, the tax return preparation services are provided to the company.

228. If the contractual flow of the supply is to an entity (other than an individual), and it is necessary to determine whether the actual flow of the supply is to another entity (other than an individual), we consider that a strong indicator that the supply is provided to another entity is that the contracting entity has no further interaction with, or participation in, the provision of the supply beyond contracting and paying for the supply. However, this is subject to the facts and circumstances of the supply not indicating to the contrary. (Refer to Examples 36 and 46, pages 100 and 104 respectively, Part V of the Explanation section.)

229. It is only in limited circumstances that any one fact, or particular combination of facts, means or indicates that a supply is provided to another entity.

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[65] This does not, however, include the delivery of goods that are generically addressed to, for example, 'The Householder' or are for delivery to the public at large. It also does not include the situation where an entity's goods are simply freighted or moved from one location to another location. In the latter case the circumstances of the particular supply in question must be considered to determine whether the supply is provided to another entity.

[66] See also Example 28, Table 1, page 96, Part V of this Ruling and Examples 10 (paragraphs 380 to 391), 13 (paragraphs 419 to 430) and 14 (paragraphs 431 to 435) in GSTR 2005/6.

230. The importance of understanding the exact nature of the supply by having regard to the facts and circumstances of the supply is illustrated by the following contrasting examples.

Example 1 – supply of consultancy services made to a resident company and provided to a resident subsidiary with a presence in Australia and outside Australia

231. *An Australian business consultancy firm, OzBiz, is engaged by an Australian parent company, Aus Co, to review the business practices and procedures of its subsidiary entity, Sub Co. At all times during the period over which the service is performed Sub Co is a resident of Australia and carries on business both in Australia, (where it has its head office), and in Papua New Guinea, (where it has a branch office).*

232. *The supply by OzBiz is properly characterised as the supply of a service. A separate review of Sub Co's operations is made by OzBiz – that is, a review of the head office and a review of the Papua New Guinea branch office. The aim of each review is to identify areas where efficiency gains and cost savings may be made by Sub Co with respect to its head office operations and its branch office operations. The service is performed over a period of time and culminates in the production of two reports, one for the management team of the subsidiary's presence in Papua New Guinea and one for the management team of the subsidiary's presence in Australia.*

Paragraph (a) of item 3

233. *The supply of consultancy services by OzBiz is made to Aus Co, a resident entity that is in Australia when the consultancy services are performed. The supply does not therefore satisfy paragraph (a) of item 3 unless subsection 38-190(4) applies.*

Subsection 38-190(4)

234. *The supply of consultancy services by the consultancy firm is a supply under an agreement entered into with a resident entity, Aus Co. Paragraph 38-190(4)(a) is therefore satisfied.*

235. *It is then necessary to consider if paragraph 38-190(4)(b) is satisfied.*

236. *What is being supplied is the service of separately reviewing the business procedures and practice of Sub Co's operations in Australia and in Papua New Guinea to achieve efficiency gains and cost savings. The consultancy services are therefore provided to another entity, Sub Co.*

237. *In accordance with the explanation in Part IV of this Ruling (see paragraphs 415 to 418) Sub Co is present both in Australia and outside Australia when the thing supplied is done.*

238. *To the extent that the supply is for the purposes of Sub Co's presence outside Australia (that is, the Papua New Guinea branch office), the supply is provided to Sub Co outside Australia. To this extent subsection 38-190(4) is satisfied and paragraph (a) of item 3 is satisfied.*

239. *To the extent that the supply is for the purposes of Sub Co's presence in Australia (that is, its Australian head office), the supply is provided to Sub Co in Australia. To this extent subsection 38-190(4) is not satisfied and paragraph (a) of item 3 is not satisfied.*

Paragraph (b) of item 3

240. *As discussed above, the supply of the consultancy services by OzBiz is provided to Sub Co. However, the supply only satisfies paragraph (a) of item 3 to the extent that the supply is for the purposes of Sub Co's presence outside Australia. It is therefore only necessary to consider if paragraph (b) of item 3 is satisfied with respect to this part of the supply. Therefore, it is necessary to determine where effective use or enjoyment of this part of the supply takes place.*

241. *As explained in Part IV (paragraphs 419 to 423), to the extent that the supply is for the purposes of Sub Co's presence outside Australia (that is, its branch in Papua New Guinea), the supply is provided to Sub Co outside Australia and effective use or enjoyment of the supply takes place outside Australia. Therefore, paragraph (b) of item 3 is satisfied.*

Summary

242. *The supply by OzBiz is GST-free under item 3*[67] *to the extent the supply of consultancy services is provided to Sub Co's presence outside Australia (that is, to the extent the consultancy services are for the purposes of the Papua New Guinea branch office).*

243. *The supply by OzBiz is not GST-free under item 3 to the extent the supply is provided to Sub Co's presence in Australia (that is, to the extent the consultancy services are for the purposes of the head office in Australia).*

244. The above example is contrasted with the following two examples.

[67] The requirement in item 3 that the supply is not a supply of work physically performed on goods situated in Australia and is not a supply directly connected with real property situated in Australia is also satisfied.

Example 2 – supply of consultancy services made and provided to a resident company

245. *Referring back to Example 1, if OzBiz was engaged by Aus Co to review the business practices and procedures of Sub Co to assess compliance by Sub Co with Aus Co's reporting requirements and standards the service is made, and provided, to Aus Co; it is not a service which is provided to Sub Co.*

246. *As the service is made to Aus Co, which is in Australia when the consultancy services are performed, paragraph (a) of item 3 is not satisfied. As the supply is also provided to Aus Co in Australia subsection 38-190(4) does not apply to extend the application of paragraph (a) of item 3. Therefore, the supply is not GST-free under item 3.*

247. *While it is unnecessary to consider paragraph (b) of item 3, it is also not satisfied. The supply is provided to Aus Co. As the supply is for the purposes of Aus Co's presence in Australia, it is therefore provided to Aus Co in Australia and thus effective use or enjoyment of the supply does not take place outside Australia.*

Example 3 – supply of promotion services conducted overseas but made and provided to an entity in Australia

248. *Aus Promos is engaged by Aussie Reds to promote Aussie Reds' wines overseas. Both Aus Promos and Aussie Reds are Australian resident companies that only carry on business in Australia; that is, they have no presence outside Australia.*

249. *Aus Promos is responsible for the organisation and doing of all things necessary to promote and market the wines to potential customers overseas. The supply of the promotional services by Aus Promos is mainly performed overseas. As part of its promotional services Aus Promos contracts an Australian wine expert (a GST-registered resident individual with expert knowledge of the Australian wines) to travel overseas and explain the wines and to make sales pitches to attendees at the overseas events.*

Supply by Aus Promos to Aussie Reds

250. *The supply of promotional services by Aus Promos to Aussie Reds is made and provided to Aussie Reds, an Australian company, that is in Australia when the services are performed.*

251. *Therefore the supply by Aus Promos does not satisfy paragraph (a) of item 3 and is not GST-free under item 3.*[68] *(Note: although the services by Aus Promos are mainly performed outside Australia this does not alter the outcome. Aussie Reds, the entity to which the supply is made, is in Australia in relation to the supply.)*

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[68] See paragraphs 64 to 66 and 335 to 339 in GSTR 2004/7.

252. *While it is unnecessary to consider paragraph (b) of item 3, it is also not satisfied. The supply is provided to Aussie Reds. As the supply is for the purposes of Aussie Reds, which only has a presence in Australia, it is provided to Aussie Reds in Australia and thus effective use or enjoyment of the supply does not take place outside Australia. (When effective use or enjoyment of a supply provided to a company takes place outside Australia is explained in Part IV (paragraphs 401 to 423) of the Explanation section.)*

Supply by the wine expert to Aus Promos

253. *The supply by the wine expert is made to Aus Promos as it is Aus Promos, not Aussie Reds, that has contracted the wine expert to supply speaking services at the events.*

254. *It is necessary to consider if those services are provided to another entity such as the persons who attend the events or, to Aussie Reds as its wines are being promoted and marketed by the wine expert.*

255. *The nature of the wine expert's speaking services is not the professional development of persons who attend the events. Rather, the nature of the supply is promoting and marketing Aussie Reds' wines. While knowledge and information about the wine may flow to the persons attending events, this is only a by-product of the supply of speaking services and it does not alter the true nature of the service, that is, the promotion and marketing of Aussie Reds' wines. The speaking services supplied by the wine expert are made to Aus Promos but are provided to Aussie Reds.*

256. *As the supply by the wine expert is made to an Australian resident company (Aus Promos) that is in Australia when the services are performed and is provided to an Australian resident company (Aussie Reds) which is also in Australia when the services are performed, the supply does not satisfy the requirements of paragraph (a) of item 3 and subsection 38-190(4) does not apply to extend the application of paragraph (a) of item 3.*

257. *While it is unnecessary to consider paragraph (b) of item 3, it is also not satisfied. The supply is provided to Aussie Reds. As the supply is for the purposes of Aussie Reds, which only has a presence in Australia, it is provided to Aussie Reds in Australia and thus effective use or enjoyment of the supply does not take place outside Australia. (When effective use or enjoyment of a supply provided to a company takes place outside Australia is explained in Part IV (paragraphs 401 to 423) of the Explanation section.)*

258. *The supply of speaking services by the wine expert is therefore not GST-free under item 3.*[69]

Determining whether a supply made to an employer is provided to an employee

259. To determine whether a supply, which is made to an employer, is provided to an employee, it is essential to examine the nature of the supply closely. By examining what is really being supplied and how that supply is carried out, it is possible to establish to whom the service or other thing is provided, that is, the employer or another entity, the employee. If the supply is provided to the employee, we determine whether effective use or enjoyment takes place outside Australia with reference to the employee.

260. If an employee is involved with the provision of a supply, the weight to be given to that fact differs according to the circumstances of the supply in question. In some situations, contact by an employee with the supplier might indicate by itself, or together with other facts, that the supply is provided to that employee. For example, an employee meets with an accountant to prepare his or her tax return. In other circumstances, contact by an employee with a supplier may simply be to facilitate the provision of the supply to the employer. This is the case if, for example, an employee interacts with a law firm in circumstances where the firm is giving legal advice concerning a business venture of the employer.

261. In each of the following examples, the supply is made to the employer but is, in our view, provided to the employee. Therefore, we determine whether effective use or enjoyment takes place outside Australia with reference to the employee. The examples are as follows:

- the employer contracts with an entity to provide training to its employees. See Example 8, paragraphs 325 to 329, Part III, and Examples 24 and 25, Table 1, page 95, Part V, of the Explanation section;
- the employer purchases tickets to entertainment or sporting events for an employee. See Example 8, paragraphs 325 to 329, Part III, and Example 23, Table 1, page 94, Part V, of the Explanation section;
- the employer contracts with an entity to provide travel to an employee. See Example 8, paragraphs 325 to 329, Part III of the Explanation section;

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[69] Although the speaking services are performed outside Australia those services are nonetheless connected with Australia as the supply is made through an enterprise that the wine expert carries on in Australia (paragraph 9-25(5)(b)).

- the employer contracts with an accounting firm to provide tax return preparation services to its employees. See Example 7, paragraphs 314 to 320, Part III of the Explanation section; and
- the employer contracts for an employee's goods to be stored. See Example 14, paragraphs 371 to 378, Part III of the Explanation section.

Determining whether a supply is provided to an agent

262. Sometimes an entity makes an acquisition through an agent (that is, the agent enters into the contract with the supplier on the entity's behalf). If all the agent does is effect on behalf of the entity for the supply to be made and provided to the entity, the supply is not provided to the agent.[70] (See Example 22, Table 1, page 94, Part V of the Explanation section.)

Determining whether a supply is provided to a partner

263. A partnership, although not a separate legal entity from the persons that form the partnership, is treated, for GST purposes as if it were a separate entity.[71] Pursuant to section 184-5 an acquisition made by or on behalf of a partner in his or her capacity as partner in a partnership is taken to be an acquisition made by the partnership and is not taken to be an acquisition made by that partner (or any other partner of the partnership). Therefore the supply is taken to be made to the partnership (that is, the partnership is the recipient).

264. However, partners in a partnership are typically individuals and companies and while a supply may be taken to be made to a partnership the nature of the supply may nonetheless mean it is provided to, for example, an individual partner.

265. Referring to the examples listed at paragraph 261, just as the supplies contracted for by an employer are provided to the employee so too are such supplies provided to an individual partner, although they may be taken to be made to the partnership. Therefore, we determine whether effective use or enjoyment takes place outside Australia with reference to the individual partner. See Example 26, Table 1, page 95, Part V of the Explanation section.

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[70] See paragraphs 126 and 127 in the Ruling section and paragraphs 471 to 481 in the Explanation section of GSTR 2005/6 for a discussion regarding supplies provided to agents.

[71] Refer to paragraph 184-1(1)(e).

Supply is provided to more than one entity

266. If a supply is provided to more than one entity, each entity is a providee for that supply. It is necessary to determine where each providee entity uses or enjoys the supply. Apportionment is required if some, but not all, providee entities use or enjoy the supply outside Australia. Refer to Apportionment, paragraphs 470 to 550, Part VI of the Explanation section.

Further examples

267. In Tables 1 (pages 94 to 97) and 2 (pages 98 to 108), Part V of the Explanation section we provide further examples showing how to determine the entity to which the supply is provided and whether effective use or enjoyment of the supply takes place outside Australia. The examples draw on examples from GSTR 2005/6 and give the GST outcomes under items 2 and 3 for comparative purposes.

Part III – providee is an individual – determining whether effective use or enjoyment of a supply takes place outside Australia

268. An individual is the providee (that is, the entity to which a supply is provided) if either:

(a) the supply is made and provided to an individual (or is made and provided in part to an individual); or

(b) the supply is made to one entity but is provided to another entity who is an individual (or is provided in part to another entity who is an individual).

269. Once it is determined that a supply is provided to an individual it is necessary to consider if effective use or enjoyment of the supply takes place outside Australia.

270. For the reasons explained in Part I of the Explanation section, we consider that effective use or enjoyment of a supply takes place outside Australia (and therefore paragraph (b) of item 3 is satisfied) if the supply is provided to an individual outside Australia. If the supply is provided to the individual in Australia, effective use or enjoyment of the supply does not take place outside Australia and paragraph (b) of item 3 is not satisfied. (This means that if it has already been determined, for the purposes of paragraphs 38-190(3)(b) or (4)(b), that a supply is provided to an individual in Australia or outside Australia respectively, it follows that effective use or enjoyment of the supply also takes place at that location.)

271. In this Part we discuss how to determine:

- when provision of a supply occurs; and
- whether a supply is provided to an individual in Australia or outside Australia.

Provision of the supply occurs as and when the thing supplied is done

272. A supply is provided as and when the thing supplied is done. This is the relevant time for determining whether a supply is provided to an entity in Australia or outside Australia and thus whether effective use or enjoyment of the supply takes place outside Australia.

273. Consistent with views expressed in GSTR 2004/7 and GSTR 2000/31 as to when the thing supplied is done we consider that:

- *if the thing provided is a service* – provision of that service occurs during the period of time when the service is performed;

- *if the thing provided is advice or information and the supply involves work to create, develop or produce that information or advice for the entity* – the thing provided is the performance of services. The provision of the service occurs when the service is performed and includes the period of time during which the advice is prepared, produced or created, as the case may be;
- *if the thing provided is an instantaneous provision of advice or information* – the provision of that thing occurs at the time at which the advice or information is instantaneously provided;
- *if the thing provided is the creation, grant, transfer, assignment or surrender of a right* – the provision of that thing occurs at the time that the right is created, granted, transferred, assigned or surrendered; and
- *if the thing provided is the entry into, or release from, an obligation to do anything, or refrain from an act, or to tolerate an act or situation* – the provision of that thing occurs at the time at which the obligation is entered into or the release is effected.

274. Thus, in the case of a service performed over time, for example, provision of advice or information created, developed or produced over time, the relevant period for determining whether any part of the supply is provided to an entity in Australia or outside Australia, (and thus whether it is effectively used or enjoyed outside Australia), is the period during which the advice or information is created, developed or produced.

How to determine whether a supply is provided to an individual in Australia or outside Australia

275. To determine whether effective use or enjoyment of a supply provided to an individual takes place outside Australia, we determine whether there is provision of the supply to the individual in Australia or outside Australia. Only if there is provision of a supply to an individual outside Australia does effective use or enjoyment of the supply take place outside Australia.

276. To determine whether there is provision of a supply to an individual in Australia or outside Australia we distinguish between resident and non-resident individuals, according to whether they are physically in or outside Australia when the thing supplied is done. Distinguishing between individuals on the basis of their residency status and physical presence at a location is consistent with the approach taken for individuals in GSTR 2004/7 and GSTR 2005/6.

Resident individual physically in Australia when the thing supplied is done

277. If a supply is provided (or is required to be provided) to a resident individual who is physically in Australia when the thing supplied is done, the supply is provided to that individual in Australia.

278. This is consistent with the underlying presumption in item 3 (as it applies to resident individuals) that a supply is for consumption by a resident individual in Australia if that individual is physically in Australia when the thing supplied is done.

279. As the supply is provided to the individual in Australia, effective use or enjoyment of the supply does not take place outside Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3. (See Flowchart 2, page 34 of the Ruling section.)

Resident individual not physically in Australia when the thing supplied is done

280. If a supply is provided (or is required to be provided) to a resident individual who is not physically in Australia when the thing supplied is done, it is necessary to determine whether the presence of the resident individual outside Australia is integral to, as distinct from being merely coincidental with, the provision of the supply. (We explain at paragraphs 293 to 386 when a resident individual's presence outside Australia is integral to the provision of the supply.)

281. If a resident individual's presence outside Australia is integral to, as distinct from being merely coincidental with, the provision of the supply, we consider that the supply is provided to that individual outside Australia. As the supply is provided to the individual outside Australia, effective use or enjoyment of the supply takes place outside Australia. Paragraph (b) of item 3 is satisfied. The supply is GST-free under item 3 if the other requirements of item 3 are satisfied. (See Flowchart 2, page 34 of the Ruling section.)

282. Conversely, if a resident individual's presence outside Australia is not integral to the provision of the supply, we consider that the supply is provided to the individual in Australia. As the supply is provided to the individual in Australia, effective use or enjoyment of the supply does not take place outside Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3. (See Flowchart 2, page 34 of the Ruling section.)

283. This approach ensures that a supply to a resident individual is not GST-free merely because the individual is coincidentally located outside Australia when the thing supplied is done. It is also consistent with the approach taken if a non-resident individual is coincidentally located in Australia when the thing supplied is done; that is, the supply is not taxable merely because the non-resident individual is coincidentally located in Australia when the thing supplied is done.

284. Apportionment is required if, for part of the time when the thing supplied is done, a resident individual is physically outside Australia and the individual's presence outside Australia is integral to the provision of the supply. That part of the otherwise taxable supply[72] is GST-free. Apportionment is discussed at paragraphs 470 to 550, Part VI of the Explanation section.

Non-resident individual not physically in Australia when the thing supplied is done

285. If a supply is provided (or is required to be provided) to a non-resident individual who is not physically in Australia when the thing supplied is done, the supply is provided to that individual outside Australia.

286. This is consistent with the underlying presumption in item 2 and item 3 (as it applies to non-resident individuals) that a supply is for consumption by a non-resident individual outside Australia if that individual is not physically in Australia when the thing supplied is done.

287. As the supply is provided to the individual outside Australia, effective use or enjoyment of the supply takes place outside Australia. Paragraph (b) of item 3 is therefore satisfied and the supply is GST-free under item 3 if the other requirements of that item are satisfied. (See Flowchart 3, page 35.)

Non-resident individual physically in Australia when the thing supplied is done

288. If a supply is provided (or is required to be provided) to a non-resident individual who is physically in Australia when the thing supplied is done, it is necessary to determine whether the presence of the non-resident individual in Australia is integral to, as distinct from being merely coincidental with, the provision of the supply. (We explain at paragraphs 293 to 386 when a non-resident individual's presence in Australia is integral to the provision of the supply.)

289. If a non-resident individual's presence in Australia is integral to, as distinct from being merely coincidental with, the provision of the supply, we consider the supply is provided to that individual in Australia. As the supply is provided to the individual in Australia, effective use or enjoyment of the supply does not take place outside Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3. (See Flowchart 3, page 35 of the Ruling section.)

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[72] Assuming that the requirements of section 9-5 are otherwise satisfied.

290. Conversely, if a non-resident individual's presence in Australia is not integral to the provision of the supply, we consider that the supply is not provided to that individual in Australia; it is provided to the non-resident individual outside Australia. As the supply is provided to the non-resident individual outside Australia, effective use or enjoyment of the supply takes place outside Australia. Paragraph (b) of item 3 is satisfied. The supply is GST-free under item 3 if the other requirements of item 3 are satisfied. (See Flowchart 3, page 35 of the Ruling section.)

291. This approach ensures that a supply to a non-resident individual is not taxable merely because the non-resident individual is coincidentally located in Australia when the thing supplied is done.

292. Apportionment is required if, for part of the time when the thing supplied is done, a non-resident individual is physically in Australia and the individual's presence in Australia is integral to the provision of the supply. That part of the supply is taxable.[73] Apportionment is discussed at paragraphs 470 to 550, Part VI of the Explanation section.

How to determine whether an individual's presence at a particular location is integral to the provision of the supply

293. It is necessary to consider this section where a supply is provided to:

- a resident individual who is physically outside Australia when the thing supplied is done (see paragraphs 280 to 284); or
- a non-resident individual who is physically in Australia when the thing supplied is done (see paragraphs 288 to 292).

294. A supply is provided to an individual at a particular location (that is, outside Australia if a resident or in Australia if a non-resident), if the facts and circumstances of the supply show that the individual's presence at that location is integral to, as distinct from being merely coincidental with, the provision of the supply.

295. Determining whether an individual's presence at a particular location is integral to the provision of the supply and not merely coincidental requires an examination of the facts and circumstances of the supply. Indicators that an individual's presence at a particular location is integral to the provision of the supply include:

- the need for the supply arises from the individual's presence at that location; or
- the presence of the individual at that location is integral to the performance, receipt or delivery of the supply.

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[73] Assuming that the requirements of section 9-5 are otherwise satisfied.

The need for the supply arises from the individual's presence at a particular location

296. If the need for a supply to be provided to an individual arises from the individual's presence at a particular location, we consider that the supply is provided to the individual at that location.

297. Some examples of supplies where the need for the supply arises from an individual's presence at a particular location are as follows:

- a supply of immigration advice to a non-resident individual who wants to extend his or her stay in Australia;
- a supply of customs broker services to a non-resident individual who is in Australia and requires the services of a customs broker to enter goods for home consumption in Australia; and
- a supply of legal services which are provided to an individual at a location in relation to an offence committed by that individual while at that location. See Examples 4, (paragraphs 301 to 304), 5 (paragraphs 305 to 310) and 6 (paragraphs 311 and 312), Part III of the Explanation section.

298. The need for a supply does not arise from an individual's presence outside Australia (in the case of a resident individual), or in Australia (in the case of a non-resident individual), if the facts indicate that the supply is not necessitated by circumstances that arise from that individual's presence at that location but rather the supply is necessitated by the individual's absence from his or her usual place of residence.

299. For example, if a resident individual is on an overseas holiday or business trip and a supply of services is made to that individual to collect the individual's mail or care for elderly parents in Australia during that time, the need for the supply does not arise from the individual's presence overseas. Rather, the need for the supply arises from the individual's absence from Australia. (See also Example 16 at paragraphs 383 to 386). This can be contrasted with the situation where a resident individual relocates overseas and the circumstances of that individuals' presence overseas necessitates the storage of household goods and other personal effects in Australia.

300. We set out below in more detail examples of supplies, the circumstances of which indicate, in our view, that the need for the supply arises from the individual's presence at that location.

Example 4 – supply of legal services to a resident individual physically located outside Australia

301. *Jane, an Australian resident, is on holidays in New Zealand and while there commits an offence. While in New Zealand Jane engages an Australian solicitor to supply her with legal services.*

Paragraph (a) of item 3

302. *The supply of legal services is made to Jane who is not physically present in Australia when the thing supplied is done (that is the period during which the legal services are performed). The supply therefore satisfies paragraph (a) of item 3.*[74]

Paragraph (b) of item 3

303. *The supply of legal services is provided to Jane. The need for the supply of legal services arises from Jane's presence in New Zealand and therefore her presence in New Zealand is integral to the provision of the supply. The legal services are therefore provided to Jane outside Australia and the effective use or enjoyment of the supply of legal services takes place outside Australia. Paragraph (b) of item 3 is satisfied*

304. *The supply to Jane is therefore GST-free under item 3.*[75]

Example 5 – referring to Example 4, Jane's parents engage the services of the Australian solicitor

305. *Referring to Example 4, this example explains the outcome if Jane's parents (who are also Australian residents) engage the legal services of the solicitor instead of Jane.*

Paragraph (a) of item 3

306. *The supply of the legal services is made to Jane's parents who are physically present in Australia when the thing supplied is done (that is the period during which the legal services are performed). The supply does not satisfy paragraph (a) of item 3 unless subsection 38-190(4) applies.*[76]

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[74] See paragraphs 221 to 228 in GSTR 2004/7 which explain when an individual is in Australia for the purposes of item 3. If an individual is in Australia in relation to a supply paragraph (a) of item 3 is not satisfied.

[75] The requirement in item 3 that the supply is not a supply of work physically performed on goods situated in Australia and is not a supply directly connected with real property situated in Australia is also satisfied.

[76] See paragraphs 221 to 228 in GSTR 2004/7 which explain when an individual is in Australia for the purposes of item 3. If an individual is in Australia in relation to a supply paragraph (a) of item 3 is not satisfied. See paragraphs 186 to 197 in GSTR 2004/7 which explain subsection 38-190(4).

Subsection 38-190(4)

307. *Paragraph 38-190(4)(a) is satisfied as the supply is made under an agreement with resident individuals (Jane's parents).*

308. *It is then necessary to consider if paragraph 38-190(4)(b) is satisfied. Paragraph 38-190(4)(b) is only satisfied if the supply of legal services is provided to another entity outside Australia.*

309. *The supply of legal services is provided to Jane. As explained at paragraph 303, Jane's presence outside Australia is integral to the supply as the need for the supply arises from Jane's presence outside Australia. The supply is therefore provided to Jane, another entity, outside Australia and paragraph 38-190(4)(b) is satisfied. Subsection 38-190(4) applies and the supply of legal services satisfies paragraph (a) of item 3.*

Paragraph (b) of item 3

310. *Paragraph (b) of item 3 is satisfied and the supply is therefore GST-free under item 3.*[77] *See explanation at paragraph 303.*

Example 6 – referring to Examples 4 and 5, the solicitor continues to provide legal services following Jane's return to Australia

311. *Referring to Examples 4 and 5, this example explains the outcome where the solicitor continues to provide legal services to Jane following her return to Australia.*

312. *To the extent the solicitor continues to provide legal services to Jane in relation to this matter after she returns to Australia, the supply of those services does not satisfy either paragraph (a) or (b) of item 3 (irrespective of whether the supply is made to Jane or Jane's parents) and to that extent the supply of the legal services is not GST-free. Paragraph (a) of item 3 is not satisfied as Jane (Example 4) or Jane's parents (Example 5) are physically in Australia when the service is performed*[78] *and subsection 38-190(4) is not satisfied in the case of the supply to Jane's parents (Example 5). Paragraph (b) of item 3 is not satisfied as the supply of legal services is provided to Jane in Australia and to this extent effective use or enjoyment of the supply does not take place outside Australia. Therefore, to the extent legal services are supplied following Jane's return to Australia the supply is not GST-free under item 3.*

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[77] The requirement in item 3 that the supply is not a supply of work physically performed on goods situated in Australia and is not a supply directly connected with real property situated in Australia is also satisfied.

[78] See paragraphs 221 to 228 in GSTR 2004/7 which explain when an individual is in Australia for the purposes of item 3. If an individual is in Australia in relation to a supply paragraph (a) of item 3 is not satisfied.

313. The next example illustrates that knowledge of the residence status of an individual to whom the supply is provided is unnecessary if it is clear in any case that a supply is provided to an individual at a particular location.

Example 7 – preparation of foreign tax returns for employees of a non-resident company who are working in Australia

314. *An Australian resident accounting firm enters into an arrangement with a non-resident company to complete tax returns for the non-resident company's employees working in Australia on secondment with a client of the non-resident company. The non-resident company does not carry on business in Australia through a place of its own or through an agent.*

315. *Each employee is available to answer questions and to provide necessary information. The returns are completed and signed by each employee while the employee is in Australia.*

Paragraph (a) of item 3

316. *The supply of tax return services is made to a non-resident company that is not in Australia when the thing supplied is done (that is the period during which the services of preparing the tax returns are performed).*[79] *The supply therefore satisfies paragraph (a) of item 3.*

Paragraph (b) of item 3

317. *What is being supplied is the service of preparing the tax returns of the employees. The nature of the service is such that the supply of tax return preparation services is provided, in part, to each employee.*

318. *Each employee is in Australia when the tax return services are performed. On the facts their presence in Australia is integral to the provision of the supply. It is not merely coincidental to the provision of the supply. The supply is therefore provided to each employee in Australia.*

319. *As the supply is provided to each employee in Australia, effective use or enjoyment of the supply does not take place outside Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3.*

[79] See paragraphs 333 to 372 in GSTR 2004/7 which explain when a company is in Australia for the purposes of item 3. If a company is in Australia in relation to a supply paragraph (a) of item 3 is not satisfied.

320. *If the finalised returns are sent to the non-resident company and are on-forwarded to its employees in Australia, this does not alter the nature of the supply and the fact that the supply of tax return preparation services is provided to the employees in Australia for the reasons explained at paragraph 318 of this Ruling.*

The presence of the individual at that location is integral to the performance, receipt or delivery of the supply

321. If the presence of the individual at a particular location is integral to the performance, receipt or delivery of the supply we consider that the supply is provided to the individual at that location.

322. Some examples of supplies where the presence of the individual at that location is integral to the performance, receipt or delivery of the supply, are as follows:

- supply of training or entertainment – the services are to be received by the individual at that location. (See Example 8, paragraphs 325 to 329);
- supply of travel – the travel is to be undertaken by the individual at that location. (See Example 8, paragraphs 325 to 329);
- supply of hairdressing or other similar services applied to the person – the services are to be performed on the individual at that location; and
- supply of assessment services – the assessment of the individual is undertaken at that location and the individual is required to be present for the assessment.

323. We set out below in more detail examples of supplies, the circumstances of which indicate, in our view, that the presence of the individual is integral to the performance, receipt or delivery of the supply.

324. The next example illustrates that knowledge of the residence status of an individual to whom the supply is provided is unnecessary if it is clear in any case that a supply is provided to an individual at a particular location.

Example 8 – supply of face to face training and entertainment provided to a non-resident employee of a non-resident company

325. *A non-resident US company contracts with an Australian firm to provide training to its employee, Kris (also a non-resident). Kris is required to attend the training in Melbourne. As Kris is in Australia over a weekend the company also purchases tickets for Kris to attend a football game and to take a bus tour of the Great Ocean road.*

326. *The non-resident company does not carry on business in Australia through a place of its own or through an agent.*

Paragraph (a) of item 3

327. *Each of the supplies mentioned (that is, the training, the football game and the bus tour) are made to the non-resident company that is not in Australia in relation to the supply when the thing supplied is done. Each supply therefore satisfies paragraph (a) of item 3.*[80]

Paragraph (b) of item 3

328. *With respect to the training, what is being supplied is the teaching and tutoring of Kris. It is in the nature of such training services that it is Kris who is trained, not her employer, and it is therefore Kris who is provided with the training. Similarly with the supply of the football game and the bus tour, it is Kris that travels and is entertained, respectively. These services are of a kind that can only be provided to the individual, Kris. The flow of the actual services of training, travel and entertainment is to Kris and not to her non-resident employer. Each supply is therefore provided to Kris.*

329. *The contract with the supplier of the training course requires Kris to attend the training course in Melbourne. As Kris' presence in Australia is integral to her receiving the training, the supply is provided to Kris in Australia. Similarly Kris' presence in Australia is integral to partaking of the football game and undertaking the bus tour. Each supply is therefore provided to Kris in Australia and effective use or enjoyment of each supply does not take place outside Australia.*[81] *Paragraph (b) of item 3 is not satisfied with respect to any supply and therefore the supplies of training, football game and bus tour are not GST-free under item 3.*

Example 9 – supply of life coaching services made to a company but provided to its employees

330. *Aus Co is contracted by a resident company to provide life coaching to high performing employees at its branch in New Zealand. The purpose of the coaching is to groom the employee to take on more senior roles within the company.*

331. *The life coaching takes place at the employee's workplace in New Zealand. The employees are non-resident individuals.*

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[80] See paragraphs 333 to 372 in GSTR 2004/7 which explain when a company is in Australia for the purposes of item 3. If a company is in Australia in relation to a supply paragraph (a) of item 3 is not satisfied.

[81] Each supply in this example is of a service. The provision of that service occurs during the period of time when the service is performed (see paragraph 273 of this Ruling). This is the relevant period for determining whether the supply is provided to Kris in Australia or outside Australia.

Paragraph (a) of item 3

332. *The supply of life coaching services is made to a resident company that is in Australia in relation to the supply when the thing supplied is done (that is the period during which the life coaching services are performed). The supply does not satisfy the requirements of paragraph (a) of item 3 unless subsection 38-190(4) applies.*[82]

Subsection 38-190(4)

333. *Paragraph 38-190(4)(a) is satisfied as the supply is made under an agreement with a resident company.*

334. *Paragraph 38-190(4)(b) is only satisfied if the supply is provided to another entity outside Australia. The supply by Aus Co is made to the resident employer company. However, it is the employee that is receiving the development through the life coaching. The Commissioner therefore considers that the supply of life coaching is provided to each employee.*

335. *As each employee is a non-resident individual who is outside Australia when the supply is performed, the supply is provided to each employee outside Australia. Paragraph 38-190(4)(b) is satisfied. Subsection 38-190(4) applies and the supply of life coaching services satisfies paragraph (a) of item 3. (Although the facts state each individual employee is a non-resident the result would not alter if the employee was in fact a resident individual who is provided with life coaching outside Australia. This is because the individual's presence outside Australia is integral to, and not merely coincidental with, the supply provided. Therefore, it is unnecessary to determine the residence status of an individual if in any case the individual's presence at a particular location is integral to, and not merely coincidental with, the provision of a supply.)*

Paragraph (b) of item 3

336. *The supply is provided to each employee and as discussed at paragraph 334, the supply is provided to each employee outside Australia. Therefore the effective use or enjoyment of the supply takes place outside Australia. Paragraph (b) of item 3 is satisfied. The supply is GST-free under item 3.*[83]

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[82] See paragraphs 333 to 372 in GSTR 2004/7 which explain when a company is in Australia for the purposes of item 3. If a company is in Australia in relation to a supply paragraph (a) of item 3 is not satisfied. See paragraphs 186 to 197 in GSTR 2004/7 which explain subsection 38-190(4).

[83] The requirement in item 3 that the supply is not a supply of work physically performed on goods situated in Australia and is not a supply directly connected with real property situated in Australia is also satisfied.

A supply of certain freight or delivery services

337. In the case of delivery or freight services which are provided to an individual in the circumstances described at paragraph 225, we accept those services are provided to that individual in Australia, if the goods are addressed to the individual in Australia. Alternatively, if the goods are addressed to the individual outside Australia, we accept that those services are provided to that individual outside Australia. This approach recognises the inherent practical difficulties in otherwise determining whether the supply is provided to an entity in Australia or outside Australia and thus whether effective use or enjoyment of the supply takes place outside Australia, particularly if the freight or delivery services are the subject of subcontract arrangements. Further, this approach does not require the residency status of the individual to whom the goods are addressed to be determined.

338. This approach does not, however, apply to the delivery of goods that are generically addressed to 'The Householder' or are for delivery to the public at large. In that case we consider the supply is made and provided to the entity seeking to have the goods delivered – see Example 11, paragraphs 354 to 358.

339. It also does not apply to circumstances where an individual's goods are freighted or moved from one location to another location; for example, where the individual is relocating overseas and the individual's household goods are freighted to an address overseas. The circumstances of the particular supply in question must be considered to determine the entity to which the supply is provided and whether the supply is provided to that entity in Australia or outside Australia and thus whether effective use or enjoyment of the supply takes place outside Australia.

340. The following example illustrates the approach where goods from a resident entity are sent to a non-resident individual. This can be contrasted with Example 12 (which follows) where the delivery is to the public (individuals) at large.

Example 10 – international freight exports – domestic leg of transport – supply of transport services (freight services only) made to a resident company and provided to another entity

341. *An Australian exporter sells goods to a Japanese individual on delivered duty paid terms. The exporter is therefore obliged to deliver the goods to the Japanese customer at the named place of destination, Tokyo. The Japanese customer takes delivery of the goods in Tokyo.*

342. *The Australian exporter contracts with an Australian airline, Aus Air Freight, to transport the goods from Adelaide to Tokyo. Aus Air Freight contracts with an Australian transport supplier, Aus Transport, to undertake the domestic leg of the transport of the goods from Adelaide to Sydney.*

343. *Aus Transport supplies Aus Air Freight with domestic transport services. Aus Transport moves the goods from Adelaide to Sydney on behalf of Aus Air Freight. The supply by Aus Transport is not covered by item 5 of section 38-355 as Aus Transport is not the supplier of the international transport of the goods from Australia.*

344. *Aus Transport arranges with the Australian exporter a suitable time to pick up the goods. The transport service occurs over the time from picking up the goods in Adelaide to delivery in Sydney.*

Paragraph (a) of item 3

345. *The supply of domestic transport services by Aus Transport to Aus Air Freight is a supply made to a resident company that is in Australia when the transport services are performed. The supply does not satisfy paragraph (a) of item 3 unless subsection 38-190(4) applies.*[84]

Subsection 38-190(4)

346. *The supply of domestic transport services by Aus Transport to Aus Air Freight is a supply under an agreement entered into with a resident. Paragraph 38-190(4)(a) is therefore satisfied.*

347. *It is then necessary to consider if paragraph 38-190(4)(b) is satisfied. Under the export sale terms, the Australian exporter is required to provide the Japanese customer with the services of delivering the goods to the customer at the named place of destination, Tokyo. The Australian exporter effects provision of delivery services to the Japanese customer through Aus Air Freight. Aus Air Freight in turn subcontracts to Aus Transport, part of the provision of delivery services to the Japanese customer.*

348. *On these facts the transport services supplied by Aus Transport to Aus Air Freight are provided to the Japanese customer. Delivery services are required to be provided to the Japanese customer and those services are provided to the customer under various subcontract arrangements.*

349. *We recognise, however, that Aus Transport may not be aware of the full circumstances of the supply of transport, as described above, that it makes to Aus Air Freight. At a practical level the transport services supplied by Aus Transport are provided to the addressee, the Japanese customer. Thus, if goods from one entity are addressed for delivery to another entity, we consider that it is reasonable for Aus Transport to conclude that the transport services are provided to the addressee entity. Therefore, the supply of transport services by Aus Transport is provided to another entity, the Japanese customer.*

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[84] See paragraphs 333 to 372 in GSTR 2004/7 which explain when a company is in Australia for the purposes of item 3. If a company is in Australia in relation to a supply paragraph (a) of item 3 is not satisfied. See paragraphs 186 to 197 in GSTR 2004/7 which explain subsection 38-190(4).

350. *If the Japanese customer is not in Australia when the transport services are performed by Aus Transport, the supply is provided to the Japanese customer outside Australia and paragraph 38-190(4)(b) is satisfied. We recognise that Aus Transport is unlikely to know the specific whereabouts of the Japanese customer at all times during the period when the transport services are performed. At a practical level if the goods are addressed to an entity outside Australia, we consider it is reasonable for Aus Transport to conclude that the transport services are provided to that other entity outside Australia. The supply therefore is provided to another entity, the Japanese customer, outside Australia.*

351. *Subsection 38-190(4) is satisfied and therefore paragraph (a) of item 3 is satisfied.*

Paragraph (b) of item 3

352. *The supply is provided to the Japanese customer. To determine whether effective use or enjoyment of the supply takes place outside Australia it is necessary to consider if provision of the supply is to the Japanese customer outside Australia.*

353. *We explain above for the purposes of paragraph 38-190(4)(b) that we consider the supply of delivery or freight services is provided to the Japanese customer outside Australia. Therefore effective use or enjoyment of the supply of the transport services supplied by Aus Transport takes place outside Australia. Paragraph (b) of item 3 is satisfied. The supply of transport services supplied by Aus Transport is therefore GST-free under item 3.*

Example 11 – supply of delivery services made and provided to a resident company

354. *Booklovers Inc (a resident company) seeks to distribute advertising material in New Zealand to the public at large. Booklovers Inc contracts with Ace Couriers (another Australian company) to distribute the advertising material on its behalf in New Zealand.*

Paragraph (a) of item 3

355. *The supply of delivery services by Ace Couriers is made to a resident company that is in Australia when the delivery services are performed. The supply does not satisfy the requirements of paragraph (a) of item 3 unless subsection 38-190(4) applies.*

Subsection 38-190(4)

356. *Subsection 38-190(4) does not apply. The delivery services are not required to be provided to any entity other than Booklovers Inc. The unsolicited delivery of goods to the public at large is not the provision of delivery services to another entity. The supply of delivery services is therefore made and provided to Booklovers Inc.*

357. *As subsection 38-190(4) does not apply the supply does not satisfy paragraph (a) of item 3.*

Paragraph (b) of item 3

358. *While it is unnecessary to consider paragraph (b) of item 3, it is also not satisfied. The supply is provided to Booklovers Inc and as the supply is provided to Booklovers Inc for the purposes of its Australian presence, the supply is provided to Booklovers Inc in Australia. Therefore, effective use or enjoyment of the supply does not take place outside Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3.*

The presence of the individual at that location is not integral to the provision of the supply

359. The following are examples of circumstances in which we consider that the individual's presence at a particular location is not integral to the provision of the supply:

- while a resident individual is on holiday outside Australia, the individual has a graphic design artist prepare designs for promotional material for the individual's business in Australia;
- while a resident individual is on a business trip outside Australia, the individual has the mail collected and pets cared for;
- while a resident individual is on holiday outside Australia, the individual has his or her tax return prepared and lodged in Australia (see Example 13, paragraphs 366 to 370, Part III of the Explanation section);
- a service is provided to an individual who is a resident of Australia and, during the period when those services are performed, the individual goes overseas on holiday. While on holiday outside Australia the resident individual checks on the progress of the supply of services or the supplier contacts the resident individual to update the individual on the progress. The need for the supply does not arise from the individual's presence outside Australia and the individual's presence outside Australia is not integral to the performance, receipt or delivery of the supply (a similar example is Example 12, paragraphs 361 to 365, Part III of the Explanation section); and

- a service is provided to an individual who is a non-resident and, during the period when those services are performed, the individual comes to Australia on holiday. While on holiday in Australia the non-resident individual takes the opportunity to visit the supplier to check on the progress of the supply of services or the supplier contacts the non-resident individual to update the individual on the progress. The need for the supply does not arise from the non-resident individual's presence in Australia and the individual's presence in Australia is not integral to the performance, receipt or delivery of the supply (a similar example is Example 14, paragraphs 371 to 378, Part III of the Explanation section).

360. We set out below some examples of supplies, the circumstances of which indicate, in the Commissioner's view, that the individual's presence at that location when the service is performed is merely coincidental with, and not integral to, the provision of the supply.

Example 12 – supply of private investigation services to a resident individual physically located outside Australia

361. *Peter, an Australian resident, engages an Australian private investigator to find a relative who may be either in Australia or outside Australia. Peter is on holidays outside Australia during part of the time when those services are provided to him. The private investigator provides weekly updates via email to Peter on the progress he is making in finding the missing relative.*

Paragraph (a) of item 3

362. *The supply of private investigation services by the private investigator is made to Peter who is physically located outside Australia for part of the time when the services are being supplied. To the extent that Peter is physically located outside Australia during the period over which the services are supplied, the supply satisfies paragraph (a) of item 3.*[85]

Paragraph (b) of item 3

363. *The supply is provided to Peter. As Peter is a resident who is physically located outside Australia for part of the time during which the services are performed it is necessary to determine if Peter's presence outside Australia is integral to the supply.*

[85] See paragraphs 221 to 228 in GSTR 2004/7 which explain when an individual is in Australia for the purposes of item 3. If an individual is in Australia in relation to a supply paragraph (a) of item 3 is not satisfied.

364. *In the circumstances of this supply Peter's presence outside Australia is not integral to the provision of the supply. Peter's presence outside Australia is merely coincidental with the provision of the supply and the weekly emails to Peter while he is overseas are merely necessitated by his absence from Australia on holiday.*

365. *As Peter's presence outside Australia is not integral to the provision of the supply, the supply is not provided to Peter outside Australia and therefore effective use or enjoyment of the supply does not take place outside Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3.*

Example 13 – supply of accounting services to a resident individual physically located outside Australia

366. *Matt, an Australian resident, engages an accountant to prepare and lodge his income tax return. During the time that his tax return is prepared Matt is overseas on holidays. While overseas Matt has a couple of phone calls with the accountant concerning deductions.*

Paragraph (a) of item 3

367. *The supply of accountancy services by the accountant is made to Matt who is physically located outside Australia for part of the time when the services are being supplied. To the extent that Matt is physically located outside Australia during the period over which the services are supplied, the supply satisfies paragraph (a) of item 3.*

Paragraph (b) of item 3

368. *The supply is provided to Matt and as Matt is a resident who is physically located outside Australia during the period when the accounting services are performed it is necessary to determine if Matt's presence outside Australia is integral to, or merely coincidental with, the supply.*

369. *In the circumstances of this supply Matt's presence outside Australia is merely coincidental with the provision of the supply and the phone calls to/from the accountant while he is overseas are merely necessitated by his absence from Australia on holiday.*

370. *As Matt's presence outside Australia is coincidental with, rather than being integral to, the provision of the supply of accountancy services, the supply is not provided to Matt outside Australia. We therefore consider the supply is provided to Matt in Australia and the effective use or enjoyment of the supply does not take place outside Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3.*

Example 14 – supply of storage services to a non-resident individual physically located in Australia

371. *John, formerly an Australian resident, has goods stored in Brisbane at Aus Lock-up's storage facility. John comes to Australia on holiday and calls in to check on the condition and safety of the goods he has stored at the facility. [Note: it is the supply of a storage service only; it does not give John an interest in real property and is not therefore a supply of real property to John.]*

Paragraph (a) of item 3

372. *The supply of storage services by Aus Lock-up is made to John, a non-resident, who is physically located in Australia for part of the time over which the services are supplied. As John is a non-resident and in Australia it is necessary to consider if John is in Australia in relation to the supply.*[86] *John is only in Australia in relation to the supply to the extent that he is in contact with the supplier while in Australia and that contact is not minor. As John is only checking on the condition and safety of his stored goods, John is not involved with the supply while in Australia and therefore is not in Australia in relation to the supply. Therefore, the supply to John satisfies paragraph (a) of item 3.*

Paragraph (b) of item 3

373. *The supply is provided to John. As John is a non-resident who is physically located in Australia for part of the time over which the services are supplied, it is necessary to determine if John's presence in Australia is integral to, or merely coincidental with, the supply.*

374. *John's presence in Australia during part of the period over which the storage services are provided is merely coincidental with the supply of storage services and is not in any way integral to the supply of those services. In the circumstances of this supply, John merely takes advantage of being in Australia to check on the condition and safety of his stored goods; this does not make his presence in Australia integral to the supply being provided. As John's presence in Australia is not integral to the provision of the supply, the supply is not provided to John in Australia. We therefore consider the supply is provided to John outside Australia at all times and effective use or enjoyment of the supply continues to take place outside Australia even though for part of the time John is physically located in Australia. Paragraph (b) of item 3 is satisfied and the supply is GST-free under item 3.*[87]

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[86] See paragraphs 221 to 228 in GSTR 2004/7 which explain when an individual is in Australia for the purposes of item 3. If an individual is in Australia in relation to a supply paragraph (a) of item 3 is not satisfied.

[87] The requirement in item 3 that the supply is not a supply of work physically performed on goods situated in Australia and is not a supply directly connected with real property situated in Australia is also satisfied.

Alternative view

375. *On one view a supply of storage services in respect of goods situated in Australia is effectively used or enjoyed in Australia. However we consider that a supply of this kind even though it involves goods situated in Australia is for consumption outside Australia if the supply is, for example, made to a non-resident who is not in Australia when the storage services are performed. Our view, we believe, is supported by the legislative frame work of items 2 and 3.*

376. *Items 2 and 3 specifically address supplies that are connected with goods situated in Australia. The GST-free status of a supply that otherwise satisfies the requirements of items 2 or 3 is negated if the supply is a supply of work physically performed on goods. A supply of storage services in respect of goods in Australia is not a supply of work physically performed on goods.*[88]

377. *It is also relevant that the Government extended the scope of services that are GST-free under these items by substituting the phrase 'a supply of work physically performed on goods situated in Australia' (which does not include a supply of storage services of goods situated in Australia) for 'a supply directly connected with goods situated in Australia' (which would have included a supply of storage services in respect of goods situated in Australia).*

378. *It would be anomalous in our view to deny the GST-free status of a supply under paragraph (b) of item 3 on the basis that the supply has a direct connection with goods in Australia.*

Example 15 – supply of instantaneous financial advice to a resident individual physically located outside Australia

379. *Belinda, an Australian resident, is outside Australia on holiday when she is provided with instantaneous advice over the phone by her accountant in Australia. The advice concerns the public listing in Australia of a company in which Belinda may wish to invest.*

Paragraph (a) of item 3

380. *The supply of advice is made to Belinda who is not physically in Australia when the thing supplied is done (that is at the time when the advice is instantaneously provided). The supply to Belinda therefore satisfies the requirements of paragraph (a) of item 3.*[89]

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[88] Refer GSTR 2003/7 at paragraphs 56 to 77. As storage services do not change the goods or otherwise affect them in some physical way storage services (similar to transport services) is not a supply of work physically performed on goods.

[89] See paragraphs 221 to 228 in GSTR 2004/7 which explain when an individual is in Australia for the purposes of item 3. If an individual is in Australia in relation to a supply paragraph (a) of item 3 is not satisfied.

Paragraph (b) of item 3

381. *The supply of advice is provided to Belinda and as Belinda is a resident individual who is outside Australia when the advice is given to her, it is necessary to consider whether her presence outside Australia is integral to the supply or is merely coincidental. The phone call from the accountant to Belinda overseas is merely necessitated by her absence from Australia on holiday. Belinda's presence overseas at the time when the advice is given is merely coincidental with, and is not in anyway integral to, the supply.*

382. *The effective use or enjoyment of the supply does not take place outside Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3.*

Example 16 – supply of services of taking messages, telephone calls, mail and faxes made by a resident company to a resident sole trader who is outside Australia when the services are performed

383. *Aus Co is a resident of Australia. Aus Co has been contracted by Anna, a sole trader, to take messages, handle telephone calls, mail and faxes on her behalf while she is on holiday in France. Aus Co in effect operates as the postal address and telephone contact for Anna's business while she is on holidays. Aus Co does not otherwise conduct any business on behalf of Anna; it merely forwards on messages, faxes and phone calls to her in France. Once Anna returns to Australia the services of Aus Co are no longer required.*

Paragraph (a) of item 3

384. *The supply of services by Aus Co is made to Anna who is physically located outside Australia when the thing supplied is done (that is the period during which the services are performed). The supply therefore satisfies paragraph (a) of item 3.*[90]

[90] See paragraphs 221 to 228 in GSTR 2004/7 which explain when an individual is in Australia for the purposes of item 3. If an individual is in Australia in relation to a supply paragraph (a) of item 3 is not satisfied.

Paragraph (b) of item 3

385. *The supply of services is provided to Anna. As Anna is a resident of Australia who is outside Australia when the services are performed it is necessary to determine if Anna's presence outside Australia is integral to the supply provided by Aus Co. Anna has business operations in Australia which must continue to be attended to in her absence and which she needs to keep in touch with while she is on overseas. Thus her absence from Australia gives rise to the need for services such as taking messages, telephone calls, mail and faxes. The facts are such that the supply is necessitated by circumstances that arise from her usual presence in Australia and not her presence overseas. As Anna's presence outside Australia is not integral to the supply of the services, the supply is provided to Anna in Australia. Effective use or enjoyment of the supply does not take place outside Australia.*

386. *Paragraph (b) of item 3 is not satisfied and the supply to Anna is not GST-free under item 3.*

Later use of a supply by an entity

387. If the nature of a supply is such that the supply is provided to an individual outside Australia and thus effectively used or enjoyed outside Australia, the fact that the results or outcomes of the supply are later used in Australia does not alter the outcome that effective use or enjoyment of the supply takes place outside Australia.

388. For instance, if training services are provided to employees of a resident company who are outside Australia attending the training course, the later use in Australia of the skills and knowledge gained by the employees from those training services does not alter the fact that the training services are provided to the employees outside Australia and thus effective use or enjoyment of those services takes place outside Australia.[91]

389. Similarly, if a supply is provided to an individual in Australia, and that supply is later used outside Australia, that later use does not alter the fact that the supply is provided to that entity in Australia and thus effective use or enjoyment of the supply does not take place outside Australia.

390. The enquiry is one of determining the exact nature of the supply having regard to all the facts and circumstances and then whether that supply, as properly described, is provided to an individual outside Australia or in Australia.

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[91] See the UK VAT case of *Customs and Excise Commissioners v. G & B Practical Management Development Ltd* [1979] STC 280 as an example of the application of the distinction between the supply of training services to employees in the UK and the later use outside the UK of the skills and knowledge gained by the employees from those training services.

Another entity benefits from the supply

391. If the nature of the supply is such that the supply is provided to an individual outside Australia and thus effective use or enjoyment of the supply takes place outside Australia, this outcome is not altered even if another entity in Australia benefits from the supply.

392. Similarly, if a supply is provided to an individual in Australia, and another entity outside Australia benefits from that supply this does not alter the outcome that the supply is provided to the individual in Australia and thus effective use or enjoyment of the supply does not take place outside Australia.

393. Also refer to paragraphs 462 to 465, Part IV of the Explanation section.

394. As stated at paragraph 390, the enquiry is one of determining the nature of the supply having regard to all the facts and circumstances of the supply, and then whether the supply, as properly described, is provided to the individual outside Australia or in Australia.

Further examples

395. In Part V of the Explanation section, we provide further examples of supplies provided to individuals and where effective use or enjoyment of the supply takes place. The examples draw on examples from GSTR 2005/6 and give the GST outcome under item 3 (and item 2 for comparative purposes). See Table 1, pages 94 to 97.

Part IV – providee is a company, partnership, corporate limited partnership or trust – determining whether effective use or enjoyment of a supply takes place outside Australia

396. A company, partnership, corporate limited partnership or trust is the providee (that is, the entity to which a supply is provided) if either:

(a) the supply is made and provided to a company, partnership, corporate limited partnership or trust (or is made and provided in part to that entity); or

(b) the supply is made to one entity (whether an individual or an entity other than an individual) but is provided to another entity that is a company, partnership, corporate limited partnership or trust (or is provided in part to another such entity).

397. Once it is determined that the supply is provided to a company, partnership, corporate limited partnership or trust it is necessary to determine whether effective use or enjoyment of the supply takes place outside Australia.

398. For the reasons explained in Part I of the Explanation section, we consider that effective use or enjoyment of a supply takes place outside Australia (and therefore paragraph (b) of item 3 is satisfied) if the supply is provided to a company, partnership, corporate limited partnership or trust outside Australia. If the supply is provided to the company, partnership, corporate limited partnership or trust in Australia, effective use or enjoyment of the supply does not take place outside Australia and paragraph (b) of item 3 is not satisfied. (This means that if it has already been determined, for the purposes of paragraphs 38-190(3)(b) or (4)(b), that a supply is provided to a company, partnership, corporate limited partnership or trust in Australia or outside Australia respectively, it follows that effective use or enjoyment of the supply also takes place at that location.)

399. In this Part we discuss how to determine:

- when provision of a supply occurs; and
- whether a supply is provided to an entity (other than an individual) in Australia or outside Australia.

Provision of the supply occurs as and when the thing supplied is done

400. A supply is provided as and when the thing supplied is done. This is the relevant time for determining whether a supply is provided to an entity in Australia or outside Australia and thus whether effective use or enjoyment of the supply takes place outside Australia. (Refer paragraphs 272 to 274, Part III of the Explanation section for an explanation of when different types of supplies, for example supplies of services, supplies of advice etc., are provided to an entity.)

How to determine whether a supply is provided to a company, partnership, corporate limited partnership or trust in Australia or outside Australia

401. To determine whether effective use or enjoyment of a supply provided to a company, partnership, corporate limited partnership or trust takes place outside Australia, we determine whether there is provision of the supply to the entity in Australia or outside Australia. Only if there is provision of a supply to the entity outside Australia does effective use or enjoyment of the supply take place outside Australia.

402. To determine whether there is provision of a supply to a company, partnership, corporate limited partnership or trust in Australia, or outside Australia, it is first necessary to determine whether the entity has a presence in Australia.

403. If a supply is provided to an entity that does not have a presence in Australia (as determined at paragraphs 415 to 418 of this Ruling in accordance with GSTR 2004/7), the supply cannot be provided to that entity in Australia. Therefore, the supply is provided to that entity outside Australia. Effective use or enjoyment of that supply takes place outside Australia and paragraph (b) of item 3 is satisfied.

404. If a supply is provided to an entity that only has a presence in Australia (that is, the entity does not have a presence such as a branch outside Australia), the supply cannot be provided to that entity outside Australia. Therefore, the supply is provided to that entity in Australia. Effective use or enjoyment of that supply does not take place outside Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3.

Alternative view

405. The alternative view is that effective use or enjoyment should be determined precisely on those words and the presence of an entity at a particular location may or may not be relevant to determining where effective use or enjoyment of a supply occurs.

406. The reasons for departing from an approach that determines the place of use or enjoyment on the basis of where a supply is used or enjoyed, depending on the meaning of those words in any particular case, are explained at paragraphs 180 to 207, Part I of the Explanation section.

407. We recognise that, in establishing the actual place of use or enjoyment, the more exact that one seeks to be the more subjective the analysis becomes and the greater the complexities in application. There has to be a sensible balance between achieving the most accurate outcome (at least from a strict theoretical GST point of view) and the administration of the law. We consider our approach in linking use or enjoyment with a requisite level of presence of an entity, such as a company, in Australia or overseas achieves this balance.

408. Importantly, we also consider that the legislative framework of section 38-190 supports our approach in requiring a certain level of presence in a jurisdiction for a supply to be treated as a supply for consumption by an entity at that place.

409. Under item 2 if a supply is made and provided to a non-resident company that has no presence in Australia that supply is GST-free (unless the supply is directly connected with goods situated in Australia or a supply of work physically performed on goods situated in Australia). We determine whether the company has a presence in Australia with reference to jurisdiction tests (see GSTR 2004/7 at paragraphs 229 to 379).

410. In *Fiduciary Ltd & Ors v. Morningstar Research Pty Ltd*[92] Gzell J noted that:

> In GSTR 2002/D8 and GSTR 2003/D9,[93] the Commissioner of Taxation has adopted the principles applicable to the presence of a corporation in Australia for jurisdictional purposes and has, correctly in my view, applied those principles to item 2 …[94]

411. His Honour, in considering whether a corporation was in Australia for the purposes of item 2 said that '[b]y using the phrase 'in Australia', Parliament invited adoption of the body of law dealing with that which constituted a corporate presence in Australia'.[95]

412. It is therefore consistent with the findings of the Court in that case to apply a jurisdictional approach to determining if an entity, to which a supply is made and provided, is in Australia when considering the 'not in Australia' requirement in item 2 and paragraph (a) of item 3.

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[92] [2004] NSWSC 381.
[93] At the time of the case the Commissioner had adopted those principles in the earlier draft rulings that preceded GSTR 2004/7. The same principles are now reflected in GSTR 2004/7.
[94] *Fiduciary Ltd & Ors v. Morningstar Research Pty Ltd* [2004] NSWSC 381, at paragraph 32.
[95] *Fiduciary Ltd & Ors v. Morningstar Research Pty Ltd* [2004] NSWSC 381, at paragraph 44.

413. It follows, in our view, that if a supply is made to one entity (for example, company) and provided to another entity (for example, company) the same presence test should be applied to determine if the supply to that other company is for consumption in Australia. That is, the level of presence relevant for consumption in Australia should not change depending on whether the test is applied to the company the supply is made to, or the company the supply is provided to.

414. On this basis the level of presence test is consistently applied within, and across items 2 and 3 and subsections 38-190(3) and (4).

Determining whether a company, partnership, corporate limited partnership or trust has a presence in Australia

415. Unlike an individual, an entity such as a company, partnership, corporate limited partnership or trust does not have a precise physical location. The entity, through its representatives, may be present in more than one location at the same time.

416. Consistent with GSTR 2004/7 we consider that a *company, corporate limited partnership or trust* is in Australia (irrespective of its residency status) if the entity carries on business, (or in the case of an entity that does not carry on business, carries on activities), in Australia at or through a fixed and definite place of its own, or through an agent at a fixed and definite place, for a sufficiently substantial period of time.[96]

417. Additionally (as we state in GSTR 2004/7) a *company or corporate limited partnership* is in Australia if it is incorporated or formed in Australia respectively.[97]

418. Also as explained in GSTR 2004/7, a partnership is in Australia if the entity carries on business (or in the case of a partnership that is in receipt of ordinary income or statutory income jointly, other activities which generate that income) in Australia at or through a fixed and definite place of its own, or through an agent at a fixed and definite place, for a sufficiently substantial period of time.[98]

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[96] Refer to GSTR 2004/7 – paragraphs 230 to 346 (company); paragraphs 412 to 416 (corporate limited partnership); paragraphs 422 to 429 (trust).
[97] Refer to GSTR 2004/7 – paragraphs 335 to 339 (companies) and paragraphs 414 to 416 (corporate limited partnerships).
[98] Refer to GSTR 2004/7 – paragraphs 381 to 397.

Determining where effective use or enjoyment of the supply takes place if the entity has a presence both in Australia and outside Australia

419. If a company, partnership, corporate limited partnership or trust has a presence both in Australia and outside Australia, effective use or enjoyment of a supply by that entity takes place outside Australia to the extent that the supply is provided to that entity's presence outside Australia. Effective use or enjoyment of the supply does not take place outside Australia to the extent that the supply is provided to that entity's presence in Australia.

420. It is therefore necessary to determine whether the supply is provided to the entity's presence in Australia or outside Australia, or whether the supply is provided to both presences or in part to each presence.

421. We consider that a supply is provided to a company, partnership, corporate limited partnership or trust outside Australia to the extent the supply is for the purposes of its presence outside Australia.[99] To this extent effective use or enjoyment of the supply takes place outside Australia. Paragraph (b) of item 3 is satisfied and the supply is GST-free under item 3 if the other requirements of item 3 are satisfied. (See Flowchart 4, page 36 of the Ruling section.)

422. Conversely, a supply is provided to a company, partnership, corporate limited partnership or trust in Australia to the extent the supply is for the purposes of its presence in Australia.[100] To this extent effective use or enjoyment of the supply does not take place outside Australia. Paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3. (See Flowchart 4, page 36 of the Ruling section.)

423. If the supply is provided for the purposes of both the presence of the entity in Australia and the presence of the entity outside Australia, (that is, separate parts of the supply are not identifiable as being provided for the purposes of each particular presence), apportionment on a reasonable basis is required. See Example 57, paragraphs 508 to 513, Part VI of the Explanation section.

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[99] Examples of the presence of an entity outside Australia are the offshore branch of an Australian resident company or, the overseas head office of a non-resident company.

[100] Examples of the Australian presence of an entity are the Australian branch of a non-resident company or, if it is an Australian incorporated company, the Australian head office.

Example 17 – supply of consultancy services made by a sole trader to a resident charitable organisation with a presence both in Australia and outside Australia

424. *Irene is a resident sole trader. Irene is contracted by a charitable organisation that is incorporated (and thus resident) in Australia. The charitable organisation has a presence both in Australia and outside Australia. Irene is to assist the overseas branch of the organisation with its financial management. Most of the consulting work is carried out by Irene overseas although some of the reports are written up in Australia.*

425. *Although the work is partly performed outside Australia it is nonetheless connected with Australia as it is made through an enterprise that Irene carries on in Australia (paragraph 9-25(5)(b)).*

Paragraph (a) of item 3

426. *The supply is made to the charitable organisation that is in Australia, but not in relation to the supply, when the services by Irene are performed. Therefore, the supply satisfies the requirements of paragraph (a) of item 3.*[101]

Paragraph (b) of item 3

427. *The supply is provided to the charitable organisation. Irene's services are for the purposes of the charitable organisation's branch operations outside Australia. The supply of consulting services by Irene is therefore provided to the charitable organisation outside Australia and the effective use or enjoyment of the supply takes place outside Australia. Paragraph (b) of item 3 is therefore satisfied and the supply is GST-free under item 3.*[102]

Example 18 – supply of consultancy services by a resident company to non-resident company; another resident company makes a supply to the resident company

428. *Probe Co, a resident company, is contracted by a non-resident company NR Co to provide a composite report and recommendation on the viability of an offshore joint venture project, Project X. Probe Co is required to report on matters including the financial viability of the project, its longevity, the environmental impact and overall its likely success. If Probe Co's report to NR Co is suitably favourable, NR Co may invest in the project.*

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[101] See paragraphs 333 to 372 in GSTR 2004/7 which explain when a company is in Australia for the purposes of item 3. If a company is in Australia in relation to a supply paragraph (a) of item 3 is not satisfied.

[102] The requirement in item 3 that the supply is not a supply of work physically performed on goods situated in Australia and is not a supply directly connected with real property situated in Australia is also satisfied.

429. *Probe Co contracts Aus Co, another resident company, to undertake the environmental impact study. Aus Co does not provide any reports to NR Co. All reports are provided to Probe Co. The copyright or intellectual property in any reports or work produced by Aus Co belongs to Probe Co. The services by Aus Co are performed both in Australia and outside Australia. Aus Co is directly responsible to Probe Co for the performance of the work. Probe Co has no presence outside Australia.*

Paragraph (a) of item 3

430. *The supply of services by Aus Co is made to Probe Co a resident company that is in Australia in relation to the supply. Therefore, paragraph (a) of item 3 is not satisfied unless subsection 38-190(4) applies.*

Subsection 38-190(4)

431. *Paragraph 38-190(4)(a) is satisfied as the supply by Aus Co is made under an agreement with a resident company, Probe Co.*

432. *It is then necessary to determine if paragraph 38-190(4)(b) is satisfied. Paragraph 38-190(4)(b) is only satisfied if the supply by Aus Co is provided to another entity outside Australia.*

433. *The facts state that Aus Co is to review the environmental impact of Project X and is required to provide all reports to Probe Co and is responsible only to Probe Co for the performance of the work. Although the report is ultimately used by Probe Co in providing a composite report and recommendation to NR Co, the supply by Aus Co is not provided to NR Co. The supply is not, therefore, provided to another entity. Subsection 38-190(4) does not apply and thus paragraph (a) of item 3 is not satisfied.*

Paragraph (b) of item 3

434. *While it is unnecessary to consider paragraph (b) of item 3, it is also not satisfied. The supply is provided by Aus Co to Probe Co. As the supply of services by Aus Co is provided to Probe Co, which has no presence outside Australia, the supply is provided to Probe Co in Australia. As the supply is provided to Probe Co in Australia effective use or enjoyment of the supply does not take place outside Australia.*

435. *The supply is not GST-free under item 3.*

Example 19 – supply of services of taking messages, telephone calls, mail and faxes by a resident company for a non-resident company

436. *Aus Co is a resident of Australia. Aus Co has been contracted by NZ Co to take messages, handle telephone calls, mail and faxes on behalf of NZ Co. Aus Co in effect operates as the postal address and telephone contact for NZ Co in Australia. Aus Co does not otherwise conduct any business on behalf of NZ Co but merely forwards on messages, faxes and phone calls to NZ Co in New Zealand. NZ Co does not carry on business in Australia.*[103]

Paragraph (a) of item 3

437. *The supply of services by Aus Co is made to NZ Co, a non-resident entity that is not in Australia when the services are performed. The supply therefore satisfies paragraph (a) of item 3.*

Paragraph (b) of item 3

438. *The supply is provided to NZ Co and as NZ Co does not have a presence in Australia the supply is provided to NZ Co for the purposes of its presence outside Australia. The supply is therefore provided to NZ Co outside Australia and thus effective use or enjoyment of the supply takes place outside Australia. Paragraph (b) of item 3 is satisfied.*

439. *The supply is GST-free under item 3 provided the other requirements of item 3 are satisfied.*[104]

A supply of certain delivery or freight services

440. In the case of delivery or freight services which are provided to a company, partnership, corporate limited partnership or trust in the circumstances described at paragraph 225, we accept those services are provided to that entity in Australia, if the goods are addressed to that entity in Australia. Alternatively, if the goods, are addressed to that entity outside Australia, we accept those services are provided to that entity outside Australia.

441. This approach recognises the inherent practical difficulties in otherwise determining whether the supply of freight/delivery services is provided to an entity in Australia or outside Australia and thus whether effective use or enjoyment of the supply takes place outside Australia, particularly if the freight or delivery services are the subject of subcontract arrangements.

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[103] See paragraphs 250 to 332 in GSTR 2004/7 which explain when a company carries on business in Australia.

[104] That is, it is not a supply of work physically performed on goods in Australia or a supply directly connected with real property in Australia.

442. This approach does not, however, apply to the delivery of goods that are generically addressed to 'The Householder' or are for delivery to the public at large. In that case we consider the supply is made and provided to the entity seeking to have the goods delivered – see Example 11, paragraphs 354 to 358. It also does not apply to circumstances where an entity's own goods are freighted or moved from one location to another location. The circumstances of the particular supply in question must be considered to determine the entity to which the supply is provided and whether the supply is provided to that entity in Australia or outside Australia and thus whether effective use or enjoyment of the supply takes place outside Australia.

443. The following example illustrates the approach where goods from one entity are sent to another entity. This can be contrasted with Example 11, (paragraphs 354 to 358) where the delivery is to the public at large.

Example 20 – export by Australian subsidiary – domestic leg of transport – supplier required to deliver goods to a customer outside Australia – supply of transport services (freight services only) made to a resident and provided to an entity outside Australia

444. *A resident company, Aus Co, supplies goods to a non-resident company, UK Co. Under the export sale terms Aus Co is obliged to deliver the goods to UK Co. Aus Co engages a resident transport company, Aus Trans Co, to undertake the international movement of goods from Australia to the UK. The goods are to be delivered to UK Co in London.*

445. *Aus Trans Co subcontracts part of the supply to another Australian resident transport company Oz Carriers to transport the goods from Adelaide to Sydney. The supply by Oz Carriers is not covered by item 5 of section 38-355 as Oz Carriers is not the supplier of the international transport of the goods from Australia. The transport of the goods from Australia to London is carried out by Aus Trans Co.*

446. *Oz Carriers picks up the goods in Adelaide and delivers them to Sydney.*

447. *Oz Carriers arranges a suitable time with Aus Co to pick up the goods. The transport service occurs over the time from picking up the goods in Adelaide until delivery of the goods to Aus Trans Co in Sydney for Aus Trans Co to then transport the goods on to UK Co.*

Paragraph (a) of item 3

448. *Oz Carriers makes a supply of transport services to Aus Trans Co, an entity that is in Australia when the services are performed. The supply does not satisfy the requirements of paragraph (a) of item 3 unless subsection 38-190(4) applies.*

Subsection 38-190(4)

449. *The supply of transport services by Oz Carriers is a supply under an agreement entered into with a resident, Aus Trans Co. Paragraph 38-190(4)(a) is therefore satisfied.*

450. *It is then necessary to determine if paragraph 38-190(4)(b) is satisfied.*

451. *Under the export sale terms, Aus Co is required to provide UK Co with the services of delivering the goods to UK Co in London. Aus Co effects provision of delivery services to UK Co through Aus Trans Co. Aus Trans Co in turn subcontracts part of the provision of delivery services to Oz Carriers.*

452. *On these facts the supply of domestic transport services by Oz Carriers to Aus Trans Co is provided to UK Co (the overseas customer) of Aus Co (the exporter). Delivery services are required to be provided to the UK customer and those services are provided to the customer under various subcontract arrangements.*

453. *However, we recognise that Oz Carriers may not be aware of all the circumstances of the supply of transport, as described above, that it makes to Aus Trans Co. At a practical level, the transport services are provided to the addressee, the UK customer, UK Co. Thus, if goods from one entity are addressed for delivery to another entity, we consider that it is reasonable for Oz Carriers to conclude that the transport services are provided to another entity, in this case UK Co.*

454. *UK Co is outside Australia when the transport services are performed. If the transport services are for the purposes of UK Co outside Australia the supply of transport services is provided to another entity, UK Co, outside Australia.*

455. *We recognise that Oz Carriers is unlikely to know whether the transport services are for the purposes of UK Co outside Australia. At a practical level, the goods are addressed to UK Co outside Australia and we therefore consider that it is reasonable for Oz Carriers to conclude that the transport services are provided to UK Co for its purposes outside Australia. Therefore, the supply is provided to another entity outside Australia. (Note: the outcome is the same even if UK Co has a presence in Australia.)*

456. *Subsection 38-190(4), therefore applies and the supply satisfies paragraph (a) of item 3.*

Paragraph (b) of item 3

457. *The supply is provided to UK Co. To determine whether effective use or enjoyment of the supply takes place outside Australia it is necessary to consider whether provision of the supply is to UK Co in Australia or outside Australia. The supply is provided to UK Co outside Australia if the delivery or freight services are for the purposes of UK Co's presence outside Australia.*

458. *We explain above, for the purposes of paragraph 38-190(4)(b), that we consider the supply of delivery or freight services are for the purposes of UK Co's presence outside Australia as the goods are addressed to UK Co outside Australia. Paragraph (b) of item 3 is therefore satisfied and the supply is GST-free under item 3.*[105]

Later use of a supply by an entity

459. If the nature of a supply is such that the supply is provided to an entity outside Australia and thus effectively used or enjoyed outside Australia, the fact that the results or outcomes of the supply are later used in Australia does not alter the outcome that effective use or enjoyment of the supply takes place outside Australia.

460. Similarly, if a supply is provided to an entity in Australia, and that supply is later used outside Australia, that later use does not alter the fact that the supply is provided to that entity in Australia and thus effective use or enjoyment of the supply does not take place outside Australia.

461. Also refer to paragraphs 387 to 390, Part III of the Explanation section.

Another entity benefits from the supply

462. If the nature of the supply is such that the supply is provided to an entity outside Australia and thus effective use or enjoyment of the supply takes place outside Australia, this outcome is not altered even if another entity in Australia benefits from the supply.

463. Similarly, if a supply is provided to an entity in Australia, and another entity outside Australia benefits from that supply this does not alter the outcome that the supply is provided to the entity in Australia and thus effective use or enjoyment of the supply does not take place outside Australia.

464. This can occur with, for example, the supply of advertising services. If the advertising services are made and provided to an entity in Australia, the fact that another entity outside Australia also derives a benefit from that supply does not alter the fact that the advertising services are provided to the entity in Australia and effective use or enjoyment of those services does not take place outside Australia.[106]

465. Also refer to paragraphs 391 to 394, Part III of the Explanation section.

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[105] The requirement in item 3 that the supply is not a supply of work physically performed on goods situated in Australia and is not a supply directly connected with real property situated in Australia is also satisfied.

[106] See Example 48, 49 and 50, Table 2, pages 106 and 107, Part V of the Explanation section.

Further examples

466. In Part V of the Explanation section, we provide further examples of supplies provided to entities other than individuals and where effective use or enjoyment of that supply takes place. The examples draw on examples from GSTR 2005/6 and give the GST outcome under item 3 (and item 2 for comparative purposes). See Table 2, pages 98 to 108. See also Example 1 (paragraphs 231 to 243), Example 2 (paragraphs 245 to 247) and Example 3 (paragraphs 248 to 258) in Part II of the Explanation section.

Part V – further examples

467. In this section of the Ruling we provide two tables which summarise relevant examples from GSTR 2005/6. In each table we identify the entity to which the supply is provided and where effective use or enjoyment of the supply takes place (see Columns 4 and 5 respectively). We also set out whether the supply is GST-free under item 3 (and item 2 for comparative purposes) (see Columns 6 and 3 respectively).

468. Table 1 (pages 94 to 97) contains a summary of examples from GSTR 2005/6 where the supply is provided to an individual. For further details of the supply refer to the specific example in GSTR 2005/6.

469. Table 2 (pages 98 to 108) contains a summary of examples from GSTR 2005/6 where the supply is provided to an entity other than an individual. For further details of the supply refer to the specific example in GSTR 2005/6.

Table 1 – The supply is provided to an individual

E.g. #	The exact nature of the supply	Is supply GST-free under item 2?	The supply is provided to	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
21	**Supply of legal services** *(Per Example 6, paragraphs 350 to 356, GSTR 2005/6)* • David, an Australian resident individual, is arrested and charged with an offence while in New Zealand on holiday. A non-resident contracts with an Australian law firm for the supply of legal services. The legal services are provided to David over a period of four weeks during which time he is in New Zealand. • The need for the supply of legal services arises from David's presence outside Australia; his presence outside Australia is not merely coincidental with the provision of the supply. The supply of legal services is therefore provided to David outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**David**	**takes place outside Australia** as the supply is provided to David outside Australia	**Yes**
22	**Supply of legal services - barrister engaged by solicitor** *(Per Examples 19 & 20, paragraphs 472 to 476 and 477 to 481 respectively, GSTR 2005/6)* • An Australian solicitor, as agent for a non-resident individual, engages an Australian barrister to supply legal services to a non-resident individual on an immigration matter. The individual is not in Australia when the legal services by the barrister or solicitor are performed and the supply is not directly connected with real property situated in Australia. • The supply of legal services by the barrister to the non-resident individual is both made and provided to the non-resident, through the solicitor as agent for the non-resident. As the non-resident individual is not in Australia when the services are performed, the supply of legal services by the barrister is provided to the individual outside Australia. • The supply of legal services by the solicitor is also made and provided to the non-resident individual outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**non-resident individual**	**takes place outside Australia** as the supply by the barrister, and the supply by the solicitor, is provided to the individual outside Australia	**Yes**
23	**Supply of entertainment** *(Per Example 7, paragraphs 358 to 363, GSTR 2005/6)* • A UK non-resident employer purchases a ticket from a supplier in Australia for his employee in Australia to attend an Aussie rules football match in Melbourne. • The employee is the entity that attends the football match and who is entertained. The supply although made to the employer is provided to the employee. • As the employee's presence in Australia is integral to the performance of the supply of entertainment services, the supply is provided to the individual in Australia.	**No** as ss38-190(3) negates the GST-free status under item 2	**the employee**	**does not take place outside Australia** as the supply is provided to the employee in Australia	**No**

E.g. #	The exact nature of the supply	Is supply GST-free under item 2?	The supply is provided to…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
24	**Supply of training** *(Per Example 15, paragraphs 442 to 448, GSTR 2005/6)* • An Australian flight school contracts with a non-resident airline company (that has no presence in Australia) to provide training in Australia to employees of the non-resident company. The employees, who are non-resident individuals from China, attend the training in Australia. • What is being supplied is the teaching and tutoring of the employees of the non-resident airline company. It is in the nature of such training services that it is the individuals that are trained, rather than the individuals' employer, and it is therefore the individual who is provided with the training. These services are of a kind that can only be provided to the employee. The supply is therefore made to the non-resident employer but is provided to its employees. • The employee pilots are required to physically attend training in Australia. As the employee's presence in Australia is integral to the performance of the training, the supply is provided to the employees in Australia.	**No** as ss38-190(3) negates the GST-free status under item 2	**each employee**	**does not take place outside Australia** as the supply is provided to the employee in Australia	**No**
25	**Supply of training** *(Per Example 16, paragraphs 451 to 456, GSTR 2005/6)* • Andrew is a New Zealand resident individual who carries on business as a management consultant. Andrew employs Barbara, who is based in Sydney, to provide consultancy services to Andrew's Australian customers. Andrew decides that Barbara would benefit from some additional computer training and so engages an Australian computer training company to train Barbara. Andrew remains in New Zealand at all times and Barbara remains in Australia at all times. • The supply is made by the Australian computer training company to Andrew but the training services are provided to Barbara as she is the person that is trained (by analogy with example 24). As Barbara's presence in Australia is integral to the performance of the training, the supply is provided to Barbara in Australia.	**No** as ss38-190(3) negates the GST-free status under item 2	**Barbara**	**does not take place outside Australia** as the supply is provided to Barbara in Australia	**No**
26	**Supply of training** *(Per Example 21, paragraphs 484 to 489, GSTR 2005/6)* • A partner in a non-resident partnership contracts, on behalf of the partnership, for the supply of 'Managing for today and tomorrow' training to all newly appointed partners. The training course is conducted in Australia. • The training services are provided to each partner as the partners are the persons that are trained (by analogy with example 24). As the partners are required to physically attend training in Australia and their presence in Australia is integral to the performance of the supply, the supply is provided to each partner in Australia.	**No** as ss38-190(3) negates the GST-free status under item 2	**each partner**	**does not take place outside Australia** as the supply is provided to the partner in Australia	**No**

E.g. #	The exact nature of the supply	Is supply GST-free under item 2?	The supply is provided to…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
27	**Supply of speaking services** *(Per Example 25, paragraphs 523 to 528, GSTR 2005/6)* • An Australian legal specialist (sole proprietor) is engaged for a fee by a non-resident company to speak about recent maritime law developments at an international conference held in Sydney. The attendees of the conference are members of the legal profession, both from Australia and overseas. • The supply by the lawyer is made to the non-resident company but is provided to the attendees at the conference as what is supplied is information and knowledge for the professional development of the members of the audience. It is akin to training of the attendees. • Each attendee's presence in Australia is integral to the performance of the supply. The supply is therefore provided to each attendee in Australia.	**No** as ss38-190(3) negates the GST-free status under item 2	**each attendee**	**does not take place outside Australia** as the supply is provided to the attendee in Australia	**No**
28	**Supply of delivery services** *(Per Example 11, paragraphs 392 to 400, GSTR 2005/6)* • Kate who is in Australia purchases a book over the Internet from Booklovers Inc. Booklovers Inc offers a delivery service for a small extra charge of which Kate avails herself. Booklovers Inc engages Ace Couriers to deliver the book to Kate. Booklovers Inc is a non-resident company which does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. • The supply of delivery services by Ace Couriers is made to Booklovers Inc but is provided to Kate. At a practical level, the goods are addressed to Kate in Australia and we therefore consider that it is reasonable for Ace Couriers to conclude that the transport services are provided to Kate in Australia.	**No** as ss38-190(3) negates the GST-free status under item 2	**Kate**	**does not take place outside Australia** as the supply is provided to Kate in Australia	**No**

E.g. #	The exact nature of the supply	Is supply GST-free under item 2?	The supply is provided to…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
29	**Supply of assembly services** *(Per Example 37, paragraphs 614 to 620, GSTR 2005/6)* • UK Co sells furniture in kit form but offers an assembly service to the customer (individual) in Australia if the customer requires the furniture to be assembled prior to delivery. UK Co engages Aus Engineering to assemble the furniture so that it is ready to be delivered, as assembled, to the Australian customer of UK Co. UK Co does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. • The supply by Aus Engineering is made to UK Co but is provided to the customer in Australia. The furniture is assembled for a specified customer. • If the customer is a resident individual the supply is provided to that individual in Australia. If the customer is a non-resident individual the need for the supply arises from the presence of that individual in Australia. The supply of assembly services is, therefore, provided to another entity, the Australian customer, in Australia, irrespective of whether that customer is a non-resident or resident individual.	**No** as ss38-190(3) negates the GST-free status under item 2	**each customer**	**does not take place outside Australia** as the supply is provided to the customer in Australia	**No**
30	**Repair services to a rental property** *(Per Example 24, paragraphs 510 to 517, GSTR 2005/6)* • Angela is a non-resident individual who owns a residential apartment in Australia which is currently being rented. Angela's real estate agent advises her that the air-conditioner needs repairing. Angela authorises the repairs which the agent arranges. Angela is not physically located in Australia at any time during which the repair services are performed. Angela is not registered, or required to be registered for GST. • The supply of the repair services are made and provided to Angela, a non-resident who is not in Australia when the repair services are performed. As landlord, it is Angela's responsibility to maintain the apartment and all inclusions in good repair. While the tenant may subsequently benefit from the supply of the repair services, this does not alter the nature of the supply and the fact that the supply is not provided to the tenant. (The supply is also not provided to the agent who merely arranges for the supply to be made to Angela.) • **However note that: subsection 38-190(2A) may apply to this supply.** As the supply by Angela is of the leasing of residential premises which is an input taxed supply, and the acquisition of the repair services relates to the making of that supply, the GST-free status of the supply is negated by subsection 38-190(2A) if the supply of the repair services was made on or after 1 April 2005. If the supply of the repair services was made before 1 April 2005 subsection 38-190(2A) does not negate the GST-free status of the supply.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2. (While the supply is either a supply of work physically performed on goods situated in Australia or a supply directly connected with real property, the requirements of paragraph (b) of item 2 are satisfied)	**Angela**	**takes place outside Australia** as the supply is provided to Angela outside Australia	**No** (As the supply is either a supply of work physically performed on goods situated in Australia or a supply directly connected with real property, the requirements of item 3 are not satisfied)

Table 2 – The supply is provided to a company, partnership, corporate limited partnership or trust

E.g. #	The exact nature of the supply	Is supply GST-free under item 2?	The supply is provided to…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
31	**Supply of technical support services** *(Per Example 1, paragraphs 264 to 275, GSTR 2005/6)* • Aus Co is a subsidiary of US Co. Aus Co is contracted by US Co to provide technical support services, in relation to software licensed by US Co, to financial services entities in Australia. The actual flow of the technical support services is to the Australian financial services entities. Therefore the supply by Aus Co is made to US Co but is provided to the financial services entities. • The Australian financial services entities are in Australia when the service is performed. The supply of technical support services is for the purposes of the financial services entities in Australia. The supply is therefore provided to the financial services entities in Australia.	**No** as ss38-190(3) negates the GST-free status under item 2	**financial service entities**	**does not take place outside Australia** as the supply is provided to the financial services entities in Australia	**No**
32	**Supply of audit services** *(Per Example 2, paragraphs 288 to 296, GSTR 2005/6)* • A non-resident US parent company contracts with an Australian accounting firm to audit its subsidiary in Australia. The non-resident US parent company does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. • What is being supplied is an audit service effecting compliance by the Australian subsidiary with its obligations under the corporation's laws in Australia. The actual flow of the audit service is to another entity, the Australian subsidiary. • The Australian subsidiary is in Australia when the audit service is performed. As the supply of audit services is for the purposes of the Australian subsidiary, the supply is provided to that entity in Australia.	**No** as ss38-190(3) negates the GST-free status under item 2	**Australian subsidiary**	**does not take place outside Australia** as the supply is provided to the Australian subsidiary in Australia	**No**

E.g. #	The exact nature of the supply	Is supply GST-free under item 2?	The supply is provided to…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
33	**Supply of audit services** *(Per Example 3, paragraphs 298 to 303, GSTR 2005/6)* • A non-resident US parent company contracts with an Australian accounting firm to audit its subsidiary in Australia. The non-resident US parent company does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. • What is being supplied is an audit service effecting compliance by the non-resident US parent company with its reporting obligations in the US. The actual flow of the audit service is to the US parent company, not the Australian subsidiary which is the subject of the audit. The supply is therefore provided to the US parent company. • The supply of audit services is provided to the US parent company, which has no presence in Australia. The supply is therefore provided to that entity outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**US parent company**	**takes place outside Australia** as the supply is provided to the US parent company outside Australia	**Yes**
34	**Supply of legal services** *(Per Example 22, paragraphs 492 to 498, GSTR 2005/6)* • A non-resident partnership is contemplating the acquisition of commercial real property in Australia. The partnership does not carry on any business activities in Australia and so one of the partners comes to Australia to engage and consult with the Australian law firm about the proposed acquisition and is in Australia when the supply of legal services is performed. As the advice concerns the business affairs of the partnership the supply is provided to the partnership (not the partner). • As the supply is provided to the partnership which does not have a presence in Australia, the supply is provided to the partnership outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**non-resident partner-ship**	**takes place outside Australia** as the supply is provided to the non-resident partnership outside Australia	**Yes**

E.g. #	The exact nature of the supply	Is supply GST-free under item 2?	The supply is provided to…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
35	**Supply of legal services** *(Per Example 4, paragraphs 305 to 312, GSTR 2005/6)* • An Australian law firm is requested by a non-resident UK company to apply, on behalf of the UK company, for registration of a trademark in an international class in the name of its Australian subsidiary. The UK company does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. • What is being supplied by the Australian law firm is a legal service of preparing and lodging an application for registration of the trademark on behalf of the applicant, UK Co. That legal service – that is, preparation and lodgement of an application on behalf of the non-resident, is to be distinguished from the outcome of that service, the registration of the trademark in the name of the Australian subsidiary. • While the outcome of the service is that the Australian subsidiary obtains the exclusive rights to use the trademark, the nature of the supply of the legal services in applying for the trademark, is such that the legal services are provided to the applicant, the UK company, which has no presence in Australia. The supply is therefore provided to the UK company outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**UK company**	**takes place outside Australia** as the supply is provided to the UK company outside Australia	**Yes**
36	**Supply of legal services (advice)** *(Per Example 5, paragraphs 314 to 322, GSTR 2005/6)* • US Co is a non-resident company, which has an Australian subsidiary. US Co enters into a contract with an Australian law firm for the supply of legal services. US Co does not carry on business in Australia either through a place of business of its own, through its Australian subsidiary, or through any other agent acting on behalf of the company. • The legal service is advice to the Australian subsidiary on the legal consequences and its options for dismissing its Chief Finance Officer. The law firm has no further contact with US Co beyond entering into the contract and rendering the bill for professional services to US Co. • The supply by the Australian law firm is made to US Co but is provided to its Australian subsidiary. The Australian subsidiary is in Australia when the services are performed and the supply is for the purposes of that subsidiary in Australia. The supply is, therefore, provided to the Australian subsidiary in Australia.	**No** as ss38-190(3) negates the GST-free status under item 2	**Australian subsidiary**	**does not take place outside Australia** as the supply is provided to the Australian subsidiary in Australia	**No**

E.g. #	The exact nature of the supply	Is supply GST-free under item 2?	The supply is provided to…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
37	**Supply of legal services (advice)** *(Per Example 27, paragraphs 539 to 543, GSTR 2005/6)* • An executive of a non-resident company, US Finance, comes to Australia to obtain legal advice from an Australian law firm. US Finance does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. • The advice concerns foreign ownership requirements which may impact on the possible purchase of shares in an Australian company by US Finance. The interaction between the Australian law firm and the employee of US Co does not alter the nature of the advice and the fact that the supply is provided to US Finance Co. The supply by the Australian law firm is made and provided to US Finance, which has no presence in Australia. The supply is therefore provided to US Finance outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**US Finance**	**takes place outside Australia** as the supply is provided to US Finance outside Australia	**Yes**
38	**Supply of legal services (advice)** *(Per Example 28, paragraphs 544 to 549, GSTR 2005/6)* • NR Co, proposes to use its existing Australian subsidiary, Aus Sub, to acquire the shares in an Australian company, Oz Co. An Australian law firm supplies taxation advice to the head office of NR Co on various tax issues associated with NR Co acquiring Oz Co through an existing Australian subsidiary. NR Co does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. • What is being supplied is advice on tax issues relevant to NR Co's proposal to acquire Oz Co through Aus Sub. The legal firm has no interaction with Aus Sub, nor is any advice given to Aus Sub. The nature of the advice is such that the supply of legal advice is made and provided to NR Co. The supply by the Australian law firm is made and provided to NR Co, which has no presence in Australia. The supply is therefore provided to NR Co outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**NR Co**	**takes place outside Australia** as the supply is provided to NR Co outside Australia	**Yes**

E.g. #	The exact nature of the supply	Is supply GST-free under item 2?	The supply is provided to…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
39	**Supply of legal services (advice)** *(Per Example 29, paragraphs 550 to 554, GSTR 2005/6)* • An Australian law firm contracts with a non-resident company, US Co, to supply legal services. US Co does not carry on business in Australia either through a place of business of its own or through its subsidiary, or any other agent acting on its behalf. • The legal advice concerns the dismissal of the Chief Executive Officer of the Australian subsidiary of US Co. US Co is assessing the impact dismissal would have on its Australian operations. The Australian law firm deals only with personnel of US Co and has no interaction of any kind with any personnel from the Australian subsidiary in relation to the advice. The advice is prepared and once finalised sent to US Co. • The supply by the Australian law firm is made and provided to US Co, which has no presence in Australia. The supply is therefore provided to US Co outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**US Co**	**takes place outside Australia** as the supply is provided to US Co outside Australia	**Yes**
40	**Supply of accounting services** *(Per Example 30, paragraphs 557 to 564, GSTR 2005/6)* • A non-resident company, NR Co, contracts with an Australian accounting firm to co-ordinate management reporting systems for the Australian subsidiaries of its global enterprise. NR Co does not carry on business in Australia either through a place of business of its own, through its Australian subsidiaries, or any other agent acting on its behalf. • Management consultants from the Australian accounting firm are required to work with the Australian subsidiaries to modify their systems so that each subsidiary can meet the group's global reporting standards. • The supply by the Australian accounting firm is made to NR Co but is provided to its Australian subsidiary. The Australian subsidiary is in Australia when the services are performed and the supply is for the purposes of the Australian subsidiary in Australia. The supply is, therefore, provided to the Australian subsidiary in Australia.	**No** as ss38-190(3) negates the GST-free status under item 2	**Australian subsidiary**	**does not take place outside Australia** as the supply is provided to the Australian subsidiary in Australia	**No**

E.g. #	The exact nature of the supply	Is supply GST-free under item 2?	The supply is provided to…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
41	**Supply of accounting services (tax advice)** *(Per Example 31, paragraphs 565 to 570, GSTR 2005/6)* • A non-resident company, NZ Co, has a subsidiary in Australia. NZ Co does not carry on business in Australia either through a place of business of its own, through its Australian subsidiary, or any other agent acting on its behalf. • NZ Co is contemplating selling the subsidiary in Australia or down-sizing the Australian operations by selling-off key assets owned by the subsidiary. An Australian accounting firm supplies NZ Co with advice on the Australian taxation implications of the different options to assist NZ Co in its deliberations. The tax advice concerns the plans of NZ Co to either sell-off its Australian subsidiary or assets of the subsidiary. The Australian accounting firm deals only with personnel of NZ Co. It has no interaction of any kind with any personnel from the Australian subsidiary in relation to the advice. The advice is prepared and once finalised sent to NZ Co. • The supply by the Australian accounting firm is made and provided to NZ Co, which has no presence in Australia. The supply is therefore provided to NZ Co outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**NZ Co**	**takes place outside Australia** as the supply is provided to NZ Co outside Australia	**Yes**
42	**Supply of customs advice** *(Per Example 12, paragraphs 408 to 414, GSTR 2005/6)* • A non-resident parent company contracts with a customs specialist for the provision of customs advice in relation to operations in the Asia-Pacific region. The non-resident company does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. • The non-resident company has an Australian subsidiary with a branch in Malaysia. The branch operates an import/export business in Kuala Lumpur. The customs specialist provides advice to the Malaysian branch on aspects of new import restrictions recently introduced in Malaysia. • The advice is about import restrictions impacting on the Malaysian operations of the Australian subsidiary. The supply is provided to another entity, the Australian subsidiary. While the Australian subsidiary is in Australia when the services are performed, the advice is for the purposes of its Malaysian branch. The supply is therefore provided to the Australian subsidiary outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**Australian subsidiary**	**takes place outside Australia** as the supply is provided to the Australian subsidiary outside Australia	**Yes**

E.g. #	The exact nature of the supply	Is supply GST-free under item 2?	The supply is provided to…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
43	**Supply of speaking services** *(Per Example 26, paragraphs 529 to 536, GSTR 2005/6)* • An Australian software expert is engaged by a non-resident company to promote and market its new software product at various seminars throughout Australia. The seminars are pitched to existing and potential customers. The non-resident software company does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. • The nature of the service is not the professional development of members of the audience. Rather, it is promoting and marketing a new product, that is, the new software of the non-resident software company to potential customers. While knowledge and information about the software capabilities flow to the audience members, this is only a by-product of the supply of speaking services and does not alter the true nature of the service, that is, the promotion and marketing of the new software. • The supply by the software expert is made and provided to the non-resident company, which has no presence in Australia. The supply is therefore provided to the non-resident company outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**non-resident company**	**takes place outside Australia** as the supply is provided to the non-resident company outside Australia	**Yes**
44	**Supply of advertising services** *(Per Example 23, paragraphs 504 to 508, GSTR 2005/6)* • A non-resident US company, which is a distributor of soft drinks, contracts for the supply of advertising air time on a national television network in Australia. The soft drinks are available from supermarket chains throughout Australia. The non-resident US company does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. • What is being supplied is air time on an Australian television network advertising the US distributor's products in Australia. The nature of the supply of air time is such that the supply is provided to the US company. While Australian retailers potentially benefit from the supply of advertising air time through increased sales, this does not alter the nature of the supply and the fact that the supply, as properly described, is not provided to another entity. • The supply of air time is made and provided to the US company, which has no presence in Australia. The supply is therefore provided to the non-resident US company outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**non-resident US company**	**takes place outside Australia** as the supply is provided to the non-resident US company outside Australia	**Yes**

E.g. #	The exact nature of the supply	Is supply GST-free under item 2?	The supply is provided to…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
45	**Supply of advertising services** *(Per Example 32, paragraphs 573 to 578, GSTR 2005/6)* • An Australian advertising agency, Aus Ad Co, contracts with Nile Co to develop and prepare advertising material for products sold by the world-wide group of Nile Co, including products sold by its Australian subsidiary, Aust Co. Nile Co does not carry on business in Australia either through a place of business of its own or its subsidiary or any other agent acting on behalf of the company. • Aus Ad Co deals only with Nile Co, which exercises full control over the conduct of the advertising services. Aus Ad Co delivers the advertising 'copy' (that is, the product) directly to the media in Australia. • The supply by the Australian advertising agency is made and provided to Nile Co, which has no presence in Australia. The supply is therefore provided to the non-resident US company outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**Nile Co**	**takes place outside Australia** as the supply is provided to Nile Co outside Australia	**Yes**
46	**Supply of advertising services** *(Per Example 33, paragraphs 580 to 587, GSTR 2005/6)* • An Australian advertising agency, Aus Ad Co, contracts with Sing Co to develop and prepare advertising material for products sold by its Australian subsidiary, Aust Co. Sing Co does not carry on business in Australia either through a place of business of its own, through Aust Co, or any other agent acting on behalf of the company. • Aus Ad Co deals only with the Australian subsidiary, which exercises full control over the conduct of the advertising services. Sing Co has no further participation in the supply beyond contracting and paying for the supply. • The supply by the Australian advertising agency is made to Sing Co but is provided to the Australian subsidiary. Aust Co is in Australia when the services are performed. As the services are for the purposes of Aust Co in Australia, the supply of advertising services is provided to another entity, Aust Co, in Australia.	**No** as ss38-190(3) negates the GST-free status under item 2	**Australian subsidiary**	**does not take place outside Australia** as the supply is provided to Australian subsidiary in Australia	**No**

E.g. #	The exact nature of the supply	Is supply GST-free under item 2?	The supply is provided to…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
47	**Supply of telephone booking services** *(Per Example 34, paragraphs 589 to 594, GSTR 2005/6)* • Aus Bookings Co is contracted by Trans-Europe Railways Co (a non-resident company) to operate a telephone bookings centre in Australia. Trans-Europe does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. • The telephone service is operated for Trans Europe so that it can take bookings from customers in Australia. The customers get information and other benefits, such as their travel booked, by calling Aus Bookings Co. However, the customers are not provided with the service of operating a bookings and enquiries service. This service is provided to Trans Europe. • The supply by Aus Bookings Co is made and provided to Trans-Europe, which has no presence in Australia. The supply is therefore provided to Trans-Europe outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**Trans-Europe**	**takes place outside Australia** as the supply is provided to Trans-Europe outside Australia	**Yes**
48	**Supply of computer helpline services** *(Per Example 35, paragraphs 596 to 602, GSTR 2005/6)* • Mumbai Technology, a non-resident company, contracts with Help Line Co to supply technical support services to an Australian company (Aus Customer), which has purchased a computer network from Mumbai Technology. Mumbai Technology does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. • Help Line Co provides assistance, either over the phone or via e-mail, to staff of Aus Customer when they have technical problems. • While the staff of Aus Customer receive individual attention and advice, the nature of the supply is maintaining in working order, the computer system of Aus Customer. The supply by Help Line Co is made to Mumbai Technology but is provided to Aus Customer. Aus Customer Ltd is in Australia when the services are performed and the supply is for the purposes of Aus Customer in Australia. The supply is provided to another entity, Aus Customer, in Australia.	**No** as ss38-190(3) negates the GST-free status under item 2	**Aus Customer**	**does not take place outside Australia** as the supply is provided to Aus Customer in Australia	**No**

E.g. #	The exact nature of the supply	Is supply GST-free under item 2?	The supply is provided to…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
49	**Supply of stevedoring services** *(Per Example 18, paragraphs 466 to 470, GSTR 2005/6)* • A non-resident shipping company contracts an Australian stevedore company to load and unload its ships when in Australian ports. Some of the employees of the shipping company are present to facilitate the process of loading/unloading the ship. The non-resident shipping company does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. • It is the ships of the non-resident shipping company that are loaded or unloaded. The supply by the Australian stevedore company is made and provided to the non-resident shipping company which has no presence in Australia. The supply is therefore provided to the non-resident shipping company outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**non-resident shipping company**	**takes place outside Australia** as the supply is provided to the non-resident shipping company outside Australia	**Yes**
50	**Supply of testing services** *(Per Example 36, paragraphs 604 to 611, GSTR 2005/6)* • UK Co contracts with an Australian resident, Oz Miner, to test, analyse and report on the quality of certain mineral ores found by Oz Miner during its recent exploration activities in Queensland. UK Co does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. UK Co is not registered or required to be registered for GST. • UK Co enters into an agreement with an Australian company, Oz Test Co, to perform certain tests on the ore samples and report on the findings of those tests directly to UK Co. UK Co uses this information to conduct further analysis culminating in a comprehensive report to send to Oz Miner on the quality of the ores. • UK Co arranges for Oz Miner to deliver its ore samples to Oz Test Co. Other than delivery of the samples to Oz Test Co, Oz Test Co has no further interaction with Oz Miner. • The supply by Oz Test Co is made and provided to UK Co, which has no presence in Australia. The supply is therefore provided to UK Co outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**UK Co**	**takes place outside Australia** as the supply is provided to UK Co outside Australia	**Yes**

E.g. #	The exact nature of the supply	Is supply GST-free under item 2?	The supply is provided to…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
51	**Supply of assembly services** *(Per Example 38, paragraphs 621 to 625, GSTR 2005/6)* • UK Co sells furniture as an assembled unit to customers in Australia. However, to lower costs it has the furniture assembled by Aus Engineering once it arrives in Australia. UK Co does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. • The assembly is undertaken on behalf of UK Co as the goods are sold as assembled goods to the customers in Australia. • The supply by Aus Engineering is made and provided to UK Co, which has no presence in Australia. The supply is therefore provided to UK Co outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**UK Co**	**takes place outside Australia** as the supply is provided to UK Co outside Australia	**Yes**
52	**Supply of assembly services** *(Per Example 39, paragraphs 626 to 630, GSTR 2005/6)* • UK Co imports furniture into Australia in kit form and has Aus Engineering assemble the furniture for sale to future, but as yet, unidentified customers. UK Co does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. • The assembly is undertaken on behalf of UK Co. The assembly is undertaken prior to there being any customer for the assembled furniture. • The supply by Aus Engineering is made and provided to UK Co, which has no presence in Australia. The supply is therefore provided to UK Co outside Australia.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**UK Co**	**takes place outside Australia** as the supply is provided to UK Co outside Australia	**Yes**
53	**Supply of transport services (freight services only)** *(Per Example 13, paragraphs 419 to 430, GSTR 2005/6)* • A non resident company, UK Co supplies goods on a delivered duty paid basis to an Australian customer, Oz Co. UK Co contracts with UK Trans Co to deliver those goods to Oz Co in Australia. Neither UK Co, nor UK Trans Co, carries on business in Australia through a place of business of its own or through an agent acting on its behalf. • UK Trans Co engages Aus Transport to transport the goods on the domestic leg from Sydney to Adelaide. • The supply by Aus Transport is made to UK Trans Co but is provided to Oz Co. At a practical level, the goods are addressed to Oz Co in Australia and we therefore consider that it is reasonable for Aus Transport to conclude that the transport services are provided to Oz Co for its purposes in Australia.	**No** as ss38-190(3) negates the GST-free status under item 2	**Oz Co**	**does not take place outside Australia** as the supply is provided to Oz Co in Australia	**No**

Part VI – apportionment

470. In this Part we explain the requirement for apportionment of a supply if effective use or enjoyment of a supply takes place partly in Australia and partly outside Australia. We provide examples illustrating how apportionment arises. We also discuss how to apportion when a supply is provided, or is required to be provided, on a periodic or progressive basis.

When apportionment is necessary

471. Section 9-5 provides that a supply is not a taxable supply to the extent that it is GST-free or input taxed.

472. Apportionment may arise for the purposes of paragraph (b) of item 3 if, for example:

- a supply is provided in part to an entity in Australia and in part to another entity outside Australia. See Example 54 (paragraphs 474 to 482);
- a supply is partly provided to an entity in Australia and partly provided to that same entity outside Australia. See Example 55 (paragraphs 484 to 489); or
- a supply is made to one entity and is provided to another entity in Australia for part of the time. See Example 56 (paragraphs 491 to 500); or
- a supply is made to an entity that is not in Australia and is provided to that entity outside Australia and another entity in Australia but the supply is not divisible with separate parts of the supply being provided to each entity. See Example 57 (paragraphs 508 to 513).

473. In each of these situations, effective use or enjoyment of the supply takes place outside Australia to the extent that the supply is provided to the entity outside Australia. Effective use or enjoyment of the supply does not take place outside Australia, and the supply is not GST-free under item 3, to the extent that the supply is provided to the entity in Australia.

Example 54 – supply made to a non-resident parent company and provided in part to a non-resident subsidiary and in part to an Australian subsidiary

474. *NZ Co is a non-resident parent company which has a subsidiary company in Australia and a subsidiary company in New Zealand. NZ Co does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. The New Zealand and Australian subsidiary entities have no presence outside of New Zealand and Australia respectively.*

475. *The non-resident parent company engages an Australian management consultant company, AMC Pty Ltd, to assist each subsidiary company in restructuring its operations. The restructuring operations are required by each subsidiary to achieve cost savings and efficiency gains.*

Paragraph (a) of item 3

476. *The supply of management consultancy services by AMC is made to NZ Co, a non-resident company that is not in Australia when the consultancy services are performed. The supply satisfies the requirements of paragraph (a) of item 3.*

Paragraph (b) of item 3

477. *The consultancy work is undertaken by the consultant with each of the subsidiaries. The management consultant consults with each subsidiary in turn to restructure its operations to effect cost savings and efficiency gains.*

478. *The nature of the service is such that the supply is provided to each subsidiary. The actual flow of the services is to each subsidiary. The supply is, therefore, provided to each subsidiary (not the non-resident parent company).*

479. *The New Zealand subsidiary is not in Australia and therefore the services are not provided to that subsidiary in Australia. Effective use or enjoyment of the supply therefore takes place outside Australia to the extent the supply is provided to the New Zealand subsidiary.*

480. *The Australian subsidiary is in Australia when the services are performed. The services are provided to that subsidiary in Australia. Effective use or enjoyment of the supply therefore takes place in Australia to the extent the supply is provided to the Australian subsidiary.*

481. *Therefore the supply is GST-free under item 3 to the extent that the supply is provided to the New Zealand subsidiary. The supply is not GST-free under item 3 to the extent that it is provided to the Australian subsidiary.*

482. *The consideration for the supply is required to be apportioned between the GST-free part of the supply (that part of the supply which is provided to the New Zealand subsidiary), and the taxable*[107] *part of the supply (that part of the supply which is provided to the Australian subsidiary).*

483. This is the same result that occurs for the supply under item 2 and subsection 38-190(3). Refer to Example 40, paragraphs 636 to 644 in GSTR 2005/6.

[107] Assuming that the requirements of section 9-5 are otherwise satisfied.

Example 55 – the supply is provided to a non-resident individual in Australia for part of the time over which the services are performed

484. *Tom, a non-resident individual who is holidaying in Australia, falls over while shopping in a store in Australia. While in Australia Tom seeks legal advice from an Australian legal firm contracted for by his parents in New Zealand. Tom's parents are not in Australia when the legal services are performed. The legal firm, on behalf of Tom, writes to the shopping centre seeking out of pocket expenses and an amount for pain and suffering. Tom returns to New Zealand before the claim is settled. Further contact with the legal firm occurs from New Zealand.*

Paragraph (a) of item 3

485. *The supply of legal services is made to non-resident individuals, the parents, who are not in Australia when the legal services are performed. The supply satisfies the requirements of paragraph (a) of item 3.*

Paragraph (b) of item 3

486. *What is being supplied is a service of seeking, on Tom's behalf, compensation resulting from an accident in Australia. The nature of the service is such that the supply is provided to Tom.*

487. *Tom is a non-resident individual who is in Australia for part of the time when the service is performed. As the need for the supply arises from Tom's presence in Australia, the supply is provided to Tom in Australia and effective use or enjoyment of the supply does not take place outside Australia. To this extent paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3.*

488. *Once Tom returns to New Zealand the supply is provided to Tom outside Australia and effective use or enjoyment of the supply takes place outside Australia. To this extent paragraph (b) of item 3 is satisfied and the supply is GST-free under item 3.*

489. *The consideration for the supply is required to be apportioned between the GST-free part of the supply (that part of the supply which is provided to Tom when he is in New Zealand), and the taxable*[108] *part of the supply (that part of the supply which is provided to Tom while he is in Australia).*

490. This is the same result that occurs for the supply under item 2 and subsection 38-190(3). Refer to Example 41, paragraphs 647 to 652 in GSTR 2005/6.

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[108] Assuming that the requirements of section 9-5 are otherwise satisfied.

Example 56 – supply made to a non-resident parent company and provided to another entity which is only in Australia for part of the time that the supply is provided to it

491. *NZ Co is a non-resident parent company. NZ Co does not carry on business in Australia either through a place of its own or through an agent acting on its behalf.*

492. *NZ Co engages an Australian market research company to assist its New Zealand subsidiary with product promotion in Australia. The New Zealand subsidiary has a presence in Australia, that is, an Australian branch, which sells various products to the Australian market. The Australian market research company deals only with personnel of the Australian branch and supplies all reports to the branch.*

493. *However, during the period over which the market research services are provided, the New Zealand subsidiary closes its Australian branch and centralises all product sales in New Zealand. The Australian market research company continues to undertake the same work for the New Zealand subsidiary and provides all reports to the Head Office in New Zealand.*

Paragraph (a) of item 3

494. *The supply of market research services by the Australian research company is made to NZ Co, a non-resident company that is not in Australia when the services are performed. The supply satisfies the requirements of paragraph (a) of item 3.*

Paragraph (b) of item 3

495. *The agreement requires the Australian research company to provide market research services to the New Zealand subsidiary of NZ Co to promote and market its products in Australia. The nature of the service is also such that the supply is provided to the New Zealand subsidiary. The supply is, therefore, provided to another entity, the New Zealand subsidiary.*

496. *The New Zealand subsidiary has a branch in Australia. The New Zealand subsidiary is therefore in Australia when the services are performed. The market research undertaken by the Australian research company is for the purposes of the Australian branch of the New Zealand subsidiary. The supply is therefore provided to the New Zealand subsidiary in Australia and effective use or enjoyment of the supply does not take place outside Australia.*

497. *However, the New Zealand subsidiary only has a presence in Australia for part of the time that the supply is provided to it. Once the Australian branch of the New Zealand subsidiary is closed, the New Zealand subsidiary no longer has any presence in Australia when the services are performed and, therefore, from that point onwards the supply is for the purposes of the New Zealand subsidiary's presence outside Australia.*

498. *To the extent the New Zealand subsidiary has a presence in Australia (that is, its branch office) effective use or enjoyment of the supply does not take place outside Australia. To this extent paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3.*

499. *To the extent that the New Zealand subsidiary is not in Australia (that is, it has closed its branch office) the supply is provided to the New Zealand subsidiary for the purposes of its presence in New Zealand and effective use or enjoyment of the supply takes place outside Australia. To this extent paragraph (b) of item 3 is satisfied and the supply is GST-free under item 3.*

500. *The consideration for the supply is required to be apportioned between the GST-free part of the supply (that part of the supply which is provided to the New Zealand subsidiary when it no longer has a branch in Australia), and the taxable*[109] *part of the supply (that part of the supply which is provided to the Australian branch of the New Zealand subsidiary).*

501. This is the same result that occurs for the supply under item 2 and subsection 38-190(3). Refer to Example 42, paragraphs 653 to 661 in GSTR 2005/6.

A supply is provided to both an entity that is not in Australia and another entity in Australia

502. Sometimes a supply of services might, for example, be made and provided to an entity that is not in Australia and also provided to another entity in Australia in circumstances where the supply is not divisible with separate parts of the supply being provided to each entity. Section 9-5 provides that a supply is not a taxable supply to the extent that it is GST-free (or input taxed).

503. As explained at paragraph 66 of GSTR 2006/4 the High Court in *Ronpibon Tin v. FC of T (Ronpibon Tin)*[110] indicated, in the income tax context, that if a certain expense, such as directors' fees, has a 'double aspect', it will need to be apportioned if it 'cannot be dissected'.[111] As further explained in GSTR 2006/4 the High Court also emphasised the necessity of considering the facts of the particular case.[112]

504. Thus if a supply is provided to both an entity that is in Australia and an entity that is not in Australia, but it cannot be said that there are separate and distinct parts of the supply provided to each entity, that supply is nonetheless apportionable on a fair and reasonable basis.

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[109] Assuming that the requirements of section 9-5 are otherwise satisfied.
[110] (1949) 78 CLR 47.
[111] See *Ronpibon Tin* (1949) 78 CLR 47 at 59.
[112] See *Ronpibon Tin* (1949) 78 CLR 47 at 58-9 and paragraph 99 of GSTR 2006/4.

505. The method used by the supplier to apportion the supply must result in a fair and reasonable reflection of the extent to which the supply is provided to each entity in Australia (taxable part of the supply) and to each entity outside Australia (GST-free part of the supply). The method used must also be appropriately documented by the supplier.[113]

506. Having determined the taxable and GST-free parts of the supply, the consideration for the supply is required to be apportioned between those parts. The Commissioner considers that the GST Act requires apportionment of consideration as between the taxable component and the non-taxable component of a supply.[114]

507. The following example illustrates a supply that is provided to both a non-resident entity and other resident entities.

Example 57 – supply of pathology services made and provided to a non-resident and also required to be provided to another entity in Australia

508. *A non-resident pharmaceutical company runs a global clinical trial for a new drug. Australian medical practitioners engaged by the pharmaceutical company are responsible for recruiting and monitoring the Australian patients included in the trial. The company does not carry on business in Australia either through a place of business of its own or through any agent acting on its behalf.*

509. *The non-resident pharmaceutical company contracts with an Australian pathology company for the testing of samples from the Australian patients. The testing of samples is part of the pharmaceutical company's assessment of the effectiveness of the drug and the medical practitioners' services of monitoring the health of their trial patients, as required under the contract with the pharmaceutical company. It is essential to the performance of the contract between the non-resident pharmaceutical company and the Australian medical practitioners that the pathology services are carried out for both the Australian medical practitioners and the non-resident pharmaceutical company.*

Paragraph (a) of item 3

510. *The supply of pathology services is made to the non-resident pharmaceutical company that is not in Australia. The supply satisfies the requirements of paragraph (a) of item 3. The supply is not a supply of work physically performed on goods. The supply is a supply of information that involves work to produce that information and thus the supply is one of performing services.*

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[113] See *Ronpibon Tin* (1949) 78 CLR 47 at 58-9 and paragraph 100 of GSTR 2006/4.
[114] Refer to GSTR 2001/8 at paragraphs 82 to 91 for a discussion of the general rule of apportionment.

Paragraph (b) of item 3

511. *The pathology service is a service of carrying out certain tests and preparing a report. The service as a whole (the testing and the report) is carried out as part of the drug company assessment of the effectiveness of the new drug and the medical practitioners' monitoring of the health of their patients involved in the drug trial, as required under the terms of their contract with the non-resident pharmaceutical company. The medical practitioners are not merely supplied with a copy of the report for interest only. If the medical practitioners did not receive the pathology reports commissioned by the non-resident company, each practitioner would need to order his or her own pathology tests in monitoring the patients' health, as required.*

512. *In this circumstance the supply of pathology services is provided to both the non-resident pharmaceutical company and the Australian medical practitioners. To the extent that the supply of pathology services is provided to each medical practitioner in Australia, effective use or enjoyment of the supply does not take place outside Australia. To this extent paragraph (b) of item 3 is not satisfied and the supply is not GST-free under item 3. However, to the extent that the supply of pathology services is provided to the non-resident pharmaceutical company outside Australia, effective use or enjoyment of the supply takes place outside Australia. To this extent paragraph (b) of item 3 is satisfied and the supply is GST-free under item 3.*[115]

513. *The consideration for the supply is required to be apportioned between the GST-free part of the supply (that part of the supply that is provided to the non-resident pharmaceutical company) and the taxable part of the supply (that part of the supply which is provided to the Australian medical practitioners). Apportionment is required on a fair and reasonable basis taking into account the particular facts of the case. In the circumstances of this case the Australian pathology company might take into account how many medical practitioners in Australia are supplied with the results of the tests (taxable part of the supply) as against the supply to the non-resident pharmaceutical company outside Australia (GST-free part of the supply) in apportioning the consideration received for the supply.*

514. This is the same result that occurs for the supply under item 2 and subsection 38-190(3). Refer to Example 43, paragraphs 663 to 671 in GSTR 2005/6.

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[115] The requirement in item 3 that the supply is not a supply of work physically performed on goods situated in Australia and is not a supply directly connected with real property situated in Australia is also satisfied.

Apportionment method

515. If a supply is partly GST-free under item 3 the supplier is required to apportion the consideration between the GST-free and taxable[116] parts of the supply.

516. The supplier can use any reasonable method that is supportable in the particular circumstances to apportion the consideration.[117]

517. The supplier should keep records that explain the method used.[118]

Apportionment when a supply is provided on a periodic or progressive basis

518. Under Division 156, if a taxable supply is made for a period or on a progressive basis and the consideration is provided on a periodic or progressive basis, the GST payable is attributed as if each periodic or progressive component of the supply were a separate supply.[119]

519. If a supply is provided for a period with consideration given on a periodic basis and, for part of the time when the thing supplied is done, the supply is provided, (or is required to be provided), to an entity in Australia and thus is effectively used or enjoyed in Australia, it may not be possible for the supplier to identify the taxable[120] part of the supply at the beginning of the period over which the supply is provided. This is because there may be no way for the supplier to determine in advance whether, and to what extent, the supply is provided to that entity in Australia (and thus effectively used or enjoyed in Australia) during the period over which the supply is provided.

520. However, it is possible for the supplier to identify the extent to which a supply is provided to an entity in Australia for the periodic components of the supply. Accordingly, we accept that this is the basis on which GST payable on the supply (and input tax credits, if it is a creditable acquisition for the other entity) is attributable to tax periods.

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[116] Assuming that the requirements of section 9-5 are otherwise satisfied.
[117] Refer to GSTR 2001/8 at paragraphs 92 to 113.
[118] Refer to GSTR 2001/8 at paragraphs 25 to 30 and paragraph 70(1)(d) of the *Taxation Administration Act 1953*.
[119] Section 156-25 provides that Division 156 does not apply to a supplier who accounts on a cash basis.
[120] Assuming that the requirements of section 9-5 are otherwise satisfied.

Example 58 – a supply is provided to a non-resident individual who is in Australia for part of the time when the service is performed

521. *Sylvia is a New Zealand resident who carries on business in New Zealand and Australia as a sole trader. She has a one year contract with an Australian company, Aus Computers, under which the company is to provide services including:*

- *software development; and*
- *training as required.*

522. *The contract provides for charges to be calculated on an hourly basis ($100/hour plus GST (if any)) and invoices issued on a monthly basis. Aus Computers does not account for GST on a cash basis. It has one month tax periods.*

523. *It is agreed that Aus Computers' staff will travel to Auckland to discuss Sylvia's business requirements at various times throughout the course of the supply and that Sylvia and or her employees will come to Australia as necessary.*

524. *In March, Aus Computers requests Sylvia to come to Sydney to receive training. Sylvia sends two employees for training in Australia. The employees are in Australia to attend training classes for two weeks in March. The employees also take in the sights of Sydney during this time.*

525. *Aus Computers' charges for the first three months of the supply including the GST treatment are as set out below:*

Invoice date	***Amount***	***Hours billed***
4 March 2005 (for services performed in February)	*$3,000 (no GST payable)*	*30*
6 April 2005 (for services performed in March)	*$10,600 (including $600 GST)*	*100 (60 hours attributable to training of the employees in Australia)*
5 May 2005 (for services performed in April)	*$2,000 (no GST payable)*	*20*

Explanation

Paragraph (a) of item 3

526. *The supply of software development and computer training services is made to Sylvia a non-resident who is not in Australia when the software development or computer training is performed. The supply satisfies the requirements of paragraph (a) of item 3.*

Paragraph (b) of item 3

527. *The supply to Sylvia is GST-free under item 3 to the extent that the effective use or enjoyment of the supply takes place outside Australia.*

Provided to another entity – training

528. *The training services are provided to each employee as it is the employee that is trained. Each employee's presence in Australia is integral to the performance of the training and the supply is therefore provided to the two employees in Australia. As the supply is provided to the employees in Australia, effective use or enjoyment of the supply does not take place outside Australia and paragraph (b) of item 3 is therefore not satisfied. The supply, to the extent it is the training of Sylvia's two employees, is not GST-free under item 3.*

Provided to the same entity – software development

529. *The supply of software development services is not provided to another entity; the supply is made (and provided) to Sylvia, a sole trader. As the supply is provided to Sylvia outside Australia, effective use or enjoyment of the supply takes place outside Australia. The supply, to the extent it is of software development services, is GST-free under item 3.*

Working out the GST payable

530. *There is no GST payable for the tax period ending 31 March 2005 (refer to invoice of 4 March 2005)*[121] *because the supply is covered by item 3 and is therefore GST-free. For the whole of the time when the services are performed, the services are not provided to any entity in Australia (that is, either Sylvia or her employees) and therefore effective use or enjoyment of the supply takes place outside Australia. Similarly, there is no GST payable for the tax period ending 31 May 2005 (refer to invoice of 5 May 2005).*

531. *There is GST payable for the tax period ending 30 April 2005 as it is during this time that Sylvia's employees are trained in Australia. To work out the GST payable that is attributable to the tax period ending 30 April 2005 (refer to invoice of 6 April 2005), it is necessary to identify the taxable part of the supply. The supply is taxable to the extent that the supply of training is provided to the employees in Australia. To this extent, effective use or enjoyment of the supply does not take place outside Australia and paragraph (b) of item 3 is not satisfied.*

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[121] As Aus Computers does not account for GST on a cash basis, any GST payable by Aus Computers is attributable to the tax period in which any of the consideration is received or, if before any consideration is received, an invoice is issued, the tax period in which the invoice is issued. Therefore, any GST payable with respect to the invoice issued on 4 March 2005 is attributable to the tax period ending 31 March 2005.

532. *To work out the value of the taxable part of the supply, it is necessary to apportion the consideration on a reasonable basis. As the supply is provided to the employees in Australia for the two weeks that they are in Australia, the effective use or enjoyment of the supply takes place in Australia during that two weeks.*

533. *The supply is taxable to the extent that the consideration relates to the part of the supply performed during this time. The circumstances of this supply are such that a time basis is a reasonable basis on which to apportion the consideration, that is, using the hours billed for the training provided to the employees in Australia (60 hours) as a proportion of the total hours billed for that tax period (100 hours) to work out the value of the taxable part of the supply.*

534. *The GST attributable to the tax period ending 30 April 2005 is calculated as follows:*

Value of the taxable part: (60 ÷ 100**) × $10,000*** = $6,000*

GST payable: $6,000 × 10% = $600

Consideration payable: $10,000 + $600 = $10,600

** Number of hours billed during the period for training provided to the employees in Australia.*

*** Total number of hours billed in the relevant tax period to which the amount invoiced relates*

**** Total amount invoiced (excluding GST) in the relevant tax period*

Supplier accounts on a cash basis

535. If a supplier, who accounts on a cash basis, makes a supply for a period or on a progressive basis and the consideration is given on a periodic or progressive basis, similar issues may arise to those referred to at paragraph 519 of this Ruling. The following example illustrates how to attribute GST payable in that case.

Example 59 – a supply is provided to a non-resident individual in Australia for part of the time when the legal services are performed

536. *William, an English tourist, is injured while on holidays in Australia. While in Australia recovering from his injuries, William's parents, who are non-residents, engage Simon, a solicitor, to seek compensation on behalf of William.*

537. *The case takes three months to finalise. During the first month (April 2005) William is in Australia in hospital. Simon visits William in hospital to discuss his case. Simon commences action on behalf of William. William returns home to England at the end of the first month. Subsequently, William travels to Australia to attend a mediation conference on 20 June 2005. William meets with Simon prior to and after the conference. The meetings and the conference take place over a period of five days. The matter is settled as a result of the conference.*

538. *Simon's hourly rate is $200 (plus GST (if any)) and he bills clients on a monthly basis for work done during the month. He accounts for GST quarterly and on a cash basis.*

539. *Simon receives the following payments for his services to William:*

Payment date	***Amount***	***Hours billed***
5 May 2005 (for services provided in April 2005 while Simon was in Australia)	*$7,480 (including $680 GST payable)*	*34 (34 hours attributable to period supply is provided to William in Australia)*
7 June 2005 (for services provided in May 2005)	*$2,600 (no GST payable)*	*13*
10 July 2005 (for services provided in June 2005 for which Simon was in Australia for part of the time))	*$2,100 (including $100 GST)*	*10 (5 hours attributable to period supply is provided to William in Australia)*

Explanation

Paragraph (a) of item 3

540. *The supply of legal services is made to non-residents (William's parents) who are not in Australia when the services are performed. The supply satisfies the requirements of paragraph (a) of item 3.*

Paragraph (b) of item 3

541. *The legal services are provided to William and not the non-resident parents. The legal services are not GST-free under item 3 to the extent that the services are provided to William in Australia.*

542. *As Simon accounts for GST on a cash basis, GST payable on the supply of legal services is attributable to a tax period to the extent that consideration is received in that tax period. Therefore the consideration received in a quarterly tax period for the supply of the legal services must be apportioned on a reasonable basis to the extent that the supply is provided to William in Australia during that quarterly tax period.*

Quarterly tax period ended 30 June 2005

543. *As a result of the accident in Australia William's need for the supply of legal services arises in Australia. The supply is therefore provided to William in Australia to the extent that he is physically in Australia when the services are performed. During April 2005 the supply is therefore provided to William in Australia. To this extent effective use or enjoyment of the supply does not take place outside Australia and is not GST-free under item 3. The supply is not, however, provided to William in Australia to the extent that William is not physically located in Australia (that is May 2005). To this extent effective use or enjoyment of the supply takes place outside Australia and is GST-free under item 3. Therefore, the supply performed in the quarterly tax period ending 30 June 2005 is partly taxable and partly GST-free.*

544. *The circumstances of this supply are such that a time basis is a reasonable basis on which to apportion the consideration, that is, using the hours billed for legal services provided to William in Australia (34 hours) as a proportion of the total hours billed for legal services provided to William for that quarterly tax period (47 hours – that is, 34 hours billed in May 2005 + 13 hours billed in June 2005) to work out the value of the taxable part of the supply.*

545. *The GST attributable to the quarterly tax period ended 30 June 2005 is calculated as follows:*

Value of the taxable part: (34 ÷ 47**) × $9,400*** = $6,800*

GST payable: $6,800 × 10% = $680

Consideration payable: $9,400 + $680 = $10,080

** Number of hours billed during the period for legal services provided to William in Australia and to which the consideration received relates (that is, for services provided in April 2005 for which consideration was received on 5 May 2005)*

*** Total number of hours billed in the quarterly tax period to which the consideration relates (that is, for services provided in April and May 2005 for which consideration was received on 5 May 2005 and 7 June 2005 respectively)*

**** Total consideration (excluding GST) received from William in the quarterly tax period ending 30 June 2005 (that is, 47 hours × $200)*

Quarterly tax period ended 30 September 2005

546. *There is also GST payable on the supply for the quarterly tax period ended 30 September 2005. The consideration received in that tax period includes consideration for services that are performed when William is in Australia. The supply is taxable to the extent that the supply is provided to William in Australia. To work out the value of the taxable part of the supply, it is necessary to apportion the consideration on a reasonable basis.*

547. *As William is in Australia and his presence is integral to the provision of the supply, it is considered that the supply is provided to William in Australia for five days. To this extent effective use or enjoyment of the supply does not take place outside Australia and is not GST-free under item 3. The part of the supply performed during this time is therefore the taxable part of the supply. The circumstances of this supply are such that a time basis is a reasonable basis on which to apportion the consideration, that is, using the hours billed for legal services provided to William in Australia (5 hours) as a proportion of the total hours billed for legal services provided to William for that quarterly tax period (10 hours) to work out the value of the taxable part of the supply.*

548. *The GST attributable to the quarterly tax period ended 30 September 2005 is calculated as follows:*

Value of the taxable part: (5 ÷ 10**) × $2,000*** = $1,000*

GST payable: $1,000 × 10% = $100

Consideration payable: $2,000 + $100 = $2,100

** Number of hours billed during the period for legal services provided to William in Australia and to which the consideration received relates*

*** Total number of hours billed in the quarterly tax period to which the consideration relates*

**** Total consideration (excluding GST) received from William in the quarterly tax period ending 30 September 2005 (that is, 10 hours × $200)*

Apportionment where the supply is performed over more than one tax period but consideration is paid in earlier tax period

549. If a supply is performed over more than one tax period and the GST (if any) on the supply is attributable to a tax period prior to the completion of the supply (for example, consideration is fully paid in one tax period but provision of the supply to an entity is spread across two or more later tax periods), the supplier must use a reasonable basis for determining if, and to the extent, the supply is taxable. That is, the supplier must use a reasonable basis to determine the extent to which the supply is to be provided to the entity in Australia and thus the extent to which effective use or enjoyment of the supply does not take place outside Australia.

550. If there is a change in circumstance such that the supply is taxable to a greater or lesser extent than determined in an earlier tax period, the supplier has an adjustment event. The adjustment may be either an increasing or a decreasing adjustment depending upon whether the corrected GST amount is greater than, or less than, the previously attributed GST amount.[122]

[122] Refer to paragraphs 12 to 15 and 72 to 87 in GSTR 2000/19.

Part VII – application of paragraph (b) of item 3 to subcontract arrangements and global supplies

551. In this Part we explain the application of paragraph (b) of item 3 to certain complex arrangements as follows.

552. We discuss **subcontract arrangements** and provide two examples where a supply by an Australian supplier to a non-resident entity is subcontracted to another Australian supplier (see Example 60, paragraphs 569 to 577 and Example 61, paragraphs 578 to 588).

553. We also discuss **global supply arrangements** and provide an example of a supply of due diligence services (Example 64, paragraphs 599 to 619).

554. For subcontract and global supply arrangements we also summarise examples from GSTR 2005/6 and give the GST outcome under item 3 (and item 2 for comparative purposes). These examples are relevant to this Ruling as a supply, that is not GST-free under item 2 because of the application of subsection 38-190(3) (that is, the supply is provided to another entity in Australia), is also not GST-free under item 3 as effective use or enjoyment of the supply does not take place outside Australia (that is, the supply is provided to an entity in Australia).

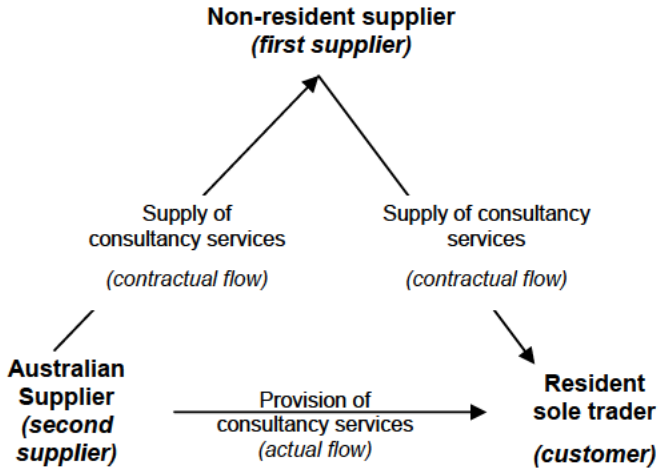
Subcontract arrangements[123]

555. GSTR 2005/6 comprehensively discusses subcontract arrangements at paragraphs 713 to 755. Although supplies illustrated in that Ruling are typically made to a non-resident entity (as the focus in that Ruling is on item 2 and subsection 38-190(3)), the principles in that Ruling are illustrative of when a supply under a subcontract arrangement is provided to another entity in Australia and, to this extent, the principles in that Ruling are equally applicable to this Ruling. A supply that is provided to an entity in Australia is not used or enjoyed outside Australia.

556. A subcontract arrangement could arise for example where a non-resident supplier enters into a contract with an entity in Australia (the customer) under which it is obliged to provide certain services to that customer. However, the non-resident supplier enters into a contract with another Australian entity to provide the services to the customer.

[123] That is, a supplier subcontracts the provision of services to its customer to another supplier.

557. Using a supply of consultancy services as an example, a subcontract arrangement is shown in diagrammatic form as follows:



Supply by the first (non-resident) supplier

The exact nature of the supply

558. The first (non-resident) supplier is obliged to supply consultancy services to the resident sole trader. To meet that obligation the first supplier subcontracts a second (Australian) supplier to provide those consultancy services to the resident sole trader.

559. The nature of the supply of consultancy services by the first supplier to the resident sole trader is not changed by the fact that the actual consultancy service is performed by another subcontracted supplier (or a subcontractor of that subcontractor etc). The supply by the first supplier is neither the supply of a right nor the supply of an arranging service. The supply is, and remains, a supply of consultancy services, even though the provision of that service to the resident sole trader is carried out by the subcontracted second supplier.

560. We consider that a supply is only the supply of arranging for a service to be provided to a customer (that is, an arranging service) if that is precisely what the first supplier has, in fact, been engaged to supply. For example, if the first supplier arranges for a second supplier to contract with the customer to supply the required thing, we agree the first supplier is only responsible for arranging that service. See Example 63, page 131.

561. Further, if the first supplier arranges for a second supplier to supply a particular thing to a customer, the customer typically has no legal recourse against the first supplier for the second supplier's failure to supply the thing. Should the second supplier fail to supply that thing, the customer usually only has legal recourse against the second supplier. Should the first supplier fail to arrange for the supply of a thing the customer usually has legal recourse against the first supplier for breach of its promise to arrange for the supply.

Connected with Australia

562. The supply of consultancy services by the first supplier (non-resident) to the resident sole trader is connected with Australia to the extent that those services are performed in Australia (albeit by the second supplier): paragraph 9-25(5)(a). If the other requirements for making a taxable supply[124] are met, the supply by the non-resident to the resident sole trader is a taxable supply.

563. The approach in this Ruling concerning subcontract arrangements is consistent with the views expressed in GSTR 2005/6.[125]

Determining where effective use or enjoyment of the supply takes place

564. If the supply satisfies the requirements of paragraph (a) of item 3 (that is, the resident sole trader is not in Australia when the thing supplied is done) it is necessary to determine whether use or enjoyment of the supply takes place outside Australia. The supply of consultancy services by the first supplier is made (and provided) to the resident sole trader. If the supply is provided to the resident sole trader in Australia, effective use or enjoyment of the supply does not take place outside Australia and the supply is not GST-free under item 3. We explain in Part III (paragraphs 268 to 395) of the Explanation section where effective use or enjoyment of a supply by an individual takes place.

Supply by the second (Australian) supplier

The exact nature of the supply

565. The second supplier, pursuant to its contract with the first supplier, is obliged to supply consultancy services to the resident sole trader. The nature of the supply by the second supplier is also a supply of consultancy services. The supply is not a supply of a right to the first supplier to have services supplied to the Australian customer.[126]

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[124] Section 9-5.
[125] An alternative to our view is discussed at paragraphs 723 and 724 in GSTR 2005/6.
[126] An alternative to our view is discussed at paragraph 727 in GSTR 2005/6.

Connected with Australia

566. The supply of consultancy services by the second supplier to the resident sole trader is connected with Australia to the extent that those services are performed in Australia or the supplier makes the supply through an enterprise that the supplier carries on in Australia (paragraphs 9-25(5)(a) and (b)). If the other requirements for making a taxable supply[127] are met, the supply by the Australian supplier is a taxable supply.

Determining where effective use or enjoyment of the supply takes place

567. If the supply made to the first non-resident supplier satisfies the requirements of paragraph (a) of item 3 (that is, the non-resident is not in Australia when the thing supplied is done), it is necessary to determine whether use or enjoyment of the supply takes place outside Australia. The supply of consultancy services by the second supplier is made to the first supplier but is provided to the resident sole trader (the providee). If the supply is provided to the resident sole trader in Australia, effective use or enjoyment of the supply does not take place outside Australia and the supply is not GST-free under item 3. We explain in Part III (paragraphs 268 to 395) of this Ruling where effective use or enjoyment of a supply by an individual takes place.

568. The following examples illustrates the application of the above principles, although the first supplier and the second supplier in the following examples are both resident entities and the customer is the non-resident entity.

Example 60 – supply of training services made to a non-resident company and provided to another entity, a non-resident employee, in Australia – part of supply of training services subcontracted to another entity

569. *An Australian entity, Aus Co (first supplier), enters into an agreement with a non-resident company to provide its employees with management training and occupational health and safety training. Aus Co subcontracts the management component of the training to another Australian entity, Management Training Inc (second supplier). The employees of the non-resident company attend the training in Australia.*

570. *The non-resident company does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf.*

[127] Section 9-5.

Supply by Aus Co made to the non-resident company but provided to its employees

Paragraph (a) of item 3

571. *A supply of training services (the occupational health and safety training component and the management component) is made by Aus Co to a non-resident company that is not in Australia when the thing supplied is done. Therefore, the supply by Aus Co satisfies paragraph (a) of item 3.*

Paragraph (b) of item 3

572. *While the supply of training services is made to the non-resident company it is provided to its employees who attend the training.*[128] *Although Aus Co only provides part of the training itself, (having subcontracted the management training to Management Training Inc), Aus Co provides, or is required to provide, the occupational health and safety training and the management training to the employees of the non-resident company in Australia. As the training is provided, or is required to be provided, to the employees in Australia, effective use or enjoyment of the supply does not take place outside Australia.*[129] *Paragraph (b) of item 3 is not satisfied and the supply by Aus Co to the non-resident company is not GST-free under item 3.*

Supply by Management Training Inc made to Aus Co but provided to employees of the non-resident company

Paragraph (a) of item 3 and subsection 38-190(4)

573. *A supply of management training services is made by Management Training Inc to Aus Co. As the supply by Management Training Inc is made to a recipient (Aus Co) who is in Australia when the thing supplied is done, the supply by Management Training Inc does not satisfy the requirements of paragraph (a) of item 3 unless subsection 38-190(4) applies to extend the application of paragraph (a) of item 3.*

574. *The supply of training services by Management Training Inc is a supply under an agreement entered into with a resident entity, Aus Co. Paragraph 38-190(4)(a) is therefore satisfied.*

575. *It is then necessary to consider if paragraph 38-190(4)(b) is satisfied.*

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[128] Refer to paragraph 261, Part II of the Explanation section.
[129] Refer to paragraphs 288 to 292, 321 to 324, Part III of the Explanation section.

576. *The training services are provided, or are required to be provided to another entity, the employees. The employees are required to attend the training in Australia and therefore those services are provided to the employees in Australia. Paragraph 38-190(4)(b) is therefore not satisfied. Consequently paragraph (a) of item 3 is not taken to be satisfied and therefore the supply is not GST-free under item 3.*

Paragraph (b) of item 3

577. *While it is unnecessary to consider paragraph (b) of item 3, it is also not satisfied. As the training is provided to the employees in Australia, effective use or enjoyment of the supply does not take place outside Australia.*[130]

Example 61 –supply of labour services made to a non-resident company – supply of labour services subcontracted to another entity

578. *An Australian entity, Aus Co, enters into an agreement with a non-resident company to provide labour services to that non-resident company. Aus Co enters into an agreement with another resident company Oz Staff Hire whereby it is charged a fee by Oz Staff Hire for it to send one of its employees to work at the London office of the non-resident company for a period of three months.*

579. *The labour services supplied do not involve work that is directly connected with goods or real property and thus item 1 is not applicable.*

580. *The non-resident company does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf.*

Supply by Aus Co to the non-resident company

Paragraph (a) of item 3

581. *A supply of labour services is made by Aus Co to a non-resident company that is not in Australia when the thing supplied is done. Therefore, the supply by Aus Co satisfies paragraph (a) of item 3.*

[130] Refer to paragraphs 288 to 292, 321 to 324, Part III of the Explanation section.

Paragraph (b) of item 3

582. *The supply of the labour services is also provided by Aus Co to the non-resident company. The supply is provided to an entity that does not have a presence in Australia. Therefore, effective use or enjoyment of the supply takes place outside Australia.*[131] *Paragraph (b) of item 3 is satisfied and the supply by Aus Co to the non-resident company is GST-free under item 3.*

Supply by Oz Staff Hire to Aus Co

Paragraph (a) of item 3 and subsection 38-190(4)

583. *The supply of labour services by Oz Staff Hire is made to Aus Co a resident company that is in Australia when the services are performed. The supply does not therefore satisfy paragraph (a) of item 3 unless subsection 38-190(4) applies to extend the application of paragraph (a) of item 3.*

584. *The supply of labour services by the Oz Staff Hire is a supply under an agreement entered into with a resident entity, Aus Co. Paragraph 38-190(4)(a) is therefore satisfied.*

585. *It is then necessary to consider if paragraph 38-190(4)(b) is satisfied.*

586. *The labour services are provided, or are required to be provided, to another entity, the non-resident company. As the non-resident company does not have a presence in Australia, the supply is provided to that entity outside Australia. The supply therefore satisfies subsection 38-190(4) and paragraph (a) of item 3 is satisfied.*

Paragraph (b) of item 3

587. *As discussed above, the supply of the labour services by Oz Staff Hire is provided to the non-resident company. As it is already determined that the supply is provided to the non-resident company outside Australia, the effective use or enjoyment of the supply by the non-resident company takes place outside Australia. Paragraph (b) of item 3 is satisfied.*

588. *The supply is, therefore, GST-free under item 3 provided the other requirements of item 3 are satisfied.*[132]

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[131] Refer to paragraph 403, Part IV of the Explanation section.
[132] That is, it is not a supply of work physically performed on goods in Australia or a supply directly connected with real property in Australia.

Further examples

589. GSTR 2005/6 provides further examples which illustrate the application of item 2 and subsection 38-190(3) to subcontract arrangements.

590. These examples are summarised in the tables below and we illustrate the GST treatment of these supplies under item 3 (and item 2 for comparison purposes). It can be seen that the GST outcome under each of these items is the same.

591. For further details of these supplies you should refer to the examples in GSTR 2005/6. Cross references are given in the table.

E.g. #	A supply of accounting services to a non-resident entity is subcontracted to another supplier *(Per Example 46, paragraphs 733 to 740, GSTR 2005/6)*	Is supply GST-free under item 2?	The supply is provided to…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
62	*The facts and circumstances* • A non-resident company contracts with an Australian accounting firm for the supply of accounting services. • The accounting services are required under the agreement to be provided to the Australian subsidiary of the non-resident company. • The non-resident does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. • The Australian accounting firm subcontracts with another Australian supplier to provide the accounting services to the Australian subsidiary. *The GST treatment of the accounting services supplied by the Australian accounting firm to the non-resident company* • Refer the columns opposite.	**No** as ss38-190(3) negates the GST-free status under item 2	**Australian subsidiary** as the accounting services are required to be provided to the Australian subsidiary	**does not take place outside Australia** as the supply is provided to the Australian subsidiary in Australia	**No**
E.g. #	**A supply of an arranging service is made and provided to a non-resident entity** **A supply of design services is made and provided to the non-resident entity** *(Per Example 47, paragraphs 742 to 754, GSTR 2005/6)*	**Is supply GST-free under item 2?**	**The supply is provided to…**	**Effective use or enjoyment of the supply…**	**Is supply GST-free under item 3?**
63	*The facts and circumstances* • An events organiser in Australia agrees with a non-resident company to arrange for the making of a supply of design services for the non-resident's forthcoming exhibition in Australia. The non-resident company does not carry on business in Australia through a place of business of its own or through an agent acting on its behalf. • The events organiser has dealt with Aus Design in the past and arranges for contracts to be made between that company and the non-resident company for the supply of the design services for the proposed product displays of the non-resident. *Supply by the Australian events organiser to the non-resident company* • The Australian events organiser supplies an arranging service which is made and provided to the non-resident company that is not in Australia in relation to the supply. *Supply by Aus Design to the non-resident company* • Aus Design supplies design services to the non-resident company under an agreement entered into with the non-resident company. *The GST treatment of each supply made by the Australian events organiser and Aus Design* • Refer the columns opposite.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**Non-resident company**	**takes place outside Australia** as the supply is provided to the entity outside Australia	**Yes**

Global supplies[133]

592. GSTR 2005/6 comprehensively discusses global supply arrangements at paragraphs 756 to 859. Although supplies illustrated in that Ruling are typically made to a non-resident entity (as the focus in that Ruling is on item 2 and subsection 38-190(3)), the principles in that Ruling are illustrative of when a supply under a global supply arrangement is provided to another entity in Australia and, to this extent, the principles in that Ruling are equally applicable to this Ruling. A supply that is provided to an entity in Australia is not used or enjoyed outside Australia.

593. In many multi-national groups, a range of services are provided to group members through an internal service provider – typically the parent or a separate dedicated entity. Such services include accounting, auditing, legal, information technology, research and development and financial services. The internal service provider may charge a specific fee to the relevant group member that receives the service or make a cost allocation to that group member to recover costs. The fee or cost allocation may be separately identified or form part of a bundled charge or cost allocation, incorporated into a management fee.

The nature of the supply by the internal and external service providers

594. The internal service provider may either perform the services for the group members itself or contract with an external provider to perform the services. In the latter case, there is usually a head agreement between the internal service provider and the external provider (the head supplier) and a range of subcontracting agreements (between the head supplier and other entities) to enable the head supplier to fulfil its obligations to provide services to members of the global group.

595. Irrespective of whether the service is provided by the internal service provider itself or is subcontracted out, the nature of the supply made by the internal service provider or other external service provider does not, in our view, change even if the internal service provider or other external service provider is not in a position to physically perform those services. If the internal or other external service provider has agreed (either by written agreement or otherwise) to supply services (for example audit services) to members of the multi-national group, the supply that it makes to members of the group is the supply of those audit services, regardless of whether that entity performs those services itself or subcontracts the performance to another entity (or entities). (Refer to paragraphs 555 to 568 of this Ruling for a discussion of subcontract arrangements.)

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[133] This expression refers to supplies made by a centralised entity (typically a parent or other separate dedicated entity) to other members of a corporate group. Such supplies include accounting, auditing, legal, information technology, research and development and financial services.

596. The approach in this Ruling, concerning global supply arrangements, is consistent with the views expressed in GSTR 2005/6.

Determining where effective use or enjoyment of the supply takes place

597. The supply by the internal or other external service provider is provided, or required to be provided, to the member(s) of the group. We determine whether use or enjoyment of the supply takes place outside Australia with reference to the group member(s). See Part IV (paragraphs 396 to 466) which explains where effective use or enjoyment of a supply by a company, partnership, corporate limited partnership or trust takes place.

598. The following example illustrates the application of the above principles.

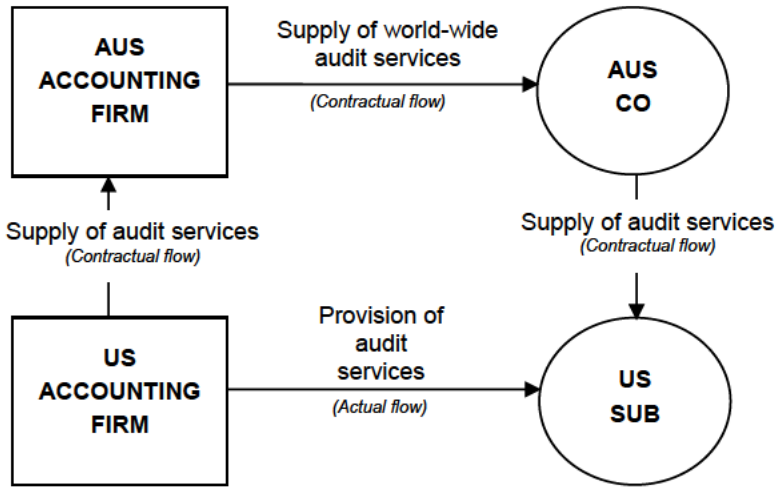
Example 64 – a supply of global audit services by a resident accounting firm to an Australian resident parent company – the resident accounting firm contracts a non-resident accounting firm to supply some services

599. *An Australian resident parent company, Aus Co, engages an Australian accounting firm, Aus Accounting, to supply audit services to the world-wide company group. Aus Accounting charges Aus Co on a monthly basis for services rendered in the immediately preceding month.*

600. *US Sub, a United States subsidiary of Aus Co, requires audit services – in particular a due diligence service for a possible business acquisition. Aus Accounting contracts with a US accounting firm for the provision of audit services to the US Sub.*

601. *Neither US Sub, nor the US accounting firm, carry on business in Australia through a place of business of its own or through an agent acting on its behalf.*

602. *The facts are illustrated as follows:*



603. *Aus Co is billed by Aus Accounting for the audit services provided to the US Sub. Aus Co charges US Sub for the cost of the audit.*

Supply by Aus Accounting to Aus Co

604. *Aus Accounting is engaged to provide audit services to the world-wide group of Aus Co. Aus Accounting has affiliates throughout the world with the expertise to carry out country-specific audits. As and when a foreign subsidiary requires audit services, Aus accounting firm subcontracts the performance of that service to an affiliate in the relevant foreign country.*

Nature of the supply by Aus Accounting to Aus Co

605. *The nature of the supply by Aus Accounting to Aus Co is a service. Aus Accounting is engaged to supply audit services. The exact nature of the supply depends on the facts and circumstances of the particular audit. In this example, a due diligence service is to be carried out for US Sub.*

606. *The fact that Aus Accounting subcontracts this part of the audit service to another supplier, US Accounting, does not alter the nature of the service supplied by Aus Accounting to Aus Co. The supply remains the supply of audit services (refer paragraphs 555 to 568 of this Ruling for a discussion of subcontract arrangements).*

Paragraph (a) of item 3

607. *The supply of audit services by Aus Accounting is made to Aus Co, a resident entity that is in Australia when the audit services are performed. The supply does not therefore satisfy paragraph (a) of item 3 unless subsection 38-190(4) applies.*

Subsection 38-190(4)

608. *The supply of audit services by Aus Accounting to Aus Co is a supply under an agreement entered into with a resident. Paragraph 38-190(4)(a) is therefore satisfied.*

609. *It is then necessary to determine if paragraph 38-190(4)(b) is satisfied.*

610. *What is being supplied is the service of auditing a business as part of a due diligence being carried out by US Sub. The due diligence service is required to be provided to US Sub, another entity.*

611. *As US Sub has no presence in Australia, the supply is provided to that entity outside Australia.*

612. *Subsection 38-190(4) is therefore satisfied and the supply by Aus Accounting to Aus Co is taken to be a supply made to a recipient who is not in Australia. Paragraph (a) of item 3 is therefore satisfied by the operation of subsection 38-190(4).*

Paragraph (b) of item 3

613. *As discussed at paragraphs 610 and 611, the supply of the audit services by Aus Accounting is required to be provided to US Sub outside Australia. Therefore effective use or enjoyment of the supply takes place outside Australia.*

614. *Paragraph (b) of item 3 is therefore satisfied. The supply by Aus Accounting to Aus Co is therefore GST-free under item 3.*[134]

Supply by US Accounting to Aus Accounting

Supply not connected with Australia (subsection 9-25(5))

615. *US Accounting makes a supply of audit services to Aus Accounting. The supply by US Accounting only falls for consideration under the Australian GST system if it is connected with Australia (paragraph 9-25(5)(a) and (b)). If the supply by US Accounting is not connected with Australia it is outside the scope of the Australian GST system.*

616. *The audit service conducted by US Accounting is not required to be done in Australia. Secondly, the facts state that US Accounting does not carry on business in Australia through a place of business of its own or through an agent acting on its behalf. Therefore the supply by US Accounting is not connected with Australia and it is not necessary to consider the supply further for Australian GST purposes.*

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[134] The requirement in item 3 that the supply is not a supply of work physically performed on goods situated in Australia and is not a supply directly connected with real property situated in Australia is also satisfied.

Supply by Aus Co to US Sub

617. *A supply of audit services is made by Aus Co to US Sub. Aus Co charges US Sub for the cost of the audit service by making a cost allocation to US Sub. The cost allocation covers the audit service and associated administrative and management costs. The facts state that US Sub does not carry on business in Australia through a place of business of its own or through an agent acting on its behalf. The supply of audit services by Aus Co is therefore made to an entity that is not in Australia when the thing supplied is done. The supply therefore satisfies paragraph (a) of item 3.*

618. *The supply of audit services is provided, or required to be provided, by Aus Co to US Sub, which has no presence in Australia. Therefore, the supply is required to be provided to US Sub outside Australia. As the supply is provided or is required to be provided to US Sub outside Australia, effective use or enjoyment of the supply takes place outside Australia. Paragraph (b) of item 3 is therefore satisfied.*

619. *The supply by Aus Co to US Sub is therefore GST-free under item 3.*[135]

Further examples

620. GSTR 2005/6 provides further examples which illustrate the application of item 2 and subsection 38-190(3) to global supply arrangements. GSTR 2005/6 also discusses, by way of those examples, the application of:

- subsection 9-25(5) – supplies of anything, other than goods or real property, connected with Australia; and
- Division 84 – offshore supplies other than goods or real property.

621. These examples are summarised in the tables below and we illustrate the GST treatment of these supplies under item 3 (and item 2 for comparison purposes). It can be seen that the GST outcome under each of these items is the same.

622. For further details of the supplies you should refer to the examples in GSTR 2005/6. Cross references are given in the table.

[135] Ibid.

E.g. #	Global supply of audit services involving due diligence services *(Per Example 48, paragraphs 762 to 787, GSTR 2005/6)*	Is supply GST-free under item 2?	The supply is provided to …	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
65	*The facts and circumstances* • A US resident parent company, US Co, engages a US accounting firm to supply audit services to the world-wide company group. The US accounting firm charges US Co on a monthly basis for services rendered in the immediately preceding month. Neither US Co, nor the US accounting firm, carry on business in Australia through a place of business of its own or through an agent acting on its behalf. • Aus Sub, an Australian subsidiary of US Co, requires audit services – in particular a due diligence service for a possible business acquisition. The US accounting firm contracts with an Australian resident accounting firm for the provision of audit services to Aus Sub. • US Co is billed by the US accounting firm for the audit services provided to the Australian subsidiary. US Co charges Aus Sub for the cost of the audit				
	The GST treatment of the supply by US accounting firm to US Co • Refer the columns opposite. • The supply by the US accounting firm of audit services to US Co is partly done in Australia. The thing, the audit service, is partly performed in Australia. The supply is, therefore, partly connected with Australia under paragraph 9-25(5)(a). • The supply by US accounting firm is a taxable supply to the extent that the other requirements of section 9-5 are met. However, the supply is not a taxable supply to the extent that it is GST-free. *The GST treatment of the supply by Australian accounting firm to US accounting firm* • Refer the columns opposite. • The GST treatment is the same as the supply by the US accounting firm to US Co.	**No** as ss38-190(3) negates the GST-free status under item 2	**Aus Sub**	**does not take place outside Australia** as the supply is provided to Aus Sub in Australia	**No**
	The GST treatment of the supply by US Co to Aus Sub • Refer the columns opposite. • The supply of audit services by US Co to Aus Sub is performed in Australia, albeit by subcontractors. The supply is, therefore, connected with Australia under paragraph 9-25(5)(a). • The supply by US Co is a taxable supply to the extent that the other requirements of section 9-5 are met. However, the supply is not a taxable supply to the extent that it is GST-free.	**No** does not apply as Aus Sub is a resident entity	**Aus Sub**	**does not take place outside Australia** as the supply is provided to Aus Sub in Australia	**No**

E.g. #	Global supply of general accounting services *(Per Example 49, paragraphs 789 to 810, GSTR 2005/6*	Is supply GST-free under item 2?	The supply is provided to…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
66	*The facts and circumstances* • Swiss Co, a Swiss resident parent company for a world-wide group, contracts with a Swiss accounting firm for that firm to arrange for the preparation of tax returns of its foreign subsidiaries to meet the tax law requirements of each of the countries in which a subsidiary is incorporated. • The Swiss accounting firm arranges for the Australian tax return to be prepared for Aus Sub, the Australian subsidiary of Swiss Co, by an Australian resident accounting firm. • The Australian accounting firm contracts with Aus Sub to supply to it taxation return preparation services. Aus Sub pays the Australian accounting firm for the tax return preparation services. • Neither Swiss Co, nor the Swiss accounting firm, carry on business in Australia through a place of business of its own or through an agent acting on its behalf.				
	The GST treatment of the supply by Swiss accounting firm to Swiss Co • Refer the columns opposite. • The Swiss accounting firm makes a supply of arranging services to Swiss Co as it arranges for the Australian accounting firm to enter into a contract with Aus Sub to provide tax return preparation services. *The GST treatment of the supply by Swiss Co to Aus Sub* • Refer the columns opposite. • Swiss Co supplies an arranging service to Aus Sub. Pursuant to that arrangement, Swiss Co has arranged through a Swiss accounting firm for tax return preparation services to be supplied to Aus Sub. Swiss Co makes a cost allocation to Aus Sub for the arranging service which is bundled up in the form of a management fee.	**Not applicable** as the supply is not connected with Australia			**Not applicable** as the supply is not connected with Australia
	The GST treatment of the supply by Australian accounting firm to Swiss accounting firm • Refer the columns opposite. • The Australian accounting firm has entered into an obligation to supply tax return preparation services to Aus Sub. The entering into an obligation to do anything is a supply (subparagraph 9-10(2)(g)(i)). • The supply of the obligation is made and provided to the Swiss accounting firm.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**Swiss account-ing Firm**	**takes place outside Australia** as the supply is provided to the Swiss accounting firm outside Australia	**Yes**
	The GST treatment of the supply by Australian accounting firm to Aus Sub • Refer the columns opposite. • The Australian accounting firm enters into a separate contract with Aus Sub under which it supplies the tax return preparation services.	**No** does not apply as Aus Sub is a resident entity	**Aus Sub**	**does not take place outside Australia** as the supply is provided to Aus Sub in Australia	**No**

E.g. #	Global supply of general accounting services *(Per Example 50, paragraphs 812 to 831, GSTR 2005/6)*	Is supply GST-free under item 2?	The supply is provided to…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
67	*The facts and circumstances* • UK Co, a UK resident parent company for a world-wide group, has agreed with each of its subsidiaries, including the Australian subsidiary, Aus Sub, to supply general accounting services to the subsidiaries addressing the specific needs of each subsidiary. Aus Sub pays a fee to its parent in consideration for the accounting services. • UK Co contracts with a UK accounting firm for the supply of accounting services to the world-wide subsidiaries of UK Co. The UK accounting firm in turn contracts with an Australian resident accounting firm to meet the general accounting requirements of Aus Sub. • Neither UK Co, nor the UK accounting firm, carry on business in Australia through a place of business of its own or through an agent acting on its behalf.				
	The GST treatment of the supply by UK accounting firm to UK Co • Refer the columns opposite. • The general accounting services for Aus Sub are performed in Australia (under a subcontract arrangement with an Australian accounting firm). The supply is connected with Australia to the extent that the accounting services are performed in Australia (paragraph 9-25(5)(a)). • The supply by UK accounting firm is a taxable supply to the extent that the other requirements of section 9-5 are met. *The GST treatment of the supply by Australian accounting firm to UK accounting firm* • Refer the columns opposite. • The Australian accounting firm makes a supply of general accounting services to the UK accounting firm.	**No** as ss38-190(3) negates the GST-free status under item 2	**Aus Sub** as the accounting services are required to be provided to Aus Sub	**does not take place outside Australia** as the supply is provided to Aus Sub in Australia	**No**
	The GST treatment of the supply by UK Co to Aus Sub • Refer the columns opposite. • UK Co supplies accounting services to Aus Sub to meet an identified need of Aus Sub. • The supply of general accounting services is made by UK Co to Aus Sub. The supply is connected with Australia because the services are performed in Australia (paragraph 9-25(5)(a)). • The supply by UK Co is a taxable supply to the extent that the other requirements of section 9-5 are met.	**No** does not apply as Aus Sub is a resident entity	**Aus Sub** as the accounting services are required to be provided to Aus Sub	**does not take place outside Australia** as the supply is provided to Aus Sub in Australia	**No**

E.g. #	Global supply of data processing and IT services *(Per Example 51, paragraphs 833 to 859, GSTR 2005/6)*	Is supply GST-free under item 2?	The supply is provided to…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
68	*The facts and circumstances* • A non-resident US company, US Fin Services Co, the parent company of a global financial services (investment banking, asset management etc) group contracts with a US IT company (US IT Co) for the supply of global data processing and IT services. • US Fin Services Co has a subsidiary in Australia, Aus Fin Services Co, which supplies financial services in Australia. US IT Co also has a subsidiary in Australia, Aus IT Co. • Neither US Fin Services Co, nor US IT Co, carries on business in Australia either through a place of business of its own or through an agent acting on its behalf. Aus Fin Services Co, is not the agent of US Fin Services Co in Australia. Aus IT Co is not the agent of US IT Co in Australia. • The data processing service supplied by US IT Co involves collecting financial data from the world-wide financial services group, including Aus Fin Services Co, processing that data (which occurs outside of Australia), and providing the processed data to US Fin Services Co. • The IT service supplied by US IT Co involves the development of software products, the copyright in which is assigned, upon completion, to US Fin Services Co. • US IT Co contracts with its Australian resident subsidiary, Aus IT Co, to collect data from Aus Fin Services Co. To perform this data collection service, Aus IT Co installs and maintains certain hardware at the premises of Aus Fin Services Co. After the raw data has been collected, Aus IT Co sends the data offshore to US IT Co. • US IT Co processes all the data collected world-wide to convert it to a form that is required by US Fin Services Co. US IT Co sends this processed data to US Fin Services Co. • US Fin Services Co analyses this processed data and from this builds customised management reports for its world-wide subsidiaries, including Aus Fin Services Co. US Fin Services Co charges a fee to Aus Fin Services Co for the supply of the management reports. Aus Fin Services Co is registered for GST and uses the reports in analysing the performance of its financial supply business. • US Fin Services Co also brings together the various software products that have been supplied to it by US IT Co. US Fin Services Co makes the software products available to its subsidiaries under a licensing agreement in return for payment.				

E.g. #	Global supply of data processing and IT services *(Per Example 51, paragraphs 833 to 859, GSTR 2005/6)*	Is supply GST-free under item 2?	The supply is provided to…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
68 Cont'd	*The GST treatment of the supply of data collection and processing services by US IT Co to US Fin Services Co* • Refer the columns opposite. • The supply of data collection and processing services involves the collection of data from the world-wide financial services subsidiaries including Aus Fin Services Co. Some of the data collection is performed in Australia under a subcontract arrangement with Aus IT Co (that is, the collection of data relating to Aus Fin Services Co is done by Aus IT Co pursuant to a contract between US IT Co and Aus IT Co). The data processing services are not performed in Australia. Therefore, the supply is connected with Australia to the extent that the data collection services are performed in Australia. • The supply by US IT Co is a taxable supply to the extent that the other requirements of section 9-5 are met. However, the supply is not a taxable supply to the extent that it is GST-free.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**US Fin Services Co**	**takes place outside Australia** as the supply is provided to US Fin Services Co outside Australia	**Yes**
	The GST treatment of the supply of IT services by US IT Co to US Fin Services Co • Refer the columns opposite. • The development and supply of the computer program are done outside Australia. The copyright is assigned outside Australia. None of these supplies are made through an enterprise carried on in Australia. The supply is not, therefore, connected with Australia. • Note: A computer program is essentially encoded instructions designed to cause a computer to perform a particular task or to produce a particular result. It is, in substance, knowledge or information (that is, intellectual property). We therefore consider that the supply of the computer program is the supply of information. As the supply of information involves work to develop that information, the supply is one of the performance of a service. The computer program/supply of information is therefore 'done' where the information is developed. *The GST treatment of the supply of management reporting services by US Fin Services Co to Aus Fin Services Co* • Refer the columns opposite. • If the supply is a service of analysing the processed data and developing management reports for Aus Fin Services Co to use, those services are done where the services are performed. As this service is performed outside Australia, the supply of management reports is not connected with Australia. • However, because Aus Fin Services Co makes financial supplies (that is, its acquisition of the management reports is for the purposes of its enterprise but is not solely for a creditable purpose), provides consideration for the supply of the management reports and is registered for GST, Division 84 applies to the supply.	**Not applicable** as the supply is not connected with Australia			**Not applicable** as the supply is not connected with Australia

E.g. #	Global supply of data processing and IT services *(Per Example 51, paragraphs 833 to 859, GSTR 2005/6)*	Is supply GST-free under item 2?	The supply is provided to…	Effective use or enjoyment of the supply…	Is supply GST-free under item 3?
68 Cont'd	*The GST treatment of the supply of software licences by US Fin Services Co to Aus Fin Services Co* • Refer the columns opposite. • Division 84 applies to the supply. The supply of the computer program is the supply of information. This supply is an instantaneous supply of information done in the US and is not done through an enterprise carried on in Australia. The supply is not connected with Australia.	**Not applicable** as the supply is not connected with Australia			**Not applicable** as the supply is not connected with Australia
	The GST treatment of the supply by Aus IT Co to US IT Co • Refer the columns opposite. • The supply of data collection services by Aus IT Co to US IT Co.	**Yes** as ss38-190(3) does not negate the GST-free status under item 2	**US IT Co** as the supply is both made and provided to US IT Co	**takes place outside Australia** as the supply is provided to US IT Co outside Australia	**Yes**

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Commissioner of Taxation
24 April 2007

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GSTR 2006/D2

Related Rulings/Determinations:
GSTR 1999/1; GSTR 2000/31;
GSTR 2001/8; GSTR 2003/7;
GSTR 2003/8; GSTR 2004/7;
GSTR 2005/2; GSTR 2005/6
GSTR 2000/19; GSTR 2006/4

Subject references:
- exported services
- GST-free supplies
- services
- supplies of things other than goods or real property
- taxable supplies

Legislative references:
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ATO references
NO: 2006/3802
ISSN: 1443-5160
ATOlaw topic: Goods and Services Tax ~~ International services ~~ supplies used or enjoyed outside Australia
Goods and Services Tax ~~ International services ~~ supplies to non-residents outside Australia
Goods and Services Tax ~~ International services ~~ supplies from non-residents
Goods and Services Tax ~~ International services ~~ other