

GSTD 2015/1EC - Compendium

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Ruling Compendium – GSTD 2015/1

This is a compendium of responses to the issues raised by external parties to Draft Goods and Services Tax Determination GSTD 2014/D4 *Goods and services tax: is the supply of brokerage services that facilitates the sale or purchase of financial products on overseas securities or futures exchanges, a GST-free supply under paragraph (a) of item 4 in the table in subsection 38-190(1) of the A New Tax System (Goods and Services Tax) Act 1999?*

This compendium of comments has been edited to maintain the anonymity of entities that commented on the Draft Determination.

Summary of issues raised and responses

Issue No.	Issue raised	ATO Response/Action taken
1	To help solve the federal deficit issue, couldn't certain purchases only constitute a taxable supply, to make investors utilise brokerage services to purchase only Australian stock and financial products.	The ATO can't comment on this proposal as it is a policy matter. The Draft Determination sets out the Commissioner's view as to how the GST Act applies in these circumstances.
2	The Draft Determination appears to have taken an approach of maximising the tax payable. But it overlooks a vital aspect, and that is that the foreign country in which the trade is executed already charges a GST or VAT on the brokerage service. The Australian broker passes on these taxes as part of its brokerage services, Australia should not apply GST twice.	Paragraph 1 of the Final Determination indicates that a service provided by an Australian broker in relation to financial products on an overseas exchange is GST-free. As the supply is GST-free the Australian broker does not charge GST on the brokerage services they provide. GST is only payable if the supply is a taxable supply.

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Issue No.	Issue raised	ATO Response/Action taken
3	As the provision of advice and facilitating the engagement of an offshore broker to purchase or sell offshore securities is all done in Australia, it follows that these are taxable supplies rendered within Australia.	Whilst the supply of brokerage is connected with Australia which is a requirement for making a taxable supply, when Item 4 of subsection 38-190(1) applies a supply can be GST-free despite it being connected with Australia.
4	The current process of 'layering' amendment after amendment and rulings, private and public, one after the other, coupled with legal interpretations, tribunal and court decisions over many years, leads to a highly complex, almost impossible to understand, expensive system. If one were to start with a clean sheet of paper, things could look very different. Perhaps the following suggestions, not all encompassing and in no particular order, might be a start: • That a 'guiding statement' be enacted to make clear the intent of the legislation is paramount and must be observed when interpreting or making future changes to the Act(s). • When any anomalies or problems are identified there is a review and the relevant provisions are redrafted and replaced.	This comment refers to amending the GST Act; this is a policy matter for government on which the ATO is not able to comment.

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Issue No.	Issue raised	ATO Response/Action taken
5	Paragraph 20 of the Draft Determination highlights the practical difficulties that a broker may face in determining the client's intended use of the security. A combined reading of paragraphs 18 and 19 of the Draft Determination is that, regardless as to the intention of the client in acquiring the overseas foreign listed securities (that is, resale or investment), the ATO will accept that the rights attaching to the securities are exercisable offshore. Whilst the difficulties in paragraph 20 do exist they do not appear relevant as paragraphs 18 and 19 have already concluded how use is determined. Accordingly, we suggest that Paragraph 20 be removed from the final version of the Determination.	Paragraph 21 of the Final Determination has been reworded to make it clear why paragraph 20 is relevant. Paragraphs 18 and 19 set out several factors that are relevant to determining use. Taking into account the factors described in paragraph 20. Paragraph 21 makes it clear that the broker doesn't need to consider all the factors in paragraph 18 and 19 for each transaction, they can rely upon the location of the exchange to determine where use occurs.