


# ***CR 2014/3 - Goods and services tax: Department of Environment and Primary Industries Victoria (DEPI) - Bushbroker Scheme Landowner Agreement and Credit Agreement***

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## Class Ruling

# Goods and services tax: Department of Environment and Primary Industries Victoria (DEPI) – Bushbroker Scheme Landowner Agreement and Credit Agreement

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**ⓘ This publication provides you with the following level of protection:**

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner’s opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

## What this Ruling is about

1. This Ruling sets out the Commissioner’s opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

### Relevant provisions

2. The relevant provisions dealt with in this ruling are:
- Sections 9-5, 9-10 and 9-15 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act),
  - Sections 11-5, 11-15 and 11-20 of the GST Act,
  - Section 29-5 of the GST Act,
  - Section 156-5 of the GST Act, and
  - Section 195-1 of the GST Act.

Unless otherwise stated, all legislative references are to the GST Act.

## Class of entities

3. The class of entities to which this Ruling applies is:

### Class 1: Landowners

Owners of land (Landowners) who:

- are the registered proprietors of a fee simple estate over land in the State of Victoria;
- have entered into the BushBroker Landowner Agreement with the Department of Environment and Primary Industries (DEPI);

These Landowners are:

- registered for GST; or required to be registered for GST; and
- carrying on an enterprise in respect of their participation in the BushBroker scheme; and
- making supplies in the course or furtherance of the BushBroker enterprise; and
- making supplies and acquisitions through this enterprise that are connected with Australia;

for the purposes of the GST Act.

### Class 2: Purchasers

Entities that purchase Credits (Purchasers) under the BushBroker Credit Agreement in order to remove native vegetation on their land.

These entities are

- registered or required to be registered for GST; and
- have acquired the Credits as part of carrying on their enterprise

for the purposes of the GST Act.

4. This Ruling does not apply to acquisitions that relate to making input taxed supplies or acquisitions that are of a private or domestic nature.

## Qualifications

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 8 to 46 of this Ruling.

6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

## **Date of effect**

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7. This Ruling applies from 1 July 2012 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

## **Scheme**

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8. The following description of the scheme is based on information provided by the applicant.

### **Overview**

9. BushBroker is a scheme established by the Department of Environment and Primary Industries (DEPI) to improve the quality and amount of native vegetation in Victoria.

10. BushBroker is not a statutory scheme. It is administered through a variety of private agreements between parties involved in the scheme.

11. The scheme involves Landowners that own land with native vegetation generating Credits. Landowners may then sell these Credits on the open market.

12. Landowners may generate Credits in two ways:

- they may perform management actions relating to the native vegetation present on their land (the First Method); or
- they may transfer some or all of their land to the Crown (or another entity controlled by the Crown) (the Second Method).

13. This class ruling only concerns the First Method.

14. Market demand for Credits is driven by other Landowners, generally property developers who wish to remove native vegetation from their own land. Planning authorities may require such Landowners to generate a commensurate offset depending on the amount of clearing and the conservation significance of the vegetation to be cleared.

15. The purchase of native vegetation credits may be used to demonstrate this commensurate offset. Credits expire once they have been allocated to a planning permit or other approval process which requires offsets to be sourced for the removal of native vegetation in Victoria.

16. Landowners may obtain three different types of Credits, depending on the type of management actions they wish to perform:

- **Habitat Hectares:** where Credits are generated through protecting, maintaining and improving the management of a remnant patch of native vegetation. This is done through management actions including weed control, rabbit control and stock exclusion.
- **Large Old Trees:** where Credits are generated through protecting scattered large old trees, or large old trees in a remnant patch from adverse impacts.
- **New Recruits:** where Credits are generated by the Landowner planting new native vegetation on an area that was previously cleared of native vegetation.

## **Entry into BushBroker Landowner Agreement (Landowner Agreement) and creation of Credits**

17. Following the lodgment of the expression of interest, the Landowner's site will be registered on the BushBroker Register, being a database of all Credits and the entities which hold them. DEPI will notify the Landowner of this registration, and also provide the Landowner with an initial indication of the potential type and estimated number of Credits that they may receive.

18. Landowners engage environmental consultants to visit the Landowners site to conduct an assessment. The environmental consultant will discuss their findings with the Landowners, together with possible management actions the Landowner is prepared to perform. The information collected forms the basis of a draft management plan and Landowner Agreement. The draft management plan and agreement is forwarded by the consultant to DEPI for consideration and inclusion in the program.

19. Once DEPI accepts and receives a final version of the Landowner Agreement and management plan which has been signed by the Landowner DEPI will record the potential credits as confirmed assets on the BushBroker Register. The Landowner may finalise negotiations with a potential Purchaser to sell the credits once this has been done.

20. The Secretary of DEPI will execute the signed Landowner Agreement and BushBroker will facilitate the recording of the agreement on the land title. The Landowner Agreement contains details of the management plan and actions the Landowner is obliged to perform as well as the number and type of Credits they will generate. Once the Landowner Agreement is recorded on title DEPI will record the Credits as full native vegetation Credits on the BushBroker Register and the Native Vegetation Credit Register.

### **Acquisitions prior to entering the Landowner Agreement**

21. Landowners may make acquisitions from third parties prior to entering into the Landowner Agreement. These acquisitions are likely to include the following:

- Environmental consultant services;
- Contractor services;
- Legal services for advice on entering into an agreement; and
- Taxation advisory services.

### **Landowner Agreement**

22. The Landowner Agreement is an agreement made under section 69 of the *Conservation, Forests and Lands Act 1987 (Vic)* (Conservation Act). Section 69 empowers the Secretary (of DEPI) to enter into an agreement with a Landowner in relation to the 'management, use, development, preservation or conservation' of the land in question. Under sections 71 and 72 of the Conservation Act, such an agreement may be expressed as being binding on the land owner's successors in title.

23. If the agreement is expressed in this manner it must be recorded in the Register of Titles. Upon registration, subsection 72(2) of the Conservation Act deems the land owner's successors in title to have notice of the agreement, binds all successors to the terms of the agreement, and provides that the agreement runs in perpetuity with the land. All Landowner Agreements are expressed as being binding on successors in titles by clause 5 of the Landowner Agreement, and are recorded in the Register of Titles.

24. Under clause 6.1 of the Landowner Agreement, the Landowner covenants and agrees to complete the Management Actions specified in the Management Plan to the satisfaction of the Secretary, for the purposes of achieving the Targets, regardless of whether all Credits have been sold to other people.

25. DEPI's obligation to record the Credits that are generated by the Landowner is set out in clause 7 of the Landowner Agreement. Clause 7.1 obliges the Secretary (of DEPI) to record the Available Gain as a Credit on the BushBroker Register and to assign that Credit in favour of the Landowner. Available Gain is defined for these purposes in clause 1.13 of the Landowner Agreement to be the estimated improvement in the extent and quality of native vegetation on the Site as assessed on behalf of the Secretary in accordance with DEPI's policies for native vegetation management.

26. Landowners are not entitled to receive further consideration from DEPI for performing the Management Actions. Clauses 7.4.1 and 7.4.2 of the Landowner Agreement provide that DEPI is only obliged to make payments to the Landowner to the extent that:

- all Credits created pursuant to this Agreement have been purchased through the Register and
- monies have been paid to the Secretary in return for Credits purchased.

27. Further, clause 6.10.2 of the Landowner Agreement provides that the Secretary makes no promises in relation to the likely market value of a Credit or that any offer will be made to purchase a Credit.

28. The Landowner Agreement also provides for certain consequences if Landowners fail to comply with the terms of the Agreement in a manner that downgrades or degrades the ecological condition of the Site. Under clause 9.2 of the Landowner Agreement the Secretary of DEPI may demand the immediate reimbursement of any payment previously made to the Landowner under the Agreement. Further, the Landowner will be liable to compensate the Secretary for the reasonable cost of either reinstating the site to its previous condition, or to achieve an equivalent gain in another location.

29. In addition, under clause 9.3 of the Landowner Agreement, the Secretary may cancel Credits that have been assigned to the Landowner, but only if the Credits remain assigned to the Landowner and relate to the gain affected by the Landowner's actions. Thus Credits may not be cancelled if they have been sold to a Purchaser.

30. The Landowner's specific management actions are set out in a ten year management plan, which is included as a schedule to the Landowner Agreement. Although the Landowner is only required to actively manage their site over this ten year period, the Landowner Agreement does include obligations which are binding in perpetuity. For example, clause 6.4.1 of the Landowner Agreement provides that the Landowner must not remove native vegetation from the site (except in accordance with the management plan) at any time from the date of commencement.

31. A further schedule to the Landowner Agreement contains two schedules of payments, which are described as Part A and Part B schedules of the Landowner Agreement respectively. Part A begins with an Initial Payment, to be made at the commencement of the agreement, and assigns a further annual payment to the following ten years. All payments are expressed as a percentage of the Total. The Total is effectively the purchase price received for Credits which have been sold by the Landowner.

32. Part B also assigns payments over a ten year period including the percentage basis for the initial payment and first year payment expressed in Part A. Each payment is expressed as a percentage of the value of the purchase price of Credits which have been sold by the Landowner and are held by DEPI in trust.

### **Sale of the Credits**

33. A potential Purchaser of Credits who wants to clear native vegetation on their land will be advised by the relevant planning authority (the Responsible Authority) of the conditions which must be met before the Responsible Authority will authorise the clearing. A potential Purchaser of Credits may choose to purchase Credits under the BushBroker scheme to satisfy the conditions imposed by the Responsible Authority.

34. DEPI has developed an information sheet on establishing a price, but does not otherwise assist parties in their price negotiations. Prior to purchasing the Credits, the potential Purchaser will prepare a draft offset plan which is lodged with the Responsible Authority. It outlines the native vegetation currently present on their site, as well as details of Credits the Purchaser proposes to purchase. The Responsible Authority then advises the potential Purchaser whether the Credits are a suitable replacement for the native vegetation proposed to be cleared. Potential Purchasers will only proceed to purchase the Credits once the Responsible Authority confirms their suitability.

35. In its administration of the BushBroker scheme DEPI plays no role in assessing whether the Credits are a suitable replacement for the native vegetation proposed to be cleared, and is not in any way involved in assessing the merits of the potential Purchaser's planning application.

### **Acquisition of the Credits by the Purchaser under the BushBroker Credit Agreement (Credit Agreement)**

36. Once a Landowner and a Purchaser have agreed on a sale price for the Credits they advise DEPI. DEPI then prepares a BushBroker Credit Agreement to effect the Credit sale.

37. The BushBroker Credit Agreement is executed by the Landowner, the Purchaser and DEPI. After the Credit Agreement has been executed and the funds have been received, DEPI updates its BushBroker Register and notifies the Native Vegetation Credit Register that the Purchaser is the new holder of the Credits.

38. Clause 4.2 of the Credit Agreement obliges the Purchaser to pay the Purchase Price to DEPI for the value of Credits purchased from the Landowner. The Landowner is obliged under clause 5.2 to sell the Credits at the Agreed Price to the Purchaser. Once this is done the Purchaser is recorded as the holder of the Credits in the Native Vegetation Credit Register and is free to use the Credits.

## **Payments to the Landowner**

39. DEPI's obligations upon receiving the purchase price, and the Landowner's rights to payment, are set out in both the Landowner Agreement and the Credit Agreement. Under the Landowner Agreement the Landowner is not entitled to immediate payment of the purchase price and DEPI is not obliged to make the purchase price immediately available to the Landowner.

40. Broadly, the purchase price received by DEPI from the Purchaser is paid progressively to the Landowner as they perform their management actions. Any portion of the purchase price which has not been paid is held by DEPI for the benefit of the Landowner in accordance with clause 7.6 of the Landowner Agreement.

41. Clause 7.5 of the Landowner Agreement provides that if the Landowner has already sold Credits at the date of the Agreement, the Secretary (of DEPI) will make the Initial Payment to the Landowner as soon as practicable after Commencement upon receipt of an invoice from the Landowner. All subsequent payments other than the Initial Payment will be made annually by the Secretary in accordance with the Part A schedule of payments. As each payment is expressed as a percentage of the purchase price, the schedule effectively sets the rate at which the purchase price is repatriated to the Landowner.

42. If the Landowner has not sold Credits at the date of the Landowner Agreement, clause 7.6 of the Landowner Agreement provides that DEPI is to pay the Landowner in accordance with the Part B schedule of payments for any subsequent trades made. This schedule sets the payments as a percentage of the purchase price of Credits which have been sold by the Landowner. Thus it also effectively sets the rate at which the purchase price paid by the Purchaser is repatriated to the Landowner.

43. DEPI is only obliged to make a payment to a Landowner once the Landowner has provided it with a report evidencing that they have performed all their management actions to DEPI's satisfaction. This reporting obligation is set out in clauses 6.8 and 6.9 of the Landowner Agreement.

44. If the Landowner does not comply with their reporting obligation DEPI will withhold payment from the Landowner until the management actions have been completed. DEPI may also recoup the purchase price and demand compensation if the Landowner fails to perform the management actions required under the agreement.

#### **Acquisitions by the Landowner in relation to the performance of management actions**

45. Landowners typically make acquisitions over the life of the Landowner Agreement. The nature of the acquisitions will depend on the precise management actions agreed to. Examples of acquisitions made by Landowners include:

- Labour and contractor services
- Materials such as fencing materials, herbicides, plants, tree guards and baits;
- Maintaining and replacing fencing;
- Stock exclusion services;
- Purchase or hire of equipment to undertake activities such as weed spraying or fencing.

#### **Use of the Credits by the Purchaser**

46. Once they have been recorded as the holder of Credits, Purchasers may utilise the Credits. The Credits are utilised by being specified in an offset plan as an offset for the clearing of native vegetation.

47. After the Credits are utilised, DEPI is informed of this by the Purchaser and the BushBroker Register will be updated to record the Purchaser of the Credits. This information will also be recorded on the Native Vegetation Credit Register.

## **Ruling**

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### **Landowners**

#### ***Taxable supplies***

48. The Landowner makes a supply of the entry into the Landowner Agreement and subsequent performance of management actions to DEPI, for which the consideration is the annual payments. As the other elements of section 9-5 of the GST Act are met, this is a taxable supply. There is no other taxable supply made by the Landowner under the BushBroker scheme.

49. The Landowner will not make a taxable supply for the purposes of section 9-5 of the GST Act if the Landowner does not sell the Credits.

## ***Attributing GST payable***

50. The supply by the Landowner under the Landowner Agreement is a progressive supply for the purposes of Division 156 of the GST Act. Therefore Landowners who account for GST on a non cash (accruals) basis will attribute the GST payable as if each component of the supply is a separate supply, under subsection 29-5(1) of the GST Act. This means that the GST payable will be attributable to the earlier of the tax period in which an invoice for the supply is issued or the Landowner receives the annual payment.

51. For Landowners who account on a cash basis, GST will be payable on the supply in each tax period that they receive an annual payment in accordance with subsection 29-5(2) of the GST Act.

## ***Entitlement to input tax credits***

52. The Landowner will be entitled to input tax credits under section 11-20 of the GST Act for acquisitions described at paragraphs 20 and 44 as they have been made for a creditable purpose for the purposes of paragraph 11-5(a) and the other elements of section 11-5 are met.

53. The Landowner is not entitled to an input tax credit for the acquisition of Credits as they have not made a creditable acquisition within the meaning of section 11-5 of the GST Act.

## **Purchasers**

### ***Taxable supplies***

54. A Purchaser will not make a taxable supply as defined in section 9-5 of the GST Act when they purchase Credits and enter into the Credit Agreement.

### ***Entitlement to input tax credits***

55. A Purchaser will be entitled to an input tax credit for the acquisition of the Credits as they have made a creditable acquisition under section 11-5 of the GST Act.

## Appendix 1 – Explanation

**ⓘ** *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

### **Class 1: Landowner**

#### ***Landowner's entry into obligations under the Landowner Agreement and subsequent performance of management actions***

56. Under section 9-5 of the GST Act, you make a taxable supply if:

- (a) you make the supply for consideration; and
- (b) the supply is made in the course or furtherance of an enterprise that you carry on; and
- (c) the supply is connected with Australia; and
- (d) you are registered or required to be registered for GST.

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

57. A supply under the BushBroker scheme is not GST free or input taxed.

58. To satisfy paragraph 9-5(a) of the GST Act, there must be a supply and consideration, and there must be a connection between the supply and the consideration.

59. 'Supply' is defined under section 9-10 of the GST Act as follows:

- (1) A supply is any form of supply whatsoever.
- (2) Without limiting subsection (1), supply includes any of these:
  - (a) a supply of goods;
  - (b) a supply of services;
  - (c) a provision of advice or information;
  - (d) a grant, assignment or surrender of real property
  - (e) a creation, grant, transfer, assignment or surrender of any right;
  - (f) a financial supply; and
  - (g) an entry into, or release from, an obligation:
    - i. to do anything;
    - ii. or to refrain from an act;
    - iii. or to tolerate an act or situation;

- (h) any combination of any 2 or more of the matters referred to in paragraphs (a) to (g).

60. Goods and Services Tax Ruling GSTR 2006/9 *Goods and services tax: supplies* (GSTR 2006/9) provides guidance in relation to the identification and character of a supply.

61. For supplies under agreements which involve a supply of rights or obligations, paragraph 102 of GSTR 2006/9 provides that an agreement that does not bind the parties in some way would not be sufficient to establish a supply by one party to the other.

62. The Landowner Agreement between the Landowner and DEPI specifies obligations of both the Landowner and DEPI.

63. Under the Landowner Agreement, the Landowner will enter into a legal agreement which includes an entry into certain obligations to preserve the native vegetation on the site in perpetuity, and to provide land management services over a ten year period for a fee.

64. We consider that these obligations and management actions fall within the broad definition of a supply within the meaning of section 9-10 of the GST Act.

65. The next question is whether there is a supply for consideration. Section 9-15 of the GST Act provides that consideration includes:

- any payment, or any act or forbearance, in connection with a supply of anything; and
- any payment, or any act or forbearance, in response to or for the inducement of a supply of anything.

66. Under subsection 9-15(2) of the GST Act, it does not matter whether the payment, act or forbearance was voluntary, or whether it was by the recipient of the supply.

67. There are potentially two forms of consideration received by the Landowner for the supply or supplies made under the Landowner Agreement. Monetary consideration is provided to the Landowner in the form of the annual payments. In addition the assignment of the Credits by DEPI to the Landowner may constitute non-monetary consideration. Non-monetary consideration is consideration for a supply that is not expressed as an amount of money.

68. In determining whether a payment is consideration under subsection 9-15(1) of the GST Act, the test is whether there is a sufficient nexus between the supply and the payment made. See paragraph 68 of Goods and Services Tax Ruling GSTR 2001/6 *Goods and services tax: non monetary consideration* (GSTR 2001/6).

69. While paragraph 82 of GSTR 2001/6 provides that a non-monetary payment (and acts and forbearances) can be consideration, the character of the transaction will determine whether it forms part of the consideration received by the supplier for making the supply.

70. Paragraph 81 of GSTR 2001/6 explains that for non monetary payments to be treated as payment for a supply, it must have economic value and independent identity provided as compensation for the making of the supply.

71. We consider that the Credits do not have economic value and separate identity such that it is non-monetary consideration for the supply by the Landowner to DEPI.

72. While the allocation of Credits to the Landowner vests in them certain contingent rights, these rights have no separate economic value from the subsequent annual payments that are made out of the proceeds of sale. This is evident from the terms and conditions of the respective Landowner and Credit Agreements and the substance and economic reality of the transactions that take place.

73. In particular:

- While the Landowner and the prospective Purchaser negotiate a price for the sale of the Credits without DEPI's involvement, the Landowner, Purchaser and DEPI are parties to the Credit Agreement which involves the transfer of Credits from the Landowner to the Purchaser on the Register.
- The Credit Agreement requires the payment by the Purchaser to be paid to the Secretary (of DEPI), not the Landowner under clause 4.2 of the Credit Agreement.
- The further obligation of DEPI under the Credit Agreement to make payment to the Landowner is governed by the Landowner Agreement under clause 3.6 of the Credit Agreement.
- Under clause 7.4 of the Landowner Agreement, DEPI is obliged to make annual payments (out of the proceeds from sale of the Credits) where the Landowner performs its management actions to the satisfaction of DEPI. Where such actions are not satisfactorily performed, DEPI is not obliged to make any payment.

74. In essence, the creation, negotiation and assignment of the Credits is merely a mechanism which enables DEPI to fund the annual payments it makes to the Landowner where the Landowner satisfactorily performs management actions pursuant to the Landowner Agreement.

75. Accordingly, the Credits have neither economic value nor separate identity from the annual payments and, as such, is not non-monetary consideration for the supply by the Landowner to DEPI.

76. As the assignment of the Credits is not consideration for the supply of the obligations and performance of land management actions, the Landowner will not make a taxable supply for the purposes of section 9-5 of the GST Act if the Landowner does not sell the Credits.

77. By contrast, the annual payments by DEPI are consideration for the supply of the obligations and performance of management actions by the Landowner as these payments have the requisite nexus to this supply for the purposes of paragraph 9-5(a) of the GST Act. As the other elements of section 9-5 are met, it is a taxable supply.

## **Sale of the Credits**

78. The Credit Agreement is executed collectively by the Landowner, the Purchaser of the Credits, and DEPI to effect the sale of the Credits. Under the Credit Agreement the Landowner is obliged to sell the Credits at the agreed price to the Purchaser, via the Register.

79. Once this is done the Purchaser is recorded as the holder of the Credits in the Register, and is free to use the Credits. The Credit Agreement obliges the Purchaser to pay the purchase price to DEPI for the value of Credits purchased.

80. DEPI's obligations upon receiving the purchase price, and the Landowner's rights to payment, are set out in the Landowner Agreement. The Landowner is not entitled to immediate payment of the purchase price and DEPI is not obliged to make the purchase price immediately available to the Landowner.

81. The obligations imposed on the Landowner pursuant to the Credit Agreement, specifically to sell at the agreed price via the Register the requisite number of Credits is a supply to the Purchaser within the meaning of section 9-10 of the GST Act.

82. However, for it to be a taxable supply, it must be a supply for consideration. Pursuant to clause 4.2 of the Credit Agreement, the Purchaser is required to pay DEPI. Moreover, DEPI's obligation to make payment to the Landowner is set out in clause 3.6 which directs that such payment be made in accordance with the Landowner Agreement.

83. The effect of the Landowner Agreement is that any payment (in the form of annual payments) by DEPI to the Landowner is contingent upon the Landowner performing its management actions to the satisfaction of DEPI (not the Purchaser).

84. While there is a payment by the Purchaser for the transfer of the Credits, it is not consideration for the supply by the Landowner to the Purchaser. That is because the Landowner does not receive the payment from the Purchaser, nor does it have any presently existing entitlement to that payment.

85. The extent of the Landowner's entitlement to any payment under the Credit Agreement is governed by the Landowner Agreement which requires DEPI to make annual payments as and when the management actions are performed by the Landowner to the satisfaction of DEPI. At that time, the Landowner's right to payment crystallises. However, this payment is owed by DEPI to the Landowner and, as stated at paragraph 76, this is consideration for the supply of the obligations and performance of management actions by the Landowner to DEPI.

86. Accordingly, there is no taxable supply of the Credits made by the Landowner to the Purchaser.

### **Attributing the GST payable by the Landowner on the taxable supply made under the Landowner Agreement**

87. GST is payable by the Landowner in accordance with the core attribution rules contained in Division 29 of the GST Act.

88. For Landowners who account on a cash basis, GST will be payable on the supply under the Landowner Agreement in each tax period that they receive a payment for the supply, under subsection 29-5(2) of the GST Act.

89. Under subsection 29-5(1) of the GST Act, a Landowner who accounts for GST on a non cash (accruals) basis will attribute the GST payable on a taxable supply in relation to the supply to the earlier of the tax period in which:

- any of the consideration for the supply is received; or
- an invoice for the supply is issued

90. However, there are modified attribution rules under Division 156 in respect of progressive or periodic supplies for Landowners who account on an accruals basis.

91. Subsection 156-5(1) of the GST Act provides that GST payable on a taxable supply that is made:

- for a period or on a progressive basis; and
- for consideration that is to be provided on a progressive or periodic basis

is attributable in accordance with section 29-5 of the GST Act as if each progressive or periodic component of the supply were a separate supply.

92. As the supply of the management actions is a supply made on a progressive basis for which consideration is also made on a progressive basis (i.e. annually over the term of the Landowner Agreement), Division 156 of the GST Act applies.

93. The Landowner who accounts on an accruals basis will attribute GST payable in accordance with section 29-5 of the GST Act as if each payment represents a separate supply. However if the Landowner issues an invoice before they receive the payment then attribution will occur in the tax period in which the invoice has issued.

94. Due to the operation of the modified rules in section 156-5 of the GST Act, Landowners who account on a cash or non cash basis will generally attribute the GST to the tax period in which the Landowner receives the annual payment from DEPI.

## **Landowner's entitlement to input tax credits for acquisitions made in relation to the BushBroker scheme**

95. As stated at paragraph 3 this ruling applies to Landowners who are carrying on an enterprise in respect of their participation in the BushBroker scheme.

96. Section 11-20 of the GST Act provides that an entitlement to an input tax credit will arise on a creditable acquisition that you make.

97. Section 11-5 of the GST Act defines the term 'creditable acquisition' and states that you make a creditable acquisition if:

- a. you acquire anything solely or partly for a creditable purpose; and
- b. the supply of the thing to you is a taxable supply; and
- c. you provide, or are liable to provide, consideration for the supply; and
- d. you are registered, or required to be registered.

98. A creditable acquisition is only made if all of the above conditions are satisfied.

99. Section 11-15 of the GST Act defines the meaning of creditable purpose as follows:

- You acquire a thing for a creditable purpose to the extent that you acquire it in carrying on your enterprise.
- However, you do not acquire the thing for a creditable purpose to the extent that:
  - the acquisition relates to making supplies that would be input taxed; or
  - the acquisition is of a private or domestic nature.

100. All acquisitions that we refer to in this ruling do not relate to making input taxed supplies and are not of a private or domestic nature.

## ***Acquisitions prior to entering into Landowner Agreement***

101. The term 'carrying on an enterprise' is defined in section 195-1 of the GST Act to include 'doing anything in the course of the commencement or termination of the enterprise'.

102. Acquisitions that are made by the Landowner for environmental consultant services, contractor services, legal services and taxation advisory services are for a creditable purpose as they are acquired in carrying on the Landowner's enterprise and also in the course of the commencement of the enterprise. Therefore paragraph 11-5(a) of the GST Act is satisfied.

103. Where the other requirements of section 11-5 of the GST Act are satisfied these acquisitions will be creditable acquisitions and the Landowner will be entitled to input tax credits in accordance with section 11-20 of the GST Act.

### ***Acquisitions for performing management actions***

104. Under the Landowner Agreement, Landowners will make acquisitions in respect of their obligation to perform management actions on the land. As these acquisitions will be acquired in carrying on the Landowner's enterprise paragraph 11-5(a) of the GST Act will be satisfied.

105. In performing the management actions the Landowner may make acquisitions for

- Labour and contractor services
- Materials such as fencing materials, herbicides, plants, tree guards and baits;
- Maintaining and replacing fencing;
- Stock exclusion services;
- Purchase or hire of equipment to undertake activities such as weed spraying or fencing.

106. Where these acquisitions satisfy all of the requirements of section 11-5 of the GST Act, the Landowner is entitled to input tax credits for these acquisitions.

### ***Landowner's entitlement to input tax credits for the assignment of the Credits from DEPI***

107. Paragraphs 95 to 98 explain entitlement to input tax credits under certain provisions in Division 11 of the GST Act. In addition, see paragraph 55 for the definition of a taxable supply.

108. Paragraph 11-5(b) requires that the supply of the thing (the Credits) to the Landowner must be a taxable supply.

109. While there is a supply of obligations by DEPI under the Landowner Agreement, including the obligation to assign Credits to the Landowner in the prescribed circumstances, the question is whether there is a separate taxable supply of the Credits by DEPI to the Landowner under the BushBroker scheme.

110. There is a mutual exchange of rights and obligations between the parties pursuant to the Landowner Agreement. However, these rights and obligations are not non-monetary consideration but rather merely assist to define and describe the taxable supply made by the Landowner to DEPI under the scheme, namely the supply of obligations and management actions for which the consideration is the annual payments. (See paragraphs 55 to 76).

111. Accordingly, there is no separate taxable supply of the assignment of Credits by DEPI to the Landowner. It follows that the Landowner is not entitled to an input tax credit for the acquisition of such Credits, particularly in terms of paragraph 11-5(b) of the GST Act.

## **Class 2: Purchaser**

### ***Credit Agreement***

112. Under the Credit Agreement, the Purchaser is obliged to purchase the Credits from the Landowner and to pay the sale proceeds to the Secretary of DEPI.

113. As this is essentially the only obligation under the Credit Agreement for the Purchaser, they are not making a supply for consideration under the Credit Agreement for the purposes of paragraph 9-5(a) and accordingly a taxable supply does not arise under section 9-5 of the GST Act.

### ***Acquisition of the Credits under the Credit Agreement***

114. Refer to paragraphs 95 to 98 in relation to the requirements for entitlement to input tax credits for creditable acquisitions pursuant to section 11-5 of the GST Act.

115. The Purchaser's acquisition of the Credits under the Credit Agreement will satisfy the requirements of section 11-5 of the GST Act where:

- the acquisitions of the Credits are for a creditable purpose in carrying on the Purchaser's enterprise; and
- the supply of the thing (i.e. the transfer of the Credits) by DEPI to the Purchaser is a taxable supply; and
- the Purchaser provides or is liable to provide consideration for the supply (in the form of the purchase price paid for the Credits); and
- the Purchaser is registered for GST

116. Accordingly, the Purchaser will be entitled to an input tax credit for the acquisition of the Credits pursuant to section 11-20 of the GST Act.

## **Appendix 2 – Detailed contents list**

117. The following is a detailed contents list for this Ruling:

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## References

*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*TR 2006/10; GSTR 2001/6;  
GSTR 2006/9*Subject references:*

- GST consideration
- Goods and services tax
- government entities
- GST supply
- taxable supply

*Legislative references:*

- ANTS(GST)A 1999 9-5
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NO:	1-495FUJO
ISSN:	1445-2014
ATOlaw topic:	Goods and Services Tax ~~ General rules and concepts ~~ taxable supplies

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