GSTR 2002/D1 - Goods and Services Tax: what do the expressions 'directly connected with goods or real property' and 'a supply of work physically performed on goods' mean for the purposes of subsection 38-190(1) of the A New Tax System (Goods and Services Tax) Act 1999 ?

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Draft Goods and Services Tax Ruling

Goods and Services Tax: what do the expressions 'directly connected with goods or real property' and 'a supply of work physically performed on goods' mean for the purposes of subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*?

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Preamble

This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered views of the Australian Taxation Office. This draft may not be relied on by taxation officers, taxpayers and practitioners. When officially released as a final Ruling it will be a public ruling for the purposes of section 37 of the Taxation Administration Act 1953 and may be relied upon by any entity to whom it applies.

What this Ruling is about

1. This Ruling examines the meaning of the expressions 'directly connected with goods or real property' and 'a supply of work physically performed on goods' as used in subsection 38-190(1) of the *A New Tax System (Goods and Services Tax Act) 1999* ('the GST Act'). That subsection sets out supplies of things (other than goods or real property) that are GST-free. The reach of these expressions affects whether a supply is GST-free.

2. The Ruling also looks at the meaning of 'goods' and 'real property' as defined in the GST Act.

3. The Ruling does not otherwise address the operation of the provisions of section 38-190.

4. 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).

Date of effect

5. This draft Ruling represents the preliminary, though considered, view of the Australian Taxation Office. This draft may

not be relied on by taxation officers, taxpayers or practitioners. When the final Ruling is officially released, it will explain our view of the law as it applied from 1 July 2000. The final Ruling will be a public ruling for the purposes of section 37 of the *Taxation Administration Act 1953* and may be relied upon, after it is issued, by any entity to whom it applies. 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.

Legislative context

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

   (a) you make the supply for consideration;

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

   (c) the supply is connected with Australia;[1] and

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

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

7. Section 9-25 establishes when a supply is connected with Australia. In the case of supplies other than goods or real property, a supply is connected with Australia if the thing is done in Australia or the supply is made through an enterprise that the supplier carries on in Australia.[2]

8. A supply is GST-free if it is GST-free under Division 38 or under a provision of another Act.[3]

9. 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;[4]
- 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

[1] Goods and Services Tax Ruling GSTR 2000/31 Goods and services tax: supplies connected with Australia, explains when a supply is connected with Australia under section 9-25.
[2] Subsection 9-25(5).
[3] Paragraph 9-30(1)(a).
[4] The operation of this section is addressed in Draft Goods and Services Tax Ruling GSTR 2001/D6 Goods and services tax: Exports of goods.

- section 38-190 – supplies of things, other than goods or real property, for consumption outside Australia.

10. Subsection 38-190(1) comprises five items which set out supplies of things other than goods or real property that are GST-free. If the requirements of one of those items are met the supply is GST-free, provided subsections 38-190(2) and (3) do not operate to negate that GST-free status. Subsection 38-190(4) operates to extend the GST-free status allowed under item 3.

11. The expressions 'directly connected with goods or real property' and 'a supply of work physically performed on goods' are used in items 1 to 3 as follows:

Supplies of things, other than goods or real property, for consumption outside Australia

Item	Topic	These supplies are GST-free[5]
1	Supply connected with property outside Australia	a supply that is **directly connected with goods or real property** situated outside Australia.
2	Supply to non-resident outside Australia	a supply that is made to a non-resident who is not in Australia when the thing supplied is done, and: (a) 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; or (b) the non-resident acquires the thing in carrying on the non-resident's enterprise, but is not registered or required to be registered.
3	Supplies used or enjoyed outside Australia	a supply: (a) that is made to a recipient who is not in Australia when

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

the thing supplied is done; and

(b) the effective use or enjoyment of which takes place outside Australia;

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.

Ruling

Supplies of things other than goods or real property

12. Subsection 38-190(1) only applies to supplies that are not supplies of goods or real property such as supplies of services or rights. Supplies that are supplies of goods or real property are discussed at paragraphs 58 to 86 in the Explanations section of the Ruling.

Directly connected with goods or real property

13. Subsection 38-190(1) sets out supplies of things that are for consumption outside Australia, and therefore, GST-free (unless subsection 38-190(2) or (3) applies).

14. Under item 1 of subsection 38-190(1) a supply of a thing other than goods or real property is GST-free if that supply is directly connected with goods or real property situated outside Australia. A supply that is not GST-free under item 1 may be GST-free under another item.

15. Conversely, a supply of a thing other than goods or real property to a non-resident[6] recipient is not GST-free under item 2 where the requirements of paragraph (b) are not met and the supply is directly connected with real property situated in Australia or is a supply of work physically performed on goods situated in Australia when the work is done. A supply that is not GST-free under item 2 may be GST-free under another item.

[6] Non-resident is defined in section 195-1 to mean an entity that is not an Australian resident. An Australian resident, as defined in section 195-1, means a person who is a resident of Australia for the purposes of the *Income Tax Assessment Act 1936*.

16. A supply of a thing other than goods or real property to a recipient (resident or non-resident) is not GST-free under item 3 if the supply is 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, even if the effective use or enjoyment takes place outside Australia. A supply that is not GST-free under item 3 may be GST-free under another item.

17. If a supply is directly connected with goods or real property, it is treated, for the purposes of subsection 38-190(1), as being consumed where the goods or real property are located. We consider, therefore, that the expression 'directly connected with' in the context of subsection 38-190(1) contemplates a very close link or association between the supply and the goods or the real property. The supply must have a direct effect (or have the purpose of having a direct effect) upon the goods or real property. In this regard, the goods or real property must be specific goods or real property. A supply that does not relate to specific goods or real property only has an indirect connection with goods or real property.

18. Fundamental to establishing whether there is a direct connection between a supply and particular goods or real property is determining what the supply is for. For example, without knowing what legal services are for it cannot be said what they are connected with. Legal services to effect the conveyance of land are directly connected with that real property. However, legal services in establishing a trust to hold real property are not directly connected with the underlying real property.

19. In some instances, a direct connection between a supply and particular goods or real property is self-evident. For example, a supply of repairs to goods or a building is directly connected with those goods or that building.

20. In other cases, you need to establish the exact nature of what the supplier is supplying to the recipient so that the transaction is analysed correctly. For example, a supply of advertising space in a newspaper to publicise the sale of goods is about conveying the advertising message. Even though the subject matter of the advertisement is goods, this does not establish a direct connection with the underlying goods. The advertising supply is directly connected with all the things necessary for the conveying of the message. (See paragraphs 115 to 117 of the Explanations section of the Ruling).

21. The New Zealand cases of *Wilson & Horton Ltd v. CIR* (1994) 16 NZTC 11,221; (1994) 18 TRNZ 792 *and Malololailai Interval Holidays NZ Ltd v. CIR* (1997) 18 NZTC 13,137 illustrate the importance of establishing the exact nature of the supply. These cases

are discussed at paragraphs 115 to 122 in the Explanations section of the Ruling.

22. In determining whether there is a direct connection between a supply and specific goods or real property, the location of the recipient of a supply is not relevant (refer Example 4 at paragraph 124 of the Explanations section). Rather, the issue is one of determining whether the relationship between the supply and the goods or the real property is sufficiently close to be directly connected.

23. Typically, a supply of a thing other than goods or real property is directly connected with goods or real property where the direct object of the supply is the goods or real property in the sense that:

- the supply changes or affects the goods or real property in a physical way;
- there is a physical interaction with the goods or real property but without changing the goods or real property;
- the supply establishes quantity, size, other physical attributes or the value of the goods or real property;
- the supply affects (or its purpose is to affect) or protects the nature or value of the goods or real property; or
- the supply affects or is proposed to affect the ownership of the goods or real property.

24. We consider that supplies that have a direct connection with goods or real property will typically be covered by one of the categories of supplies discussed at paragraphs 25 to 35 below. In each of these categories the supply has a direct effect (or has the purpose of having a direct effect) upon particular goods or real property. However, the categories are not exhaustive and there may be some supplies that are directly connected with goods or real property that do not readily fit into one of these categories. Also some supplies may be covered by more than one category because it is not intended that the categories are mutually exclusive.

25. A direct connection with specific goods or real property exists where the direct object of the supply is the goods or real property in the sense that the *supply changes or affects the goods or real property in a physical way*. Typically this would be the case where a service is physically performed on the goods or real property.

26. Supplies that are directly connected in this way with goods or real property include, for example, supplies of services of the following kind:

- the construction, alteration, demolition, repair or maintenance of a building or other structural improvement;
- the installation, alteration, repair, cleaning, restoration, modification of goods; and
- the removal of vegetation or revegetation or decontamination of land.

27. A direct connection with specific goods or real property also exists where the direct object of the supply is the goods or real property in the sense that *there is a physical interaction with the goods or real property, but without changing the goods or real property*.

28. Supplies that are directly connected in this way with goods or real property include, for example, supplies of services of the following kind:

- transport services - the removal of goods from one place to another;
- security services in relation to goods or real property; and
- storage services of goods[7] (which do not involve renting storage space - see paragraphs 85 to 86 of the Explanations section of the Ruling).

29. A direct connection with specific goods or real property exists where the direct object of the supply is the goods or real property in the sense that *the supply establishes quantity, size, other physical attributes or the value of goods or real property*.

30. Supplies that are directly connected in this way with goods or real property include, for example, supplies of services of the following kind:

- testing and analysing goods, for example, to see whether goods such as drugs or appliances meet specified standards;
- surveying services that are physically carried out on specific land, for example, to determine its boundaries or topography;
- counting goods, for example, a stocktake of goods;
- exploration services such as a seismic survey, aeromagnetic survey or drilling services; and

[7] While this supply is directly connected with goods, it is not directly connected with real property.

- the examination of goods or real property to establish a value.

31. Further, a direct connection exists where the direct object of the supply is the goods or real property in the sense that *the supply affects (or its purpose is to affect) or protects the nature or value of the goods or real property*. The nature of the goods or real property refers to the character, quality, features, condition, or environment of those goods or real property.

32. Supplies of this kind may, depending on what the supply is for, include management services, advisory, consulting or other professional services that commonly do not involve physically dealing with goods or real property.

33. Specific examples of supplies of this kind that have a direct connection with goods or real property include:

- a supply of architectural or design engineering services for specific real property;
- town planning consultancy services in relation to rezoning, subdividing or planning permission for a specific site;
- a supply of insurance of goods or real property; and
- services of managing specific real property where the manager takes overall responsibility for managing the property on behalf of the landlord including a range of functions such as rent collection, ensuring that the property is properly maintained or secured (and obtaining tenants or arranging repairs if ancillary to the supply of property management).

34. A direct connection with goods or real property also exists where *the supply affects or is proposed to affect the ownership of goods or real property* including any interest in, or right in or over goods or real property.

35. Examples of supplies of this kind that are directly connected with goods or real property include:

- conveyancing services in respect of real property;
- services in preparing a lease agreement for a lease of goods or real property;
- services in preparing an instrument of mortgage over real property or a chattel mortgage, such as a bill of sale;
- legal services for the preparation of a contract to effect the sale of goods;

- legal services in respect of the enforcement of a contract of sale; and
- a supply of a right or an option to buy goods.

36. A direct connection does not exist where the supply does not relate to specific goods or real property or only indirectly relates to such goods or real property. The supply does not have a direct effect upon the goods or real property. Supplies that relate to goods or real property but are not directly connected with goods or real property include:

- provision of advice or information about real property prices or property markets in general;
- architectural services that do not relate to specific real property;
- marketing, advertising or auctioneering services (where the auctioneer is not the common law agent of the vendor) or similar intermediary service;
- services of merely arranging supplies between two other parties, for example, an insurance broker arranging for a supply of building insurance;
- debt collection services, even though the debt arises from the sale or rental of goods or real property;
- legal services supplied in the general administration or winding up of a deceased person's estate which includes real property;
- legal services to establish a trust to hold real property;
- legal advice about the taxation implications of buying or selling specific goods or real property;
- accounting services in the preparation of a tax return where the return covers property related matters such as rental income or capital gains tax issues; and
- demographic study or market research, for example, to determine the economic viability of a business project for a particular region.

37. In the Appendix to the Ruling a number of examples illustrate in more detail whether in particular circumstances a supply is directly connected with goods or real property. (See paragraphs 135 to 153 of the Appendix section of the Ruling).

Supplies involving the use of real property

38. If a supply involves the use of real property and that supply is not a supply of real property as defined (supplies of real property are discussed at paragraphs 61 to 86 of the Explanations section), then it needs to be determined whether that supply is directly connected with real property.

39. If a supply involves the use of real property in circumstances where that use is ancillary to the dominant part of the supply, the real property merely providing the setting for the dominant part of the supply, that supply is not directly connected with real property.

40. For example, supplies such as the membership of a club, admission to a cinema and the provision of storage services involve the use of real property, but that use is ancillary to the dominant part of the supply. The supply is characterised by its dominant part which falls short of being a supply of real property (this is explained further in the Explanations section at paragraphs 69 to 70). In cases of this kind the real property is merely the setting for the dominant part of the supply and the supply is not directly connected with that real property.

41. In the case of admission to a cinema or theatre, the patron has permission to enter the premises and thereby use the cinema or theatre. However, that use is ancillary to the dominant part of the supply being the presentation of the film. Permission to enter and use the premises is a means to end – that is, the viewing of the film. It is not an end in itself. The supply is not directly connected with real property as the real property only provides the setting for the dominant part in the supply.

42. The same outcome follows in relation to membership of a club or the provision of storage services. The dominant part of the supply is the right to enjoy facilities and the storage of goods respectively. The supply is not directly connected with real property as the real property only provides the setting for the dominant part of the supply.

Supplies that involve goods or real property as inputs

43. A supplier may use goods or real property as inputs in making a supply. However, that use does not make that supply directly connected with the goods or real property used. A direct connection between a supply and goods or real property does not extend to a connection between the supply and the business infrastructure used by the supplier to make that supply. For example, if a supplier supplies and charges an overseas customer for software provided electronically via the Internet, the use of the supplier's infrastructure (for example, computer and network) is essential as the means of transmitting the software to the non-resident but the supply is not directly connected with the supplier's infrastructure.

Meaning of 'a supply of work physically performed on goods'

44. The *Indirect Tax Legislation Amendment Act 2000* amended items 2 and 3, changing the words 'a supply directly connected with goods' to 'a supply of work physically performed on goods'. The Explanatory Memorandum for the amending Bill indicates that the amendment was made to 'allow a wider range of services to be GST-free'.[8] This has been achieved by narrowing the scope of the exception to the GST-free status provided by item 2 paragraph (a) and item 3.

45. The range of supplies that are directly connected with goods includes supplies of work that are physically performed on goods. That is, a supply of work physically performed on goods is always directly connected with goods. However, not all supplies directly connected with goods are also supplies of work physically performed on goods. A supply of work physically performed on goods requires a closer connection with the goods: it requires a physical intervention with the goods. For example, a supply effecting a transfer of title to goods is directly connected with goods but it is not a supply of work physically performed on goods as there is no physical intervention with the goods.

46. A supply is a supply of work[9] physically performed on goods where something is done to the goods to change them or to otherwise affect them in some physical way. The repair of goods is an example of work that is physically performed on goods.

47. In contrast, where activities do not change or affect goods in a physical way there is no supply of work physically performed on goods. For example, a supply of transporting goods is not work physically performed on goods because the supply only changes the location of the goods, not the goods themselves.

48. *Example 1 - supply of transport services*

Transaction	An Australian based transport company supplies transport services within Australia to a non-resident shipping company.
Question	Is the supply of transport services a supply of work physically performed on goods situated in

[8] See the Explanatory Memorandum to Indirect Tax Legislation Amendment Bill 2000 at paragraph 3.44.

[9] 'Work' connotes purposeful activity – it does not cover a physical impact on goods that is accidental. For example, if goods are damaged in transit, this does not make the transport supply 'work physically performed on goods'.

	Australia?
Answer	No. The supply of transport services is not a supply of work physically performed on goods. Although the goods are moved from one location to another, the supply does not have any physical effect on the goods themselves.
38-190 Consequences	The supply may be GST-free under paragraph (a) of item 2 if the other requirements of item 2 are satisfied. The supply may also be GST-free under paragraph (b) of item 2.

49. However, the work physically performed does not have to bring about a fundamental change to the attributes of the goods. For example, cleaning goods is a supply of work physically performed on goods even though the cleaning does not make them into fundamentally different goods - the change is simply the difference between dirty goods and clean goods.

50. Other examples of work physically performed on goods include supplies that maintain or restore the function of goods. Repairs to machinery used in a manufacturing business falls into this category. Painting a ship is also a supply of work physically performed on goods: the purpose of the supply is to preserve the physical condition of the vessel.

51. Work that modifies the function of goods is also physically performed on the goods. Converting a fishing vessel to a cargo vessel is one example. Upgrading of machinery used in manufacturing goods to improve and increase output is a supply that changes the machinery.

52. Most supplies of work physically performed on goods will add value to those goods. But it is not essential that a supply add value to the goods for that supply to be work physically performed on goods. For example, a supply for the destruction of toxic materials is work physically performed on goods as there is purposeful physical intervention with the goods.

53. A supply must be analysed to determine whether it is properly characterised as 'a supply of work physically performed on goods'. If the supply includes work physically performed on goods but that work is ancillary to some other dominant part of the supply that is not work physically performed on goods, then that supply is not characterised

as a supply of work physically performed on goods. This depends on the particular facts of each supply.

54. For example, a supply of a report on the results of testing and analysing samples of goods is characterised as a supply of information or advice. The dominant part of the supply is the analysis of data to enable a professional opinion to be provided. The supply is not characterised as a supply of work physically performed on goods. The testing and analysis of samples of goods enables the information to be compiled and is ancillary to the supply of that information.

55. *Example 2 – provision of research findings*

Transaction	An Australian based research firm is engaged by a UK resident client to duplicate and enhance an existing manufacturing process using the client's sample materials and equipment in Australia. The research firm makes findings and recommendations from the duplication of that process and use of the sample materials in Australia.
Question	Is the supply of research findings a supply of work physically performed on goods situated in Australia?
Answer	No. The physical work performed on goods generates data to support the conclusions and recommendations. It is the provision of these findings that represents the dominant part of the supply. The physical work carried out facilitates the findings and is merely an ancillary part of the wider supply of information or advice.
38-190 Consequences	The supply is GST-free under paragraph (a) of item 2, or item 3, if the other requirements of the relevant item are satisfied.

56. *Example 3 – provision of service – certification of goods*

Transaction	A manufacturer resident in Taiwan imports goods into Australia and engages a local Australian firm to certify that the goods comply with Australian safety standards before they are sold to the public. This certification involves the safety testing of the goods in Australia.

Question	Is this supply of certification of goods a supply of work physically performed on goods situated in Australia?
Answer	No. The safety testing of the goods is ancillary to the supply of certification of the goods, this being a supply of advice or information.
38-190 Consequences	The supply is GST-free under paragraph (a) of item 2 or item 3 if the other requirements of the relevant item are satisfied.

Apportionment

57. At times a supply includes taxable and non-taxable parts. This may be because, for example, only part of the supply is directly connected with real property outside Australia or part of the supply is a supply of work physically performed on goods in Australia. In these cases, a reasonable basis of apportionment should be used to apportion the value of the supply. This is discussed further at paragraphs 127 to 132 in the Explanations section of the Ruling.

Explanations

A supply of goods or real property

58. Section 38-190 applies to supplies of things *other than* goods or real property. If the supply is one of goods or real property section 38-190 does not apply to that supply.

59. This means that before considering the application of section 38-190 it is necessary to determine whether the supply can be characterised as a supply of things other than goods or real property.

A supply of goods

60. Section 195-1 defines 'goods' as meaning any form of tangible personal property. Personal property embraces all forms of property other than land or an interest in land. 'Tangible' connotes a physical existence and has the effect of excluding intangibles. Thus, a supply of goods is a supply of any form of personal property that has a physical existence but does not include intangible personal property such as intellectual property like copyright.

A supply of real property

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

(a) any interest in or right over land;

(b) a personal right to call for or be granted any interest in or right over land; or

(c) a licence to occupy land or any other contractual right exercisable over or in relation to land.

62. The definition of real property in section 195-1 has a broad ambit as it extends the meaning of what is real property under the general law. For example, under the general law, 'a licence to occupy land' is a personal right and not real property. A licence to occupy land falls short of creating a legal or equitable interest in land. A licence to occupy land merely legalises occupation that would otherwise be a trespass.

63. The words used in the definition of real property in the GST Act are the same as those used in Article 5 paragraph (a) of the United Kingdom (UK) *Value Added Tax (Place of Supply of Services) Order 1992.*[10] These words have been the subject of much judicial consideration in the UK. These UK authorities provide guidance in interpreting 'real property' as defined in the Australian GST Act.

64. Although the expression 'interest in or right over land' in isolation could be construed broadly, the UK courts have read it down to mean only legal or equitable interests or rights in or over land. We agree with this interpretation. A broad meaning would arguably make paragraph (c) irrelevant. A licence to occupy land would be covered by the words 'right over land'.

65. Thus, the expression 'interest in or right over land' includes legal estates in fee simple, terms of years absolute, easements and profits à prendre.

66. 'A personal right to call for or be granted any interest in or right over land' is a right under a contract that is personal to the holder as opposed to a right that creates an interest in the land itself.

67. In respect of 'any other contractual right exercisable over or in relation to land', we consider that this phrase is to be read narrowly having regard to the preceding words 'a licence to occupy land'. To

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[10] That paragraph determines the place of supply for a supply that consists of the grant, assignment or surrender of interests in or rights over land of the same kind as covered in the definition of real property in section 195-1 of the Australian GST legislation. In turn, Schedule 9, Group 1, item 1 of the *VAT Act 1994* exempts from VAT 'the grant of any interest in or right over land or of any licence to occupy land, or, in relation to land in Scotland, any personal right to call for or be granted any such interest or right, other than…[specific supplies are then excluded from the exemption]'.

give these words a wide meaning unqualified by the expression 'a licence to occupy land' would result in any contractual right in connection with land being real property for the purposes of the GST law. We consider, therefore, that the phrase is not intended to cover *any* contractual right exercisable over land but is limited to contractual rights that do not create an estate or interest in land but are recognised at law as exercisable over land. A restrictive covenant over land is an example of such a right.

68. The meaning of 'a licence to occupy land' has been the subject of extensive litigation in the UK. Lightman J of the Queen's Bench Division in *Customs and Excise Commissioners v. Sinclair Collis* [1998] BVC 335 identified the relevant principles to be applied in deciding whether a supply is a licence to occupy land or the supply of something else.[11]

69. The first step is to characterise the supply by asking what the recipient gets in return for the consideration. Where the arrangement is governed by a written contract, then the terms of the contract will usually be decisive of this question.

70. After identifying what is supplied, the next step is to ask if the supply consists of more than one part – one that is real property and one or more that are not. If one part is ancillary or incidental to the dominant part, then it will be treated as part of that dominant part. If it is not, then it depends whether the other parts can be separated from each other. If they can be separated then apportionment may be necessary. If not, the transaction must be treated as essentially the provision of one thing that takes its character from the dominant part of the supply. This is when the substance and reality of the supply will assist in characterising the dominant part of the supply.

71. It is useful to apply the principles set out in *Sinclair Collis* to a number of different scenarios that have arisen in the UK context to determine whether the relevant supply is a supply of real property.

Membership of a country club

72. What a member receives in return for the subscription paid is the right to access the club's grounds and use the club's facilities. The right of access to the land is ancillary to the dominant part which is the right to enjoy those facilities. The members do not obtain a licence to occupy any part of the club's premises: it is not a supply of real property.[12]

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[11] Although this decision has been appealed to the House of Lords and subsequently referred to the Court of Justice of the European Communities, the principles used by Lightman J to characterise a supply have not been displaced.

[12] See *Trewby* (1976) 1 BVC 80.

Non-exclusive right to occupy land granted to a golf club

73. What the club secures is the right to be physically present on the land and the physical enjoyment of the land as a golf club, including the building of a clubhouse. This is a right to occupy land. An exclusive right to occupy land in these circumstances is a lease of land.[13] This is a supply of real property.

Purchase of a ticket to obtain entry to a cinema or sporting event

74. The dominant part of the supply is the presentation of the event or film and the permission to enter upon the land and occupy a particular seat is ancillary.[14] This is not a supply of real property.

Hire of a room for a function or payment for a stall at a market

75. The supply in each of these cases is the exclusive right to occupy and use and enjoy the real property. This is a licence to occupy land.[15] It is a supply of real property.

Hotel accommodation

76. The essence of a supply of hotel accommodation is the exclusive right to occupy a specified room for a particular period. We consider that this is a licence to occupy land and so is a supply of real property.[16]

77. A hotel guest may also be entitled to receive other services for which no additional consideration is required. These may include access to a gym, pool, lounge areas, business facilities (Internet, facsimile, telephone) and the provision of car parking or room services such as cleaning. We consider these services to be ancillary

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[13] See *Abbotsley Golf & Squash Club Ltd* [1997] BVC 2492. See also *Street v. Mountford* [1985] AC 809.

[14] See *Rochdale Hornets Football Club Co. Ltd* (1975) 1BVC 1032.

[15] See *Swindon Masonic Association Ltd* (1978) 1 BVC 1091 and *Tameside Metropolitan Borough Council* (1979) 1 BVC 1103.

[16] It is noted that the exemption of the grant of real property from VAT provided for in Schedule 9, Group 1, item 1 of the UK *Value Added Tax Act 1994* excludes the provision of hotel and similar accommodation. On one view a supply of hotel accommodation would otherwise be exempt as a grant of real property. In *Swedish State v. Stockholm Lindöpark Aktiebolag* [2001] BVC 93 in relation to the equivalent provisions of the Sixth Directive it was acknowledged that accommodation in a hotel could have been considered to fall within the exemption for the leasing and letting of immoveable property on the ground that otherwise there would have been no need to specifically exclude the provision of hotel and similar accommodation from the exemption.

to the dominant part of the supply of accommodation. They are only qualitative aspects of the supply of accommodation.

78. There are obiter remarks in *Rochdale Hornets Football Club Co. Ltd* (1975) 1 BVC 1032 to support our characterisation of hotel accommodation as a supply of licence to occupy land. In *Rochdale Hornets,* in finding that a spectator at a football game does not obtain a licence to occupy land, the Tribunal contrasted this situation with the exclusive right to occupy a room obtained by a hotel guest. It is implicit in the Tribunal's reasoning that a hotel guest has a licence to occupy land.

Alternative view

79. There is an alternative view that a supply of hotel accommodation is a supply of accommodation services. On this view, the dominant parts of a supply of hotel accommodation are the range of services included in the accommodation. We consider that the better view is that a supply of hotel accommodation is a supply of real property for the reasons explained above.

Supply of a right to accommodation

80. If a supply is a supply of a right to accommodation, that supply is not a supply of real property. For example, a supply of accommodation rights by an Australian based hotel to a New Zealand resident travel wholesaler for resale to New Zealand resident customers is a supply of rights and not a supply of real property.[17] Although the hotel accommodation is subsequently acquired by the New Zealand resident customer through the exercise of the rights, the supply of rights to the wholesaler (and to the New Zealand customer) is separate and distinct from the supply of accommodation. These rights are neither a licence to occupy land nor a contractual right exercisable over land. Only the actual supply of accommodation by the hotel to the hotel guest is a supply of a licence to occupy.

81. However, this is to be contrasted with the mere booking of a hotel room. The supply that is made in that circumstance is the supply of a licence to occupy a room. The supply is not a supply of a right to accommodation. It is a supply of real property.

[17] It is noted that the supply of the right by the Australian based hotel to the New Zealand resident travel wholesaler is not GST-free. Subsection 38-190(2) operates to negate any GST-free status that may otherwise have been determined under subsection 38-190(1). This is because the supply of the right is to acquire real property (i.e., a licence to occupy) which is connected with Australia under subsection 9-25(4). The supply of the right by the wholesaler to the non-resident customer is not connected with Australia and is not a taxable supply.

Provision of a serviced office which includes use of amenities such as telephones, computer system, photocopiers and fax machines

82. The dominant part of the supply is the supply of the office space. The amenities are ancillary to the supply and are not severable from the licence to occupy the land.[18] This is a supply of real property.

Provision of a particular car parking space

83. The supply made is the licence to occupy the particular space. This is a supply of real property.[19]

Provision of valet parking

84. The supply of valet parking is a supply of services. The real property is merely the setting for the services provided. It is not a supply of real property.

Rental of particular secure storage space

85. The supply made is the licence to occupy the particular space. Security services provided are ancillary to the licence to occupy land.[20] This is a supply of real property.

Storage of goods (without rental of a specific site)

86. The supply is the service of storing goods. The real property here is merely the setting for the service performed. It is not a supply of real property.[21]

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[18] See *Business Enterprises (UK) Ltd* (1988) 3 BVC 854.

[19] It is noted that the grant of facilities for parking a vehicle is specifically excluded from the exemption from VAT for the grant of real property in Schedule 9, Group 1, item 1 of the UK *Value Added Tax Act 1994*– see paragraph (h). See also *Customs and Excise Commissioners v. Trinity Factoring Services Ltd* [1994] BVC 169 where it was held that the lease of a garage which could be used for parking a vehicle or for other purposes such as storage was the 'grant of facilities for parking a vehicle' and so excluded from the exemption for the grant of land.

[20] See *Customs and Excise Commissioners v. Trinity Factoring Services Ltd* [1994] BVC 169.

[21] *A.E. House & Son* (1988) 3 BVC 695 and *Unity Farm Holiday Centre Ltd*. (1988) 3 BVC 695.

Directly connected with goods or real property

87. Supplies of things (other than goods or real property) that are directly connected with goods or real property situated outside Australia are GST-free.[22]

88. Supplies of things (other than goods or real property) that are directly connected with real property in Australia are not GST-free under paragraph (a) of item 2, subsection 38-190(1).

89. Supplies of things (other than goods or real property) to a recipient who is not in Australia when the thing supplied is done and where the supply is effectively used or enjoyed outside Australia are not GST-free under item 3 of subsection 38-190(1) if they are directly connected with real property in Australia.

Meaning of 'directly connected with'

90. In ordinary usage 'connected with' means having some connection or relationship with. The inclusion of the word 'directly' means that the degree of connection must be close. The question that arises is how close must the connection be for there to be a direct connection.

91. The expression 'directly connected with' has not been considered by the Australian courts. However, 'in connection with' and 'directly' have been considered judicially in Australia and other jurisdictions.

92. The Full Federal Court in *Burswood Management Ltd v. Attorney-General*[23] said:

> *'The words "in connection with" are words of wide import and the meaning to be attributed to them depends on their context and the purposes of the statute in which they appear. The terms have a very wide operation but they do not usually carry the widest possible ambit, for they are subject to the context in which they are used, to the words with which they are associated and to the object or purpose of the statutory provision in which they appear.'*

93. In *Berry v. Federal Commissioner of Taxation*[24] the High Court examined the meaning of 'in connection with' in the context of deciding whether a receipt was 'consideration for or in connection with any goodwill attached to or connected with land a lease of which

[22] Item 1, subsection 38-190(1)
[23] (1990) 20 ALD 357 at 359 per Lockhart, Wilcox and Hill JJ.
[24] (1953) 89 CLR 653.

had been granted'. In that context it was held[25] that 'a substantial relation, in a practical business sense, to that property' was required.

94. The addition of the adverb 'directly' to the phrase 'in connection with' qualifies and narrows the scope of the expression 'connected with'.

95. The extent to which the word 'directly' limits the scope of the words that come after it depends on the context in which the word appears and the purpose of the legislation.

96. For example, in *Faywin Investments*[26] the Full Federal Court examined the meaning of 'directly' in the context of a provision about conferring a tax deduction for capital outlays 'expended directly in producing a film'. The Court gave 'directly' a broader construction so as to promote the purpose underlying the concession. Bowen CJ and French J in the majority joint judgment held that:

> *'The word "directly" qualifies the range of expenditure incurred "in producing a film" that is deductible. A narrow construction of that word is possible which limits the relevant class of "direct" expenditure to payments made for goods or services used in or comprising elements of the production process. But such a construction would unduly limit the range of legitimate commercial arrangements that may be entered into in connection with the financing of film production. Consistently with the purpose of the division which is to promote the production of Australian films, and recognising the commercial environment in which it must be applied, the requirement that moneys expended be expended "directly" in production is no more than a requirement that there be a sufficiently close connection between the outlay and the production process'.*[27]

97. In another context, the British VAT Tribunal in *Trustees for the MacMillan Cancer Trust*[28] examined whether particular accommodation services were exempted as being 'services which are directly connected with the provision of care, treatment or instruction designed to promote the physical or mental welfare of elderly, sick, distressed or disabled persons'. The Tribunal compared this provision with the corresponding legislation under the Sixth VAT directive[29] which exempted 'the supply of services and of goods closely linked to welfare and social security work….'. In deciding that the accommodation services satisfied both descriptions, the Tribunal observed that although the expressions 'linked to' and 'connected

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[25] At 659.
[26] 90 ATC 4361.
[27] At 4371.
[28] [1998] BVC 2320.
[29] Directive 77/388, the Sixth VAT directive.

with' are synonymous, 'there is a difference in meaning in the adverbs used for each of the terms, "closely" and "directly", the latter implying a more emphatic nexus'.[30]

98. In subsection 38-190(1), the expression 'directly connected with' appears in the context of a provision that prescribes in what circumstances a supply is GST-free. The broad thrust of the provision, as evidenced by the heading to the table in that subsection, is to make supplies GST-free where consumption of that supply occurs outside Australia. In item 1 this is achieved by treating a supply as consumed outside Australia if that supply is directly connected with goods or real property situated outside Australia. Conversely, under paragraph (a) of item 2, or item 3 of subsection 38-190(1) a supply is treated as consumed in Australia if that supply is directly connected with real property situated in Australia or is a supply of work physically performed on goods in Australia when the work is done.

99. The legislative intent is to tax supplies consumed in Australia and not tax supplies consumed outside Australia. This is achieved, in part, by making supplies that are directly connected with goods or real property located outside Australia GST-free. On the other hand, supplies that are directly connected with real property located in Australia (and supplies of work physically performed on goods situated in Australia when the work is done) are taxed.[31] Against this background, we consider that the requirement that the supply is directly connected with goods or real property is a requirement that there be a very close connection between the supply and the goods or real property.

100. In New Zealand the expression 'directly in connection with' is also used to establish if a supply is subject to GST. To be zero-rated in New Zealand (the equivalent of being GST-free), certain services must be supplied 'directly in connection with' particular goods or property.[32] In addition, services 'supplied for and to a person who is

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[30] At 2324-5.

[31] However, where paragraph (b) of item 2 applies, the supply is GST-free provided subsections 38-190 (2) or (3) do not apply.

[32] Paragraphs 11A(1)(e), (f), (h), (i), (l) and (m) of the *Goods and Services Tax Act 1985* (NZ) as they apply on and after 10 October 2000. Under subsection 11A(1):

'A supply of services that is chargeable with tax under section 8 must be charged at the rate of 0% in the following situations:…

(e) The services are supplied **directly in connection with** land situated outside New Zealand or any improvement to the land; or

(f) The services are supplied **directly in connection with** moveable personal property, other than choses in action, situated outside New Zealand when the services are performed; or

(h) The services are supplied **directly in connection with** goods supplied from outside New Zealand and whose destination is outside New Zealand, including

not resident in New Zealand and who is outside New Zealand at the time the services are performed' are not zero-rated if the services are supplied 'directly in connection with' New Zealand realty and moveable personal property (other than choses in action).[33]

101. The meaning of 'directly in connection with' has been considered by New Zealand courts in *Wilson & Horton Ltd v. CIR* (1994) 16 NZTC 11,221; (1994) 18 TRNZ 792 and *Malololailai Interval Holidays NZ Ltd v. CIR* (1997) 18 NZTC 13,137. While these cases do not establish a set of principles to be applied in any given case, the decisions only in part turning on the meaning of 'directly in connection with', they do support our position that the connection must be a very close one.

102. In *Wilson & Horton Ltd v. CIR* and *Malololailai Interval Holidays NZ Ltd v. CIR,* a supply of advertising services and a supply of marketing services respectively were not considered as being rendered directly in connection with the underlying goods or real property. The courts found that neither of these transactions had a direct effect upon the underlying goods or real property. The transactions in these cases were of a kind that could be described as 'one step removed from the direct transaction'. (These cases are discussed further at paragraphs 115 to 120. Also refer to paragraphs 121 to 122 where we comment on the notion of a transaction being one step removed from the direct transaction.)

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stores for craft, only if the goods are not removed from the ship or aircraft in which they arrived while the ship or aircraft is in New Zealand; or

(i) The services are supplied **directly in connection with** goods referred to in section 116 of the Customs and Excise Act 1996; or

(l) Subject to subsection (2), the services are the supply of information to a person who is not resident in New Zealand and who is outside New Zealand at the time the services are performed, if the services are supplied **directly in connection with** moveable personal property situated in New Zealand at the time the services are performed; or

(m) The services are supplied **directly in connection with** goods to which any one of section 11(1)(a) to 11(1)(e) applies if supplied to a person who is not resident in New Zealand and who is outside New Zealand at the time the services are performed…'. (emphasis added)

[33] Subparagraph 11A(1)(k)(i) of the *Goods and Services Tax Act 1985* (NZ) as it applies on and after 10 October 2000. Under subsection 11A(1):

'A supply of services that is chargeable with tax under section 8 must be charged at the rate of 0% in the following situations:…

(k) Subject to subsection (2), the services are supplied to a person who is not resident in New Zealand and who is outside New Zealand at the time the services are performed, not being services which are-

(i) Supplied **directly in connection with** –

(A) Land situated in New Zealand or any improvement to the land; or

(B) Moveable personal property, other than choses in action or goods to which paragraph (h) or (i) applies, situated in New Zealand at the time the services are performed; …'. (emphasis added)

103. It is noted that in the UK, under the place of supply of services rules, a supply is not exempt from VAT if the supply relates to land. In determining whether a supply is related to land, the UK approach is that the rule 'applies only to services which relate directly to a specific site(s) of land or property. It does not apply if a supply of services has only an indirect connection with land, or if the land related service is only an incidental component of a more comprehensive supply of services'.[34]

104. Similarly, under the Canadian GST legislation it is necessary to determine whether a service and property are 'in respect of' each other. Certain paragraphs of Schedule VI, Part V, sections 7 and 23 of the *Excise Tax Act* (Canada) provide that specified services 'in respect of' tangible personal property or real property are excluded from zero-rating.[35]

105. Although the expression 'in respect of' is potentially much wider than 'directly connected with', Revenue Canada read the expression down.[36] The relationship between the service and the property must be more than a mere indirect or incidental connection for the service and the property to be considered to be 'in respect of' each other.

106. In summary, for the purposes of subsection 38-190(1), we consider that the expression 'directly connected with' contemplates a very close link or association between the supply and the goods or the real property.

107. In addition, the connection is only sufficiently close to be characterised as a direct one where the supply has a connection with specific goods or real property. A supply that does not relate to specific goods or real property only has an indirect connection with goods or real property.[37]

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[34] See the Customs and Excise Notice 741 Place of supply of services at section 4.

[35] Paragraphs 7(d), 7(e), 23(b), and 23(c) as they apply on and after 10 June 1993. Section 7 of Schedule VI, Part V, specifies a zero-rated supply;

[36] See Policy Statement P-169R. *Meaning of 'In Respect of Real Property Situated in Canada' and 'In Respect of Tangible Personal Property that is Situated in Canada at the Time the Service is Performed', for the Purposes of Schedule VI, Part V, sections 7 and 23* to the Excise Tax Act, issued January 25 1995, revised May 25 1999.

[37] It is noted that the UK VAT place of supply rule for services relating to land applies only to services which relate directly to a *specific* site(s) of land or property. The rule provides that if you supply services that relate to land or property, the place of supply of those services is where the land itself is located. – refer UK Customs and Excise Notice 741 titled Place of supply of services, September 1998. In that Notice, by way of an example, it is stated at paragraph 4.6 that advice or information relating to land prices or property markets are not services that are land-related as they do not relate to specific sites. For the purposes of section 38-190, we agree that the services are not directly connected with real property.

108. For example, a supply of information about a possible property development in a particular suburb has only an indirect connection with real property because there is no direct effect on particular real property. In contrast, a supply of advice to a property owner about how best to develop a particular site is directly connected with that site. The supply has a direct effect upon real property.

109. Typically, a supply of a thing other than goods or real property is directly connected with goods or real property where the direct object of the supply is the goods or real property in the sense that:

- the supply changes or affects the goods or real property in a physical way;
- there is a physical interaction with the goods or real property but without changing the goods or real property;
- the supply establishes quantity, size, other physical attributes or the value of the goods or real property;
- the supply affects (or its purpose is to affect) or protects the nature or value of the goods or real property; or
- the supply affects or is proposed to affect the ownership of the goods or real property.

These categories are discussed at paragraphs 25 to 35 of the Ruling section of the Ruling.

What the supply is for

110. In many cases, the description of the supply is likely to be clear enough in itself to establish whether or not the supply is directly connected with goods or real property. For example, it is clear that a supply of repairs to goods or a building is directly connected with those goods or real property. However, in other cases, to establish whether there is a direct connection between the supply and the goods or real property, a close analysis of the supply is necessary to reveal what the supply is really for.

111. This is illustrated by the United Kingdom VAT case of *Mechanical Engineering Consultants Ltd* [1996] BVC 2289. That case concerned a supply relating to the commissioning of an incinerator and waste disposal complex in the UK. Under the place of supply rules, the VAT result differed depending on whether the supply was either consultancy services or the supply of staff, or a supply of services relating to land. In examining the written contract between the parties, the Tribunal found that the supply, in substance, was for the commissioning of the complex and that this supply was one relating to land in a direct way.

112. Thus there will be cases where the arrangements between the supplier and the recipient must be examined to establish what the supply is for. Often this can be ascertained by looking at the written contract between the supplier and the recipient. If there is no written contract, other documentation such as purchase orders, correspondence between the parties or invoices or receipts may be useful in establishing the purpose or objective of the supply.

113. Sometimes a supply may be given a generic label such as consultancy services or management services. In these circumstances it is necessary to examine what, in substance, the supply is for.

114. It is also important to understand the exact nature of what the supplier is supplying to the recipient so that in assessing whether there is a direct connection between that supply and particular goods or real property the transaction is analysed correctly. Two New Zealand cases illustrate this point.

115. In *Wilson & Horton* the New Zealand High Court considered the issue of whether the supply of advertising space to non-residents by Wilson & Horton Ltd was 'directly in connection with' goods situated in New Zealand. Wilson & Horton Ltd published advertisements in the New Zealand Herald for foreign clients and treated these supplies as zero-rated.

116. In considering the question of whether the supplies were directly in connection with moveable personal property in New Zealand, namely, the goods being advertised, Hillyer J held that:

> *'The supply of space and the services rendered by Wilson & Horton are directly connected with the advertising but not with the goods advertised. The goods are, as it were, at least one step removed from the services supplied by the newspaper proprietor.'*[38]

117. The supply of advertising is about conveying the advertising message. Even though the subject matter of the advertisement may be goods or real property, this does not establish a direct connection with those underlying things. Although the advertising is caused by a need arising in relation to the goods and would not occur but for the goods, this does not make the supply of advertising directly connected with the goods. This is because an advertising supply is directly connected with all the things necessary for the conveying of the message. Its immediate object is not to effect the sale of the goods but the conveying of the message.

118. In the New Zealand case of *Malololailai* the issue was whether marketing services supplied to a NZ resident company were 'directly in connection with land situated outside New Zealand or any

[38] (1994) 16 NZTC 11,221 at 11,224.

improvement thereto'. The supplier of the marketing services advertised and promoted time-share holidays at a resort in Fiji to the NZ public. The purchaser of the time-share holiday obtained a right to one week's accommodation in a Fijian resort. The supplier of the marketing services negotiated the contract for individual holidays up to the point where the contract was effected between the NZ resident company and the purchaser.

119. Neazor J held that the marketing services were not supplied directly in connection with land outside New Zealand. Neazor J stated:

> *'If one of the analogies referred to needs to be chosen I would take that of the publication of advertisements in the Wilson & Horton case. The newspaper proprietor's services facilitated or opened the way to the transactions between vendor and purchaser, and that in my view is what AHL* [the supplier of the marketing services] *did, although it was more closely involved in the transaction to which the statutory words apply than the publisher of an advertisement would be. Nevertheless the transaction having direct effect was not that of the publisher, or in this case the sales agent*.'[39]

120. The supply of the marketing services in *Malololailai* was for the purpose of introducing a willing purchaser of the time-share holiday. Once so characterised, the supply cannot be said to have a direct connection with real property. The transaction that was directly connected with the real property was the contract between the vendor and purchaser that the marketing services helped facilitate.

121. The reasoning in the New Zealand cases that the supplies were not directly in connection with goods or real property because they were 'one step removed' needs to be understood in the factual contexts of those cases. In those cases, it was appropriate to describe a supply of advertising space or marketing services as being one step removed from the underlying goods or real property. However, we do not consider that the 'one step removed' principle stated by Hillyer J[40] should be adopted as a general principle to decide whether or not a supply is directly connected with goods or real property. To do so would have the effect of substituting a different test for the words of subsection 38-190(1).

122. For example, a supply of architectural services to design a building for a specific site may be perceived as 'one step removed' from real property because the supply only makes way for another supply that is directly connected with real property - namely the construction of a building. On this analysis the supply of the

[39] (1997) 18 NZTC 13,137at p 13,148.
[40] *Wilson & Horton v. C of IR* (1994) 16 NZTC 11,221

architectural services is not directly connected with real property. However, the supply of architectural services is directly connected with real property because the direct object of the supply is the real property in the sense that it affects, or has the purpose of affecting, the nature of the real property.

Location of the recipient

123. The location of the recipient of a supply is not relevant in deciding whether a supply is directly connected with goods or real property outside Australia. The test for 'directly connected with' looks at the relationship between the thing being supplied and the goods or real property.

124. *Example 4 - Location of the recipient*

Transaction	A New Zealand resident, Bill, requires architectural plans and enters into a contract with Amanda, an Australian based architect, to supply them. Amanda, in turn, engages Amy, also resident in Australia, to draw the plans. The plans are to modify a building in New Zealand.
Question	Is the supply from Amy to Amanda directly connected with real property outside Australia?
Answer	The supply of architectural services by Amy to Amanda is directly connected with particular real property in New Zealand. The location of the recipient is not relevant in determining whether this connection exists. The fact that Amanda receives the supply in Australia is irrelevant. Even though the subcontracted supply is made and received in Australia, it is still directly connected with the real property in New Zealand. The supply by Amy to Amanda has a direct effect upon the real property in New Zealand.
38-190 Consequences	The supply of architectural services by Amy to Amanda is GST-free under item 1. (Similarly the supply of architectural services by Amanda to Bill is GST-free under item 1.)

Examples included in the Appendix

125. To illustrate the application of the concepts discussed in the Ruling about when a supply is directly connected with goods or real property, a number of examples are set out in the Appendix to this Ruling. In each example, where there are sufficient facts, we indicate whether the supply satisfies the requirements of section 38-190 for that supply to be GST-free. The following table lists the types of supplies that are discussed in the Appendix.

Example Number	Description
1	Supply of conveyancing services
2	Supply of legal services in the preparation of a will
3	Supply of legal services in providing an opinion
4	Supply of a service effecting a mortgagee's power of sale
5	Conduct of a stocktake
6	Provision of auditing service
7	Provision of capital gains tax advice
8	Provision of land tax advice
9	Preparation of financial statements and tax return
10	Supply of architectural services for generic plans (no particular real property)
11	Supply of architectural services (plans for particular real property)
12	Supply of advertising services
13	Supply of marketing services
14	Provision of brokerage services
15	Supply of debt recovery service
16	Supply of building insurance
17	Supply of public liability insurance
18	Supply of advice or information about real property prices or property markets

19	Supply of demographic study or market research

Meaning of 'a supply of work physically performed on goods'

126. This is discussed at paragraphs 44 to 56 of the Ruling section.

Apportionment

127. If a supply is directly connected with goods or real property situated in Australia and outside Australia, part of the supply is GST-free and part may be taxable. Where this is the case a reasonable basis of apportionment should be used to apportion the value of the supply.

128. Similarly, if a supply of work is physically performed on goods situated in and out of Australia when the work is done, part of the supply may be GST-free and part taxable. Again, where this is the case a reasonable basis of apportionment should be used to apportion the value of the supply.

129. *Example 5 – conduct of a global stocktake of goods outside Australia and in Australia*

Transaction	An Australian resident public accounting firm is engaged by a UK parent company under a global agreement to conduct a stocktake of the Australian subsidiary and their Pacific Rim subsidiaries.
Questions	For the purposes of item 1 of subsection 38-190(1) is the supply of the stocktake service by the Australian accounting firm directly connected with goods situated outside Australia?
Answer	Yes, to the extent that the stocktake is of goods situated outside Australia, there is a direct connection between the stocktake and those goods.
38-190 Consequences	To the extent that the supply is directly connected with goods situated outside Australia, the supply is GST-free under item 1. The stocktake of the goods of the Australian subsidiary is not a supply of work physically performed on those goods. That part of the supply is GST-free under paragraph (a). However, subsection 38-190 (3) may apply to make that part of the supply taxable.

130. Apportionment may also arise where part of a supply is directly connected with goods or real property situated outside Australia and part of the supply is work physically performed on goods in Australia.

131. However, it is noted that there is no need to apportion where there is an otherwise GST-free ancillary part in the supply that is dominated by other parts in the supply that make it taxable. The supply takes its character from the dominant parts – see Example 6 – provision of auditing service in the Appendix to this Ruling.

132. Similarly, there is no need to apportion where there is an otherwise taxable ancillary part in the supply that is dominated by other parts in the supply that make it GST-free. The supply takes its character from the dominant part.

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Your comments

134. If you wish to comment on this draft Ruling, please send your comments promptly by **27 February 2002** to:

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GSTR 1999/1; GSTR 2000/31; GSTR 2001/D6

Subject references:
- directly connected with
- goods
- real property
- work physically performed on goods

Legislative references:
- ANTS(GST)A99 9-5
- ANTS(GST)A99 9-25
- ANTS(GST)A99 38-185
- ANTS(GST)A99 38-187
- ANTS(GST)A99 38-188
- ANTS(GST)A99 38-190
- ANTS(GST)A99 38-190(1)
- ANTS(GST)A99 38-190(2)
- ANTS(GST)A99 38-190(3)
- ANTS(GST)A99 38-190(4)
- ANTS(GST)A99 195-1
- ITLAA 2000
- TAA 1953 37

Case references:
- Abbotsley Golf & Squash Club Ltd [1997] BVC 2492
- AE House & Son (1988) 3 BVC 695
- Berry v. Federal Commissioner of Taxation (1953) 89 CLR 653
- Burswood Management Ltd v. Attorney-General (1990)20 ALD 357
- Business Enterprises (UK) Ltd (1988) 3 BVC 854
- Customs and Excise Commissioners v. Sinclair Collis Ltd [1998] BVC 335
- Customs and Excise Commissioners v. Trinity Factoring Services Ltd [1994] BVC 169
- Faywin Investments 90 ATC 4361
- Malololailai Interval Holidays NZ Ltd v. CIR (1997) 18 NZTC 13,137
- Mechanical Engineering Consultants Ltd [1996] BVC 2289
- Rochdale Hornets Football Club Co Ltd (1975) 1 BVC 1302
- Swedish State v. Stockholm Lindöpark Aktiebolag [2001] BVC 93
- Swindon Masonic Association Ltd (1978) 1 BVC 1091
- Tameside Metropolitan Borough Council (1979) 1 BVC 1103
- Trewby (1976) 1 BVC 80
- Trustees for the MacMillan Cancer Trust [1998] BVC 2320
- Unity Farm Holiday Centre Ltd (1988) 3 BVC 695
- Wilson & Horton Ltd v. CIR (1994) 16 NZTC 11,221; (1994) 18 TRNZ 792

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APPENDIX

135. *Example 1 – supply of conveyancing services*

Transaction	An Australian resident buyer of a New Zealand commercial property engages a solicitor in Australia to effect a conveyance of that property.
Question	Is this supply of conveyancing services directly connected with real property situated outside Australia?
Answer	Yes. The conveyancing services are directly connected with the real property in New Zealand. Those services effect a transfer of legal title to the property. The service affects the property in a direct way. The supply affects the ownership of the real property.
38-190 Consequences	The supply is GST-free under item 1.

136. *Example 2 – supply of legal services in the preparation of a will*

Transaction	A solicitor in Australia is engaged to prepare a will. The purpose of the will is to deal with an Australian resident's personal and real property situated in the United States.
Question	Is this supply of legal services directly connected with goods or real property situated outside Australia?
Answer	No. The legal services are directly connected with the preparation of the will and not with goods or real property.
38-190 Consequences	The supply is not GST-free under item 1. Additional facts are required to determine if another item applies.

137. *Example 3 – supply of legal services - provision of an opinion*

Transaction	An Australian resident company sues a non-resident insurer for breach of contract. The non-resident insurer engages a solicitor in Australia to provide a legal opinion about whether the risk was covered by the insurance policy. The insurance policy covered the risk of damage to real property in Australia.
Question	Is this supply of legal services directly connected with real property situated in Australia?

Answer	No. The legal services directly relate to the insurance policy covering the real property but not the real property itself. The supply of the legal opinion is directly connected to the liability of the insurer to pay the insurance claim.
38-190 Consequences	Additional facts are required to determine if item 2 applies.

138. *Example 4 – supply of service effecting a mortgagee's power of sale*

Transaction	A non-resident financial institution loans money to an Australian resident. A mortgage is taken over the Australian resident's real property in Australia. The Australia resident defaults on repayments. The non-resident financial institution engages a solicitor in Australia to effect its power of sale under the mortgage.
Question	Is the supply of legal services to effect the mortgagee's power of sale directly connected with real property situated in Australia?
Answer	Yes. The supply of legal services is directly connected with the real property situated in Australia. The solicitor's services involve the sale of the property on behalf of the mortgagee. The supply affects the ownership of the real property.
38-190 Consequences	The supply is not GST-free under item 1 of subsection 38-190(1) because the real property is not situated outside Australia. Nor is it GST-free under paragraph (a) of item 2, or item 3. Additional facts are required to determine if paragraph (b) of item 2 applies.

139. *Example 5 – conduct of a stocktake*

Transaction	An Australian resident company engages another Australian resident to perform a stocktake of its goods situated outside Australia.
Question	Is this supply of the stocktake directly connected with goods situated outside Australia?
Answer	Yes. The conduct of a stocktake is directly connected with the goods. The stocktake provides information about the quantity of goods on hand.
38-190 Consequences	The supply is GST-free under item 1.

140. *Example 6 – provision of auditing service*

Transaction	An Australian resident public accounting firm is engaged by an Australian resident parent company to perform an operational audit of its non-resident subsidiary. A minor component of the audit includes a stocktake of the subsidiary's goods situated outside Australia.
Question	Is this supply of auditing services directly connected with goods situated outside Australia?
Answer	No. Although there is a direct connection between a part of the supply, the stocktake, and goods outside Australia, the stocktake is only an ancillary part of the overall supply of the operational audit. It is not sufficient to characterise the entire supply as one that is directly connected with goods.
38-190 Consequences	The supply is not GST-free under item 1. This supply is not to be apportioned because the otherwise GST-free part (the stocktake of goods outside Australia) is only ancillary and loses its identity to the dominant taxable parts of the operational audit. However the supply is GST-free under item 3 provided subsection 38-190(4) applies.

141. *Example 7 – provision of capital gains tax advice*

Transaction	An Australian resident individual engages an accountant in Australia to provide advice on the capital gains tax implications of selling real property owned and situated in the UK.
Question	Is this supply of advice directly connected with real property situated outside Australia?
Answer	No. The supply of advice does not have a direct effect upon the UK real property. The supply is directly connected with the application of the UK tax laws and the vendor's UK tax position.
38-190 Consequences	The supply is not GST-free under item 1 or any other item.

142. *Example 8 – provision of land tax advice*

Transaction	A UK resident individual engages a lawyer in Australia to advise about liability to land tax arising from the ownership of real property in Australia. The UK resident is not in Australia when the advice is prepared.
Question	Is this supply of advice directly connected with real property situated in Australia?

Answer	No. The supply of the land tax advice does not have a direct effect upon the real property. The advice is directly connected with the application of land tax laws of an Australian State.
38-190 consequences	The supply is GST-free under item 2. Paragraph (a) does not apply to preclude GST-free status.

143. *Example 9 – preparation of financial statements and tax return*

Transaction	A UK resident individual engages an accountant in Australia to prepare financial statements and a tax return relating to income derived from a rental property owned and situated in Australia. The UK resident is not in Australia when the financial statements and tax return are prepared.
Question	Is this supply of the preparation of financial statements and the tax return directly connected with real property situated in Australia?
Answer	No. The supply is directly connected with the financial and taxation position of the recipient and not with the real property. The supply does not have a direct effect upon the real property. The supply does not affect the nature of the real property.
38-190 Consequences	The supply is GST-free under item 2. Paragraph (a) does not apply to preclude GST-free status.

144. *Example 10 – supply of architectural services for generic plans (no particular real property)*

Transaction	An architect in Australia designs a plan for a project home to be included in a range of plans for a New Zealand resident builder to use in New Zealand.
Question	Is this supply of architectural services directly connected with real property situated outside Australia?
Answer	No. The plans are not directly connected with particular real property. They are not for a dwelling to be constructed on particular real property.
38-190 Consequences	The supply is not GST-free under item 1. Additional facts are required to determine if another item could apply.

145. *Example 11 – supply of architectural services (plans for particular real property)*

Transaction	An architect resident in Australia designs a plan for a warehouse specific to a site in New Zealand.

Question	Is this supply of architectural services directly connected with real property situated outside Australia?
Answer	Yes. The supply of the architectural plans has a direct connection with real property. The plans supplied have a direct effect upon the nature of that real property in New Zealand.
38-190 Consequences	The supply is GST-free under item 1.

146. *Example 12 – supply of advertising services*

Transaction	An Australian based newspaper runs an advertisement in an Australian newspaper, for the sale of a New Zealand property. The Australian newspaper provides advertising services comprising the provision of space and typesetting services.
Question	Is this supply of advertising services directly connected with real property situated outside Australia?
Answer	No. The supply of the advertising services rendered by the Australian newspaper is not directly connected with the real property being advertised. The advertising space and typesetting services are directly connected with the advertisement.
38-190 Consequences	The supply is not GST-free under item 1. Additional facts are required to determine if another item applies.

147. *Example 13 – supply of marketing services*

Transaction	A real estate agent in Australia is appointed to find a willing buyer in Australia for a commercial property located in New Zealand.
Question	Is this supply of marketing services directly connected with real property situated outside Australia?
Answer	No. The supply of marketing services is not directly connected with real property. The supply relates to finding a willing purchaser for the real property. It facilitates the transaction that directly affects the real property ie the sale.
38-190 Consequences	The supply is not GST-free under item 1. Additional facts are required to determine if another item applies.

148. *Example 14 – provision of brokerage service*

Transaction	A non-resident individual acquires through a broker in Australia units in a property trust that holds real property in Australia.
Question	Is this supply of a brokerage service directly connected with real property situated in Australia?
Answer	No. The supply is not directly connected with real property. The supply is directly connected with the acquisition of the units.
38-190 Consequences	Additional facts are required to determine if item 2 applies.

149. *Example 15 – supply of debt recovery service*

Transaction	A non-resident company engages a debt recovery agency in Australia to recover payment for a debt owed by an Australian resident. The debt arose as a result of the sale of real property in Australia.
Question	Is this supply of a debt recovery service directly connected with real property situated in Australia?
Answer	No. The supply of debt recovery services directly relates to the recovery of the debt. It is not directly connected with real property.
38-190 Consequences	Additional facts are required to determine if item 2 applies.

150. *Example 16 – supply of building insurance*

Transaction	An insurer in Australia insures a building situated outside Australia against the risk of damage.
Question	Is this insurance supply directly connected with real property situated outside Australia?
Answer	Yes. The supply directly relates to real property. The supply directly protects the value of the building to the owner.
38-190 Consequences	The supply is GST-free under item 1.

151. *Example 17 – supply of public liability insurance*

Transaction	An insurer in Australia makes a supply of public liability insurance for a public swimming pool situated outside Australia.
Question	Is this public liability insurance a supply directly connected with real property situated outside Australia?
Answer	No. The supply of public liability insurance directly relates to negligent acts that could cause loss, damage or injury to the public. The supply of that insurance does not directly relate to real property.
38-190 Consequences	The supply is not GST-free under item 1. Additional facts are required to determine if another item applies.

152. *Example 18 - Supply of advice or information about real property prices or property markets*

Transaction	An Australian based investment advisor supplies an Australian resident with advice about property prices in particular districts in London.
Question	Is the supply of advice directly connected with real property situated outside Australia?
Answer	No. The advice concerns property prices in general. Also the supply does not have a direct effect upon real property. Even though the advice may ultimately lead to the purchase of real property in London, there is only an indirect connection with that real property.
38-190 Consequences	The supply is not GST-free under item 1 or any other item of subsection 38-190(1).

153. *Example 19 - supply of demographic study or market research, for example, to determine the economic viability of a business project for a particular region*

Transaction	An Australian based market research company supplies information to an Australian resident company about the socio-economic make-up of a community in a region in New Zealand. The information will be used to assist in deciding whether to construct business premises and commence a retail business in that region.
Question	Is the supply of the information directly connected with real property situated outside Australia?

Answer	No. The information assists in making a business decision about the economic viability of the proposed venture and its location. Even though the advice may be instrumental in building premises and establishing a business in a particular location in New Zealand, this connection is too remote to be a direct one.
38-190 Consequences	The supply is not GST-free under item 1 or under any other item of subsection 38-190(1).