GSTR 2017/D1 - Goods and services tax: supplies of goods connected with the indirect tax zone (Australia)

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Draft Goods and Services Tax Ruling

Goods and services tax: supplies of goods connected with the indirect tax zone (Australia)

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This publication provides you with the following level of protection:

This publication is a draft for public comment. It sets out the Commissioner's preliminary view on how a relevant taxation provision applies, or would apply generally. Until this draft is finalised, you can rely on GSTR 2000/31 to provide you with protection from interest and penalties. Refer to the preamble to GSTR 2000/31 for the protections it provides.

Summary – what this ruling is about

1. This draft Ruling discusses when supplies of goods are connected with Australia under subsections 9-25(1), (2) and (3) of *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

2. For a supplier to be liable for GST on a taxable supply,[1] one of the requirements is that the supply must be connected with the indirect tax zone.[2] In this draft Ruling, the 'indirect tax zone' is referred to as 'Australia'.

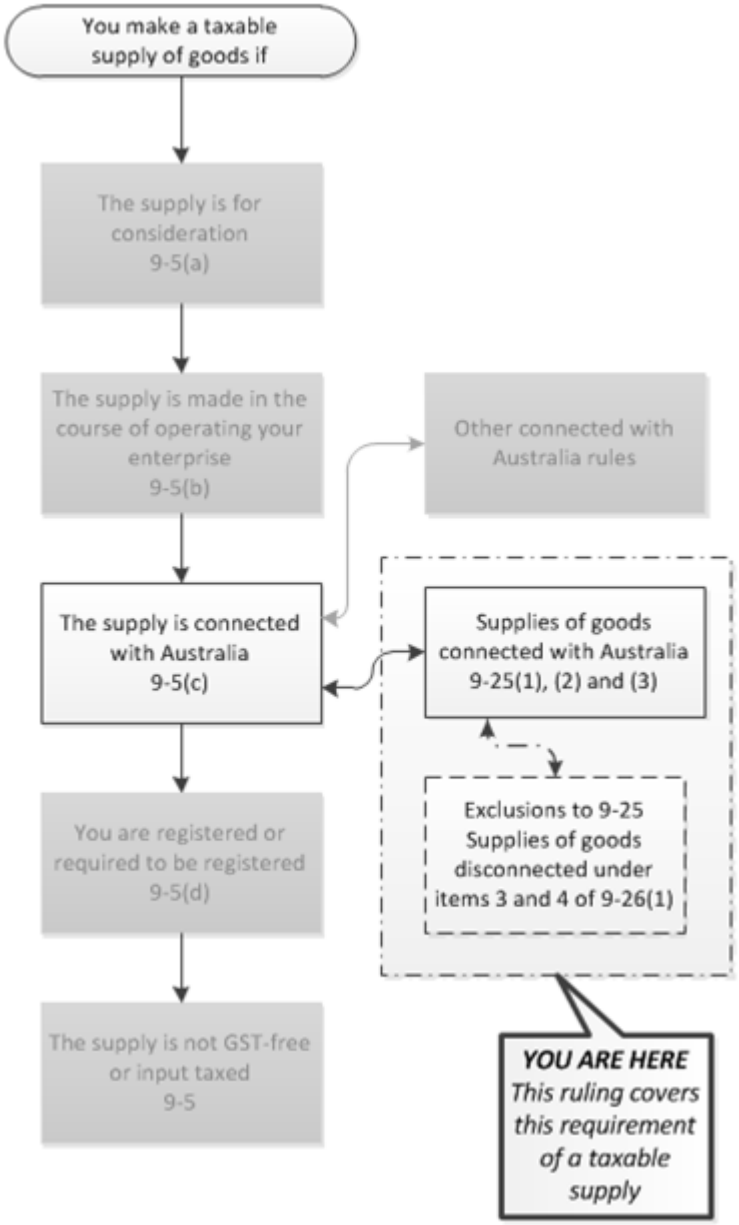
3. The draft Ruling also considers when supplies of goods are disconnected under paragraph 9-26(1)(c) (items 3 and 4).

4. Unless otherwise stated, all legislative references in this draft Ruling are to the GST Act.

Relevant provisions

5. The following diagram shows how the relevant provisions dealt with in this draft Ruling fit in with the other requirements for a supply to be a taxable supply.

[1] Section 9-5 of the GST Act.
[2] The 'indirect tax zone' is the area that Australia's GST applies to.



Previous rulings

6. This draft Ruling updates and replaces the Commissioner's view in GSTR 2000/31 *Goods and services tax: supplies connected with Australia* in regards to the supply of goods.

Ruling

Supplies of goods

7. This draft Ruling concerns the supply of goods for the purposes of the GST Act. A supply of goods is a supply of any form of tangible personal property,[3] that is, any form of personal property that has a physical existence. Therefore, it does not include:

(a) intangible personal property such as intellectual property like a copyright, or

(b) land or an interest in land.

8. A supply of goods is not limited to a sale of goods. It can include other means of supply such as a lease or hire of the goods.

Supplies of goods connected with Australia

9. In determining whether a supply of goods is connected with Australia, a distinction is made in section 9-25 between supplies of goods:

- *wholly within* Australia (subsection 9-25(1))
- *from* Australia (subsection 9-25(2)), and
- *to* Australia (subsection 9-25(3)).

10. The place the supplier or recipient carries on their business is not relevant in determining if a supply of goods is connected with Australia under subsections 9-25(1), (2) or (3). However this can be relevant in determining when a supply of goods subject to a lease is disconnected under items 3 or 4 of subsection 9-26(1) (see paragraphs 45 to 59 of this ruling).

Supplies of goods wholly within Australia

11. In the context of subsection 9-25(1), goods are delivered in Australia if the goods are physically delivered in Australia. Goods are also made available in Australia if the goods are physically made available in Australia. The terms 'delivered' and 'made available' look at the place where the goods are at the relevant time.

12. Circumstances in which goods are delivered or made available by a supplier in Australia to the recipient include:

- where the supplier physically delivers the goods from a place in Australia to the recipient's nominated place in Australia, and
- where the supplier has the goods imported into Australia, and shipped to themselves, prior to

[3] Section195-1.

delivering or making the goods available to the recipient of the supply in Australia.

13. Made available refers to the situation where goods are not actually delivered to the recipient but rather the supplier makes the goods physically available to the recipient in Australia. That is, a supplier may make goods available for collection by the recipient. For example, where a supplier of sand sells a load of sand to a customer, and the customer takes away the sand, the supplier has made the sand available.

14. Where the recipient imports the goods into Australia, the supply of goods is not connected with Australia under subsection 9-25(1) because the goods are not delivered, or made available, wholly within Australia to the recipient of the supply. [4]

15. Subsection 9-25(1) does not apply where the supply is a supply of goods from Australia or to Australia. Supplies of this kind are covered by subsections 9-25(2) and (3), respectively.

Example 1 – Goods delivered in Australia

16. *Richard, a computer wholesaler in Perth, sells computers to JP Pty Ltd, a computer retailer in Adelaide. The computers are transported from Richard's warehouse in Perth and delivered to the premises of JP Pty Ltd in Adelaide. This supply of goods is connected with Australia as the computers (goods) are delivered to JP Pty Ltd, the recipient, in Australia.*

Example 2 – Supplies of imported goods wholly within Australia

17. *Joe goes to a car dealer in Perth and, after driving a demonstration model, agrees to purchase an Italian manufactured car of a particular model. The car dealer does not have that model car in stock. The car dealer orders and purchases the car from the Italian manufacturer and imports the car into Australia. When the car dealer receives the imported car, Joe is contacted and told that the car is ready for delivery.*

18. *Even though the car is imported by the car dealer, the supply from the car dealer to Joe is wholly within Australia. This supply is connected with Australia as the car is delivered to Joe wholly in Australia.*

[4] The heading to this subsection, 'Supplies of goods wholly within the indirect tax zone', forms part of the GST Act pursuant to subsection 182-1(1) and points to the operation of subsection 9-25(1) being limited to the supply of goods wholly within Australia. This limitation is supported by the Explanatory Memorandum to the *A New Tax System (Goods and Services Tax) Bill* 1998 at paragraph 3.11.

Example 3 – Goods supplied outside Australia and imported by recipient – not connected with Australia

19. *Joe decides to fit his car with specialised seat covers valued at $1,500. He approaches Seat Pty Ltd in Sydney to supply the seat covers. However, the seat covers have to be imported from Italy. Under the arrangements with Seat Pty Ltd, Joe takes delivery of the seat covers in Italy and imports the seat covers into Australia. The supply of goods, by Seat Pty Ltd to Joe, is not connected with Australia because the goods are not delivered, or made available to Joe, in Australia.*

20. *Joe makes a taxable importation on which GST is payable through border processes.*[5]

21. A lease of goods is a supply of goods and may be connected with Australia as a supply of goods delivered or made available wholly within Australia.

Example 4 – Goods supplied by way of lease

22. *Finance Pty Ltd (an Australian resident business) leases laptops to domestic and overseas customers. If the laptops are delivered, or made available in Australia, to the recipient of the supply, the supply of those laptops by way of lease is a supply connected with Australia.*

Supplies of goods from Australia

23. A supply of goods is connected with Australia, if the supply involves those goods being removed from Australia.[6]

24. 'Removed' in subsection 9-25(2) has its ordinary meaning. 'Remove' means to move from a place, to move or shift to another place, or to displace from a position.[7]

25. The subsection does not apply where removal is not part of the supply.

Example 5 – Goods removed from Australia

26. *BrisCo Pty Ltd sells souvenirs to overseas retailers. The souvenirs are to be shipped to their overseas purchasers from BrisCo Pty Ltd's premises in Australia. The souvenirs are removed from Australia by export as part of the supply. The supply is connected with Australia.*

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[5] Sections 13-5 and 13-15.
[6] Subsection 9-25(2).
[7] The Macquarie Dictionary, The Macquarie Library Pty Ltd, 2nd ed.

27. *Notwithstanding that this supply is connected with Australia, it may be GST-free. If BrisCo Pty Ltd exports the souvenirs from Australia within the specified time[8] the supply is GST-free*.[9]

28. A supply of goods by way of lease may involve the goods being removed from Australia. This is illustrated in the following example.

Example 6 – Goods supplied by way of lease

29. *Aust Pty Ltd is an Australian manufacturer. It leases equipment to its subsidiary in New Zealand. The equipment is manufactured in Australia and exported to New Zealand. The supply of those goods by way of lease to the New Zealand subsidiary involves the goods being removed from Australia and, therefore, the supply is connected with Australia under subsection 9-25(2).*

30. *Although the supply will be GST-free under section 38-187 to the extent the leased goods are used in New Zealand, GST could arise if the leased goods are used in Australia.*

Supplies of goods to Australia

31. A supply of goods is connected with Australia if the supply involves those goods being brought to Australia and the supplier imports the goods into Australia.[10]

32. Subsection 9-25(3) does not apply to a supply of goods that involves goods being brought to Australia where the recipient imports the goods into Australia.

Supplier as importer

33. A supplier imports the goods into Australia where it is the importer for the purposes of determining who (if any entity) makes a creditable importation under section 15-5.[11]

[8] Item 1 of the table in subsection 38-185(1), refer to GSTR 2002/6 *Goods and Services Tax: Exports of goods, items 1 to 4A of the table in subsection 38-185(1) of the A New Tax System (Goods and Services Tax) Act 1999*.

[9] Refer to GSTR 2002/6 which is relevant to GST-free export of goods.

[10] Subsection 9-25(3). The supply is connected with Australia regardless of whether or not the supplier engages a Customs broker to arrange customs clearance of the goods.

[11] GSTR 2003/15 *Goods and services tax: importation of goods into Australia* considers who the importer is for a taxable importation for the purposes of section 15-5 and therefore the entity that makes a creditable importation.

34. If a supply of goods involves the goods being delivered, or made available, to the recipient outside of Australia and the recipient subsequently imports the goods into Australia, the supply is not connected with Australia under subsection 9-25(1), (2) or (3).[12] However, the importation can be a taxable importation and the recipient (importer) would be liable to pay GST on the taxable importation.[13]

Example 7 – Goods imported into Australia by recipient

35. *US Co sells a tractor to Tract Pty Ltd. Tract Pty Ltd agrees to be responsible for the importation of the tractor from the United States. The supply of the tractor involves the goods being brought to Australia but is not connected with Australia under subsection 9-25(3) given the supplier, US Co is not the importer. Additionally, the tractor is not delivered, or made available, in Australia to Tract Pty Ltd. The supply of the tractor by US Co is not connected with Australia under subsection 9-25(1). However, the importation of the tractor by Tract Pty Ltd is a taxable importation and Tract Pty Ltd is liable to pay GST on the taxable importation.*[14]

36. A supply of goods by way of lease may involve a supply of goods to Australia. This is illustrated in the following example.

Example 8 – Goods supplied by way of lease

37. *UK Crane Co leases a specialised crane to Construct Pty Ltd for use in Australia. UK Crane Co imports the crane into Australia from the United Kingdom.*

38. *As the supplier, UK Crane Co, imports the goods into Australia, the supply is connected with Australia under paragraph 9-25(3)(a). The supply is also a taxable importation under section 13-5.*

[12] Offshore supplies of low value goods can be connected with Australia under subsection 9-25(3A).
[13] Sections 13-5 and 13-15.
[14] Sections 13-5 and 13-15.

Interaction of the GST concepts of taxable supply and taxable importation

39. A supply that is connected with Australia under subsection 9-25(3) may involve both a taxable supply under section 9-5 and a taxable importation of the supplier under section 13-5. The GST payable on a taxable supply is payable by the supplier. If the supplier also makes a taxable importation, the supplier must pay the GST on the taxable importation.[15] However, if the supplier makes a creditable Importation the supplier is entitled to an input tax credit for the GST payable on the importation.[16]

Example 9 – Supply of goods connected with Australia and taxable importation

40. *NZ Co enters into a contract with Aust Ice Pty Ltd, a Brisbane ice-cream production company, to supply Aust Ice Pty Ltd with an ice-cream maker from New Zealand for $5500. NZ Co is registered for GST purposes in Australia and agrees to be the importer.*

41. *The supply of the equipment (goods) is connected with Australia under subsection 9-25(3) because the supply involves the goods being brought to Australia and NZ Co, the supplier, imports the goods into Australia. The supply is a taxable supply and NZ Co is liable to pay GST on that supply.*[17]

42. *The importation of the equipment by NZ Co is also a taxable importation.*[18] *GST is payable on the taxable importation by NZ Co. NZ Co is entitled to an input tax credit for the importation because it is a creditable importation of trading stock.*[19]

Supplies of goods involving installation or assembly services

43. If a supply of goods involves the goods being brought into Australia and the supplier installs or assembles the goods in Australia, this supply is treated as if there are two separate supplies. The characterisation of these two supplies is as follows:

- the installation or assembly of the goods is a separate supply of services connected with Australia, and
- the remainder of the supply is treated as if it were a separate supply of goods involving the goods being brought to Australia, but not involving the installation or assembly of the goods.

[15] Section 13-15.
[16] Sections 15-15 and 15-20.
[17] Subsection 7-1(1) and section 9-5.
[18] Section 13-5.
[19] Subsection 7-1(1) and section 15-5.

44. However, where the supplier is a non-resident, the services component may be disconnected with Australia under subsection 9-25(6).

Exceptions to the connected with Australia rule for goods

45. Ordinarily, a supply of goods that is delivered or made available in Australia is connected with Australia. This is the case even where the supply is made between two non-residents, neither of which makes the supply or acquisition in the course of an enterprise they carry on in Australia.

46. However, section 9-26 provides two exceptions to the connected with Australia rules in section 9-25(1) for supplies that involve a transfer of ownership of goods that are subject to a lease.[20] If these exceptions apply, the supply will not be connected with Australia.

Supply between non-residents of leased goods

47. The first exception relates to a supply of goods subject to a lease involving a transfer of ownership from one non-resident lessor to a new non-resident lessor. A supply of this kind is disconnected if:[21]

- the supplier is a non-resident[22]
- the supplier does not make a supply through an enterprise that they carry on in Australia[23]
- the non-resident recipient (the new lessor) does not acquire the goods to any extent for the purpose of an enterprise they carry on in Australia
- the goods were leased to an entity (the lessee) that made a taxable importation of the goods before the transfer of ownership occurred, and
- after the supply is made, the goods continue to be leased to the lessee on substantially similar terms and conditions to those that operated under the lease before the transfer of ownership occurred.

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[20] Items 3 and 4 in the table in paragraph 9-26(1)(c).
[21] Item 3 in the table in paragraph 9-26(1)(c).
[22] 'Non-resident' is defined in section 195-1 as an entity that is not an Australian resident. See GSTR 2004/7 *Goods and services tax: in the application of items 2 and 3 and paragraph (b) of item 4 in the table in subsection 38-190(1) of the A New Tax System (Goods and Services Tax) Act 1999:*

- *when is a 'non-resident' or other 'recipient' of a supply 'not in Australia when the thing supplied is done'?*
- *when is 'an entity that is not an Australian resident' 'outside Australia when the thing supplied is done'?*

for an explanation of entities that are non-resident for the purposes of the GST Act.
[23] See LCG 2016/1 *GST and carrying on an enterprise in the indirect tax zone (Australia)*.

Supply by way of continued lease of goods

48. The second exception relates to new lease arrangements that are entered into between the non-resident that acquired ownership of the goods and the entity that continues to lease the goods. The supply of goods by way of a lease between a new non-resident lessor and lessee is disconnected if:[24]

- the supplier is a non-resident
- the supplier does not make a supply through an enterprise that they carry on in Australia[25]
- the goods were leased to an entity that made a taxable importation of the goods before the transfer of ownership occurred, and
- the goods continue to be leased to the entity that made the taxable importation on substantially similar terms and conditions to those that operated under the lease before the transfer of ownership occurred.

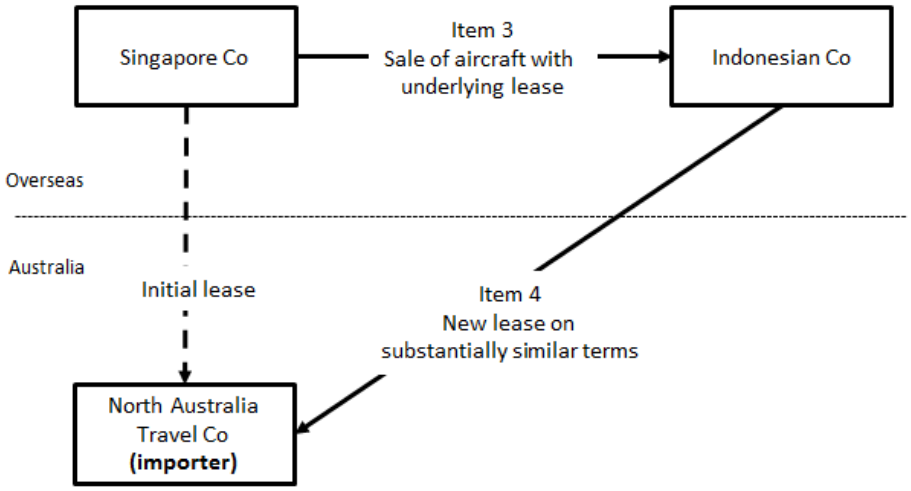
49. Whether or not there is a continued lease of goods may depend on the contractual arrangements adopted by the parties.

50. The requirement that the goods continue to be leased on 'substantially similar' terms and conditions requires that the rights and obligations between the lessee and the new non-resident lessor to be on substantially similar terms and conditions as those that operated under the original lease. However, it is not necessary for the terms and conditions to be the same or identical. Some variations are permissible, including to account for the fact that the lessor of the goods has changed.

51. Additionally, it is open to the non-resident supplier (old lessor) and the recipient (new non-resident lessor), if registered, to utilise the voluntary reverse charge provisions in Division 83 for the supply of the transfer of the asset.

[24] Item 4 in the table in paragraph 9-26(1)(c).
[25] See LCG 2016/1 *GST and carrying on an enterprise in the indirect tax zone (Australia)*.

Example 10 – Supply of leased goods to a new non-resident lessor



52. *Singapore Co, a non-resident entity, leases an aircraft to North Australia Travel Pty Ltd for 10 years. Under the lease agreement the aircraft was made available in Singapore to North Australia Travel Pty Ltd and North Australia Travel Pty Ltd imported the aircraft into Australia. The importation was a taxable importation.*

53. *Five years into the 10 year lease, Singapore Co sells the aircraft to Indonesian Co, another non-resident entity. Immediately after the sale, the existing lease is terminated and North Australia Travel Pty Ltd enters into a new lease of the aircraft from Indonesian Co on substantially similar terms and conditions as were in their lease with Singapore Co.*

54. *Although the aircraft is made available to Indonesian Co in Australia, the supply is disconnected with Australia under item 3 in the table of paragraph 9-26(1)(c) because:*

- *Singapore Co is a non-resident*
- *Singapore Co did not make the supply of the aircraft through an enterprise that it carries on in Australia*
- *Singapore Co transferred the ownership of the leased aircraft to Indonesia Co*
- *Indonesian Co is a non-resident*
- *Indonesian Co did not acquire the aircraft for the purposes of an enterprise that it carries on in Australia*
- *North Australia Travel Pty Ltd made a taxable importation of the aircraft, and*
- *North Australia Travel Pty Ltd continued to lease the aircraft from Indonesian Co on substantially similar terms and conditions.*

55. *Indonesian Co's supply of the aircraft by way of lease to North Australia Travel Pty Ltd is a new supply by way of lease. This supply is disconnected under item 4 in the table of paragraph 9-26(1)(c) because:*

- *Indonesian Co is a non-resident*
- *Indonesian Co does not make the supply of the aircraft by way of lease through an enterprise that it carries on in Australia[26], and*
- *North Australia Travel Pty Ltd made a taxable importation of the aircraft and continues to lease the aircraft on substantially similar terms and conditions from Indonesian Co as it did with Singapore Co.*

56. A common variation to the situation outlined in example 10 above may involve a chain of leases. For example, the entity that makes a taxable importation of the aircraft (North Australia Pty Ltd) may sublease the aircraft from an interposed entity (possibly a finance company) that is in turn leasing it from the new owner (Indonesian Co).

57. In this situation, the Commissioner accepts that the ownership supply is disconnected under item 3 provided that a taxable importation has occurred and the other requirements are satisfied. It does not matter that North Australia Pty Ltd is not party to any new lease with Indonesian Co.

58. However, item 4 will not apply to the new supply by way of lease by Indonesian Co to the interposed entity, as the recipient of the new lease is not the lessee referred to in item 3(b) in the table of subsection 9-26(1). In these cases Division 83 'reverse charge'[27] may be utilised.

59. The Commissioner invites comment as part of the public consultation process on the application of items 3 and 4 in the table of subsection 9-26(1)(c) in a supply chain of leases. In particular, we would be interested in how our draft ATO view, in relation to items 3 and 4, would affect your lease arrangements.

[26] Section 9-27.
[27] See ATO advice and guidance under development - [3870] Supplies connected with Australia.

Date of effect

60. When the final Ruling of this draft is issued, it is proposed to apply from its date of issue. However, paragraphs 43 to 59 apply in working out net amounts for tax periods starting on or after 1 October 2016. It is also proposed that GSTR 2000/31 will be withdrawn on and from the date that the final ruling issues. GSTR 2000/31 will cease to apply from that date.

61. Additionally, the final 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).

Commissioner of Taxation
6 December 2017

Appendix 1 – Your comments

62. You are invited to comment on this draft Ruling, including the proposed date of effect. Please forward your comments to the contact officer by the due date.

63. A compendium of comments is prepared for the consideration of the relevant Rulings Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments, and
- be published on the ATO website at www.ato.gov.au.

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

Due date: **19 January 2018**

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Appendix 2 – Detailed contents list

64. 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 2002/6; GSTR 2003/15; GSTR 2004/7 LCG 2016/1

Previous Rulings/Determinations:

GSTR 2000/31

Legislative references:

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- ANTS(GST)A 1999 38–190(1)
- ANTS(GST)A 1999 Div 83
- ANTS(GST)A 1999 182-1(1)
- ANTS(GST)A 1999 195-1

Other references:

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- Explanatory Memorandum to the Tax and Superannuation Laws Amendment (2016 Measures No. 1) Bill 2016.

ATO references

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