

GSTD 2012/5 - Goods and services tax: are acquisitions related to an entity's retail foreign currency exchange transactions with customers in Australia made solely for a creditable purpose under section 11-15 of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act)?

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! There is a Compendium for this document: **GSTD 2012/5EC** .

! From 1 July 2015, the term 'Australia' is replaced in nearly all instances within the GST, Luxury Car Tax, and Wine Equalisation Tax legislation with the term 'indirect tax zone' by the *Treasury Legislation Amendment (Repeal Day) Act 2015*. The scope of the new term, however, remains the same as the now repealed definition of 'Australia' used in those Acts. This change was made for consistency of terminology across the tax legislation, with no change in policy or legal effect. For readability and other reasons, where the term 'Australia' is used in this document, it is referring to the 'indirect tax zone' as defined in subsection 195-1 of the GST Act.

This Ruling contains references to provisions of the *A New Tax System (Goods and Services Tax) Regulations 1999*, which have been replaced by the *A New Tax System (Goods and Services Tax) Regulations 2019*. This Ruling continues to have effect in relation to the remade Regulations.

Paragraph 32 of TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed and rewritten.

A comparison table which provides the replacement provisions in the *A New Tax System (Goods and Services Tax) Regulations 2019* for regulations which are referenced in this Ruling is available.

! This document has changed over time. This is a consolidated version of the ruling which was published on 9 May 2018



Goods and Services Tax Determination

Goods and services tax: are acquisitions related to an entity's retail foreign currency exchange transactions with customers in Australia made solely for a creditable purpose under section 11-15 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act)?

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

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

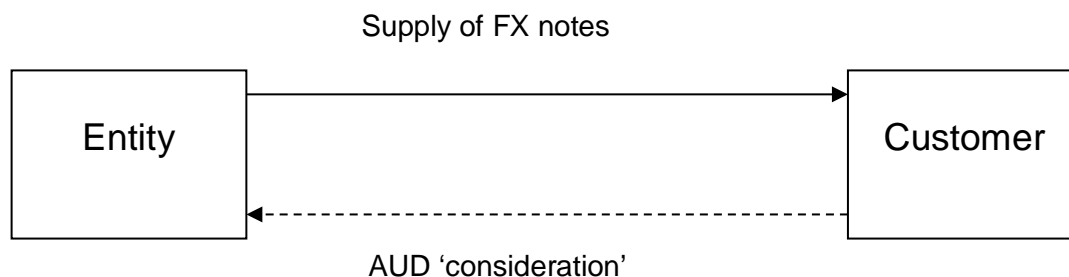
A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

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

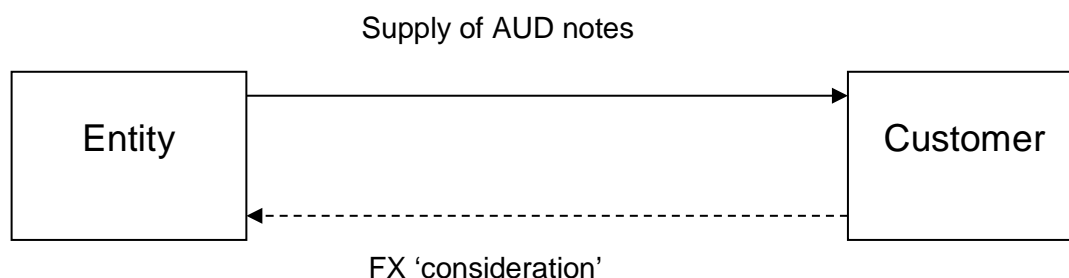
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GSTD 2012/5**Ruling**

1. No. The acquisitions are made only partly for a creditable purpose.
2. As part of a retail foreign exchange enterprise conducted in Australia, a currency exchange company ('the entity') may supply foreign currency banknotes (FX) to customers intending to use the FX outside Australia, for which the customers provide Australian currency banknotes (AUD) as consideration. In this Determination, these are referred to as outbound transactions, as illustrated by the following diagram:



3. The entity may also supply AUD to customers in Australia, for which the customers provide FX as consideration. In this Determination, these are referred to as inbound transactions.

**Outbound transactions**

4. The entity's supply of FX is a financial supply, and is also a supply that is made in relation to rights. Hence, the supply is GST-free where the customer's intention is to use the FX outside Australia.¹
5. When the entity supplies FX in exchange for AUD, it also makes an input taxed financial supply (an acquisition-supply) of the interest in the AUD.
6. To the extent that acquisitions made by the entity relate to outbound transactions, they relate solely to the GST-free supply of the FX. Consequently, to this extent, these acquisitions are made solely for a creditable purpose.

Inbound transactions

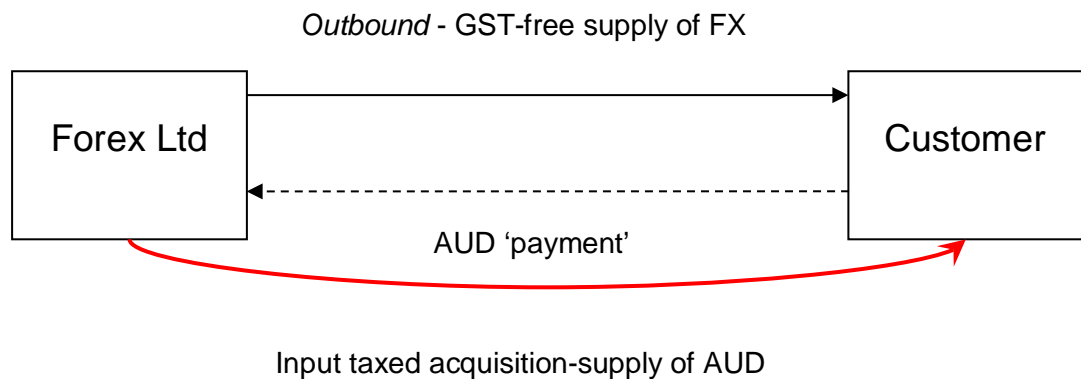
7. The entity's supply of AUD is an input taxed financial supply. It is also a supply made in relation to rights, but to the extent the rights are not intended for use outside Australia it will not have the additional character of a GST-free supply.
8. When the entity supplies AUD in exchange for FX, it also makes a financial supply (an acquisition-supply) of the interest in the FX.
9. To the extent that acquisitions made by the entity relate to inbound transactions, they relate solely to the input taxed supply of the AUD. Consequently these acquisitions are not made for a creditable purpose.

¹ Paragraph (a) of Item 4 in the table in subsection 38-190(1).

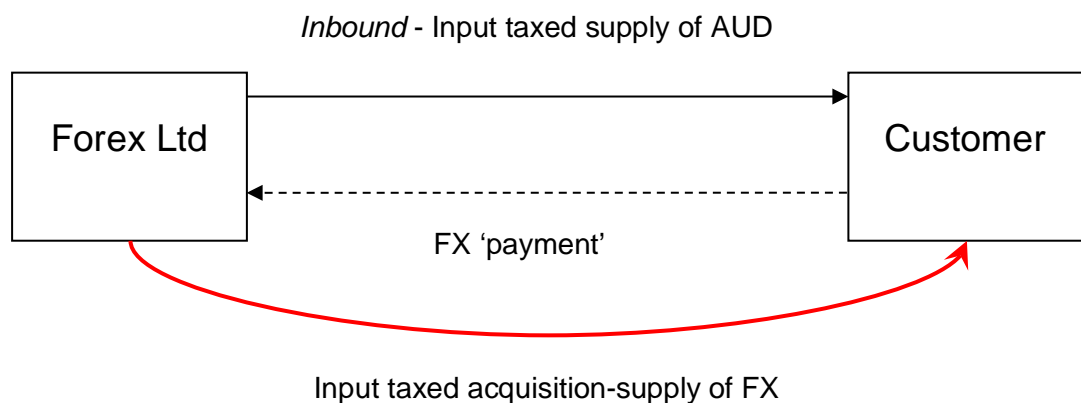
Example

10. Forex Ltd (Forex) operates a retail foreign currency exchange enterprise through a service counter at an Australian airport, catering for both outbound and inbound customers. Forex supplies FX to customers leaving Australia and acquires AUD as payment for the supply of FX. Forex supplies AUD to those arriving from overseas and acquires FX as payment for the AUD. Each payment is consideration for the other.

11. Forex's supply of the FX (outbound) is GST-free. Its acquisition of the AUD (outbound) is an input taxed financial supply (acquisition-supply) made by Forex.



12. Forex's supply of the AUD (inbound) is an input taxed financial supply. It's acquisition of the FX (inbound) is also an input taxed financial supply (acquisition-supply) made by Forex.



13. Forex needs to determine the extent to which its acquisitions relate to outbound and inbound transactions using a fair and reasonable apportionment methodology.² To the extent that Forex's acquisitions relate to its outbound transactions, they relate solely to the GST-free supplies of FX. To the extent that Forex's acquisitions relate to its inbound transactions, they relate solely to its input taxed supply of AUD.

Date of effect

14. This Determination applies both before and after its date of issue. However, this Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 75 to 76 of Taxation Ruling TR 2006/10).

² GSTR 2006/3: *determining the extent of creditable purpose for providers of financial supplies*, provides guidance on fair and reasonable apportionment methodologies.

GSTD 2012/5

14A. Changes made to this Determination by Addenda that issued on 9 May 2018 have been incorporated into this version of the Determination.

Commissioner of Taxation

6 June 2012

Appendix 1 – Explanation

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

Background

15. The High Court found, in *Travelex Ltd v. Commissioner of Taxation* [2010] HCA 33; 2010 ATC 20-214; 76 ATR 329 (*Travelex*), that the supply of foreign currency banknotes (FX) by an entity to a customer whose intention was to use the banknotes outside Australia is a GST-free supply. The matter at issue in *Travelex* involved a supply of foreign currency banknotes on an outbound exchange transaction. The Court made no observations in relation to inbound transactions.

16. The Court observed that:

It is necessary to ask whether the supply is 'GST-free' because *Travelex* submitted that, if the supply is GST-free, it could claim associated input tax credits which it could not claim if the supply is input taxed. (The validity of this submission was not in issue in the appeal).³

17. The ATO decision impact statement (DIS) for the High Court decision in *Travelex* outlines the ATO response to the High Court decision. Though entitlement to input tax credits was not in issue in *Travelex*, the DIS gives some consideration to this question.

18. The DIS states:

The Commissioner notes that when supplying foreign currency in a currency conversion transaction in Australia, the supplier of the foreign currency also makes an acquisition of an interest in Australian currency. This acquisition will be a financial supply that is input taxed where the acquisition is made for consideration. Input tax credits are not available to the extent that acquisitions relate to making that acquisition-supply.

19. This Determination provides the ATO view on the creditable purpose of acquisitions relating to currency exchange transactions. The ATO view is provided on the basis that the entity is carrying on an enterprise of retail foreign exchange services in Australia and is registered for GST.

20. The ATO view is also provided on the assumptions that the customer acquiring FX on an outbound transaction intends to use the FX outside Australia, and the customer acquiring AUD on an inbound transaction does not intend to use the AUD outside Australia.

Supply of money

21. Subsection 9-10(4) of the GST Act provides that a supply does not include a supply of money unless the money is provided as consideration for a supply that is a supply of money.

22. Where an entity supplies foreign currency to a customer in the course of its enterprise, in exchange for Australian currency (or vice versa), each payment is consideration for the other. Hence, the entity and its customer are each making supplies of money to the other.

³ *Travelex* at [2].

Financial supplies of currency

23. A financial supply is input taxed, and 'financial supply' has the meaning given by the A New Tax System (Goods and Services Tax) Regulations 1999 (all further references to regulations are to these Regulations).⁴

24. A financial supply arises where the requirements of subregulation 40-5.09(1) are satisfied in relation to a provision, acquisition or disposal of an interest mentioned in the table in subregulation 40-5.09(3) (financial interest).⁵

25. Item 9 of the table in subregulation 40-5.09(3) refers to an interest in or under Australian currency, the currency of a foreign country, digital currency or an agreement to buy or sell any of these three things. This includes foreign currency in cash form.⁶

26. An entity supplying either FX or AUD to a customer is the 'financial supply provider' in relation to that supply.⁷

27. A GST registered entity, supplying FX for consideration in the form of AUD, or supplying AUD for consideration in the form of FX, where the entity makes the supply as the financial supply provider as part of an enterprise it carries on in Australia, satisfies the requirements of subregulation 40-5.09(1) in relation to the supply and is therefore making a financial supply.

Acquisition-supplies

28. An acquisition of a thing is not a supply according to ordinary concepts. However, an acquisition of a financial interest, that satisfies the requirements of subregulation 40-5.09(1), is a financial supply under section 40-5 of the GST Act, and is therefore a 'supply' under paragraph 9-10(2)(f) of the GST Act.

29. Goods and Services Tax Ruling GSTR 2002/2 uses the term 'acquisition-supply'⁸ to describe the supply constituted by the acquisition of a financial interest.⁹

30. The requirement of subregulation 40-5.09(1) that the supplier be a 'financial supply provider' is satisfied in relation to an acquirer of a financial interest by virtue of subregulation 40-5.06(2), which extends the meaning of 'financial supply provider' where an interest is supplied, to apply also to the acquirer of that interest.

31. Subregulation 40-5.09(1) is applied independently to both the provision and the acquisition. For example, whether the provider of a financial interest is registered for GST has no bearing on whether the acquirer of that interest makes a financial supply of its acquisition.

32. It follows that a GST registered entity *acquiring* currency banknotes for consideration as part of an enterprise it carries on in Australia is making a separate financial supply to the financial supply of the currency banknotes it supplies in exchange.

33. In this Determination, 'supply' refers to the provision of banknotes, and 'acquisition-supply' refers to a supply that is the acquisition of banknotes.¹⁰

⁴ Section 40-5 of the GST Act.

⁵ GSTR 2002/2: *GST treatment of financial supplies and related supplies and acquisitions*, provides a detailed explanation of the Commissioner's view of GST treatment of financial supplies.

⁶ Item 1 of Part 7 of Schedule 7 of the GST Regulations.

⁷ Subregulation 40-5.06(1) of the GST Regulations.

⁸ Paragraph 26 of GSTR 2002/2: *GST treatment of financial supplies and related supplies and acquisitions*.

⁹ Acquisition-supplies are discussed in more detail at paragraphs 110-116 of GSTR 2002/2.

¹⁰ Paragraph 26, GSTR 2002/2.

GST-free supplies of currency

34. Subsection 9-30(3) of the GST Act contemplates that a supply may be both GST-free and input taxed, and to the extent that a supply would otherwise have the character of both, subsection 9-30(3) provides that the supply is to that extent GST-free and not input taxed.¹¹

35. The effect of the decision of the High Court in *Travellex* is that the supply of foreign currency banknotes in Australia to a customer whose intention is to use the banknotes outside Australia is a GST-free supply.

36. The High Court found in *Travellex* that the supply of the foreign currency banknotes (FX) was a 'supply that is made in relation to rights' for the purposes of Item 4 of the table in subsection 38-190(1) of the GST Act. The rights in relation to which the supply is made are the rights attaching to the FX.

Creditable purpose

37. Section 11-15 of the GST Act is about creditable purpose. Paragraph 11-15(2)(a) provides that a thing acquired in carrying on your enterprise is not acquired for a creditable purpose to the extent that the acquisition relates to making supplies that would be input taxed.

38. The Commissioner's view of creditable purpose is explained in GSTR 2008/1.¹² In explaining the meaning of 'relates to' in paragraph 11-15(2)(a), GSTR 2008/1 draws on the principles established by *HP Mercantile*¹³. At paragraph 118, GSTR 2008/1 sets out the following principle:

The words 'relates to' are wide words signifying some connection between two subject matters. There must be a connection between an acquisition and the making of input taxed supplies. The connection or association signified by the words may be direct, or indirect, substantial or real. It must be relevant and usually a remote connection would not suffice.

39. GSTR 2008/1 refers to a connection that would establish a relationship for purposes of paragraph 11-15(2)(a) as a 'sufficient connection'.¹⁴ At paragraphs 131 to 135, GSTR 2008/1 discusses creditable purpose of acquisitions in the context of acquisition-supplies. In referring to acquisition-supplies, paragraph 132 states:

If an acquisition is for the purpose of making a financial supply of this special kind, the acquisition relates to making a supply that would be input taxed.

40. Authority for this view is found in the judgments in *AXA*¹⁵ and *HP Mercantile*. It follows that a relationship between an acquisition and a supply that would be input taxed should not be disregarded for the purposes of paragraph 11-15(2)(a) merely because the input taxed supply is an acquisition-supply.

¹¹ Unless the provision under which it is input taxed requires the supplier to have chosen for its supplies of that kind to be input taxed.

¹² GSTR 2008/1: *when do you acquire anything or import goods solely or partly for a creditable purpose*.

¹³ *HP Mercantile Pty Limited v. Commissioner of Taxation* (2005) 143 FCR 553; [2005] FCAC 126; 2005 ATC 4571; (2005) 60 ATR 106.

¹⁴ GSTR 2008/1 [119].

¹⁵ *AXA Asia Pacific Holdings Limited v Commissioner of Taxation* [2008] FCA 1834; (2008) 173 FCR 500; 2008 ATC 20-074; (2008) 71 ATR 1.

41. However, where in a particular transaction, an entity both provides and acquires a financial supply, acquisitions relating to the transaction won't necessarily have a sufficient connection to both financial supplies. A relevant, real or substantial connection between the acquisition and each supply needs to be established for the paragraph 11-15(2)(a) relationship to be recognised

Exchange transactions in this GSTD

42. The exchange transactions discussed in this Determination give rise to four financial supplies made by the entity, being:

- For outbound transactions: the supply of the FX which is a GST-free supply through the operation of subsection 9-30(3), and the acquisition-supply of the AUD; and
- For inbound transactions: the supply of AUD, which is an input taxed supply, and the acquisition-supply of FX.

Outbound transactions

43. To the extent that acquisitions relate to outbound transactions, they are acquired in carrying on the entity's enterprise and are, *prima facie*, acquired for a creditable purpose. Under paragraph 11-15(2)(a), creditable purpose would then be denied to the extent the acquisition relates to making acquisition-supplies of AUD.

44. The Commissioner considers that in the facts of the outbound transactions, there is not a sufficient connection between such acquisitions and the acquisition-supply.

45. The AUD paid by the customer is received by the entity solely as consideration for the FX it supplies to the customer. While the entity's receipt of the AUD as consideration gives rise to an acquisition-supply, in the context of the transaction, its only significance is as consideration for the supply of the FX. Acquisitions by the entity could not be said to have a relevant, real or substantial connection to the acquisition-supply that arises from the mere receipt of the consideration.

46. Accordingly, to the extent that an acquisition relates to an outbound transaction, it relates solely to the GST-free supply of the FX. The acquisition-supply of the AUD does not lead to any denial of creditable purpose.

Inbound transactions

47. Consistent with the above analysis, the Commissioner considers that in the facts of the inbound transactions described, the only significance, for GST purposes, of the FX received in exchange for the AUD, is as consideration for the supply of the AUD.

48. Accordingly, to the extent that an acquisition relates to an inbound transaction, it relates solely to the input taxed supply of the AUD and will not be for a creditable purpose to any extent.

Conclusion

49. Some things acquired in carrying on the entity's enterprise may relate solely to an outbound transaction, or solely to an inbound transaction. However, the creditable purpose of acquisitions that relate partly to both categories of transactions needs to be apportioned on a basis that is fair and reasonable.

50. Such apportionment should take account of the acquisition's relationship to either or both categories of transactions and whether the entity, as a matter of normal business practice, makes more outbound than inbound transactions, or vice versa.

Other cases involving acquisition-supplies

51. The ruling in this GST Determination only applies to acquisitions made by an entity carrying on a retail currency exchange enterprise in Australia. Whether there will be a sufficient connection between acquisitions and an acquisition-supply in other contexts will depend on the facts of a particular case.

52. Acquisitions relating to other types of transactions involving the acquisition of financial interests for the provision of monetary consideration are likely to have a relevant, real or substantial relationship with the acquisition-supply of the interests. The *AXA* and *HP Mercantile* cases demonstrate this.

53. For example, brokerage and legal services that are acquired for the purposes of acquiring shares (an acquisition-supply) would be acquisitions that relate to making acquisition-supplies. Where the acquisition-supply is input taxed, creditable purpose would be denied in respect of such acquisitions.¹⁶

54. In the transactions discussed in this GSTD, the currency acquired is acquired solely as consideration for a supply made, in the context of these particular transactions. However, in other types of transactions involving the acquisition of financial interests as consideration for a supply, the acquisition may have a significance that is greater, in the context of the transaction, than solely as consideration received. Shares acquired as consideration for a supply of goods, or scrip for scrip transactions would be examples of this.

55. In such transactions, it needs to be established whether a relevant, real or substantial relationship exists between acquisitions and the input taxed acquisition-supply. Establishment of such a relationship would lead to a denial, or reduction in the extent, of creditable purpose of the acquisition.

¹⁶ GSTR 2008/1 [132].

GSTD 2012/5

References

Previous draft:

GSTD 2011/D5

Related Rulings/Determinations:

GSTR 2002/2; GSTR 2006/3; GSTR 2008/1;
TR 2006/10

Subject references:

- creditable acquisition
- creditable purpose
- GST foreign exchange transactions
- GST free
- input taxed supplies

Legislative references:

- ANTS(GST)A 1999 9-10(2)(f)
- ANTS(GST)A 1999 9-10(4)
- ANTS(GST)A 1999 9-30(3)
- ANTS(GST)A 1999 11-15
- ANTS(GST)A 1999 11-15(2)(a)
- ANTS(GST)A 1999 38-190(1)

- ANTS(GST)A 1999 40-5
- ANTS(GST)R 1999 40-5.06(1)
- ANTS(GST)R 1999 40-5.06(2)
- ANTS(GST)R 1999 40-5.09(1)
- ANTS(GST)R 1999 40-5.09(3)
- ANTS(GST)R 1999 Part 7 Schedule 7

Case references:

- AXA Asia Pacific Holdings v. Commissioner of Taxation [2008] FCA 1834; (2008) 173 FCR 500; 2008 ATC 20-074; (2008) 71 ATR 1
- Travelex Ltd v. Commissioner of Taxation [2010] HCA 33; 2010 ATC 20-214; 76 ATR 329
- HP Mercantile Pty Limited v. Commissioner of Taxation (2005) 143 FCR 553; [2005] FCAC 126; 2005 ATC 4571; (2005) 60 ATR 106.

ATO references

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