GSTR 2000/31 - Goods and services tax: supplies connected with Australia

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This Ruling is currently being reviewed and progressively replaced. For the current views on

- supplies of real property - see GSTR 2018/1 *Goods and services tax: supplies of real property connected with the indirect tax zone (Australia)*
- supplies of goods - see GSTR 2018/2 *Goods and services tax: supplies of goods connected with the indirect tax zone (Australia)*

A further ruling in relation to supplies of intangibles is currently under development - see our Advice under Development program.

This document has changed over time. This is a consolidated version of the ruling which was published on *10 August 2016*

Goods and Services Tax Ruling

Goods and services tax: supplies connected with Australia

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Preamble

This document was published prior to 1 July 2010 and was a public ruling for the purposes of former section 105-60 of Schedule 1 to the ***Taxation Administration Act 1953****.*

From 1 July 2010, this document is taken to be a public ruling under Division 358 of Schedule 1 to 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.

*[**Note:** This is a consolidated version of this document. Refer to the Tax Office Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]*

What this Ruling is about

1. This Ruling is about *'supplies connected with Australia'*, which under the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act), may be taxable supplies[1] and subject to GST.[2] Unless

[1] Section 9-5.
[2] Section 7-1.

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).

2. The Ruling explains when a supply is connected with Australia under section 9-25. In particular, the Ruling looks at when a supply of goods, real property, or things other than goods or real property, is connected with Australia. It does not address whether a supply is a taxable supply.

3. While the Ruling does not address whether a particular supply is a taxable supply, we make reference to, and illustrate by way of examples, the effect of certain provisions on the question of whether a supply is a taxable supply, GST-free or input taxed. The provisions considered are:

- section 38-185 – exports of goods that are GST-free;
- section 38-187 – leases or hire of goods for use outside Australia;
- section 38-190 – supplies of things other than goods or real property, for consumption outside Australia that are GST-free; and
- Division 84 – offshore supplies other than goods or real property.

4. In this Ruling we also outline the operation of Division 96 and section 156-15 in relation to supplies that are partly connected with Australia.

5. It is recognised in the Ruling that a supply of goods that is connected with Australia may give rise to a taxable supply and a taxable importation.[3] This is explained and illustrated in the Explanations section of the Ruling (see paragraphs 152 to 162). We also summarise in the Context section of the Ruling, the requirements for an importation of goods to be a taxable importation under Division 13 (refer paragraphs 27 to 33).

6. The Ruling does not address telecommunication supplies4 or financial supplies.[5] Also, while the Ruling outlines the broad principles relating to all kinds of supplies connected with Australia (other than telecommunication or financial supplies), it does not specifically illustrate how these principles apply to cross-border electronic supplies.

7. Certain terms used in this Ruling are defined, or explained, in the definitions section of the Ruling. These terms, when first mentioned in the body of the Ruling, appear in **bold** type.

[3] Subsections 9-25(3) and section 13-5.
[4] Division 85.
[5] Defined in section 195-1.

Date of effect

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

8A. [Omitted.]

8B. [Omitted.]

Context of supplies connected with Australia

9. To assist you in understanding the GST consequences of a supply that is connected with Australia, we provide below an outline of the basic operation of the GST law in respect of:

- taxable supplies;
- GST-free supplies;
- importations;
- taxable supplies and taxable importations;
- offshore supplies other than goods or real property; and
- non-residents making supplies connected with Australia.

Taxable supplies

10. The concept of supplies 'connected with Australia' is relevant to determining whether a supply is a taxable supply and subject to GST. Under section 9-5 you make a taxable supply if:

(a) you make the supply for consideration; and

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

(c) the supply is connected with **Australia**; and

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

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

11. Section 9-25 defines when a supply is 'connected with Australia'. For the purposes of determining whether a supply is

[5A] [Omitted.]

connected with Australia, section 9-25 makes a distinction between a supply of goods, a supply of real property and a supply of anything other than goods or real property. This is explored fully in the Ruling and Explanations sections of the Ruling.

12. The connection with Australia is one of the elements required to be satisfied before a supply is a taxable supply. However, a supply is not a taxable supply to the extent that it is GST-free.

GST-free supplies

13. Broadly speaking, provided certain conditions are met, goods that are exported, or supplies of services or things other than goods or real property, that are for consumption outside Australia are GST-free.

14. If a supply is GST-free, no GST is payable on the supply.[6] However, you can still claim an input tax credit for anything acquired or imported to make that GST-free supply.[7]

Export of goods[7A]

15. Even though a supply of goods is connected with Australia, if the goods are exported, that supply of goods may be GST-free under section 38-185.

16. Section 38-185 sets out supplies of goods which are GST-free exports. For example, Item 1 of the table in subsection 38-185(1) provides that a supply of goods is GST-free if the supplier exports the goods from Australia before, or within 60 days (or such further period as the Commissioner allows) after:

(a) the day on which the supplier receives any of the consideration for the supply; or

(b) if, on an earlier day, the supplier gives an invoice for the supply - the day on which the supplier gives the invoice.[8]

However, the supply is not GST-free if the supplier reimports the goods into Australia.[9]

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[6] Subsection 7-1 and section 9-5.
[7] Subsection 7-1(2) and Division 11.
[7A] Refer to Goods and Services Tax Rulings GSTR 2002/6 Goods and services tax: exports of goods, items 1 to 4 of the table in subsection 38-185(1) of the *A New Tax System (Goods and Services Tax) Act 1999*; GSTR 2005/2 Goods and services tax: supplies of goods and services in the repair, renovation, modification or treatment of goods from outside Australia whose destination is outside Australia; and GSTR 2003/4 Goods and services tax: stores and spare parts for international flights and voyages.
[8] Item 1 of the table subsection 38-185(1).
[9] Subsection 38-185(2).

Example 1 – GST-free export of goods

17. Vino, an Australian wine merchant, supplies wine to Epicure in France. Vino exports the consignment of wine from Australia 20 days after giving Epicure an invoice for the supply. The supply is GST-free because Vino (the supplier) exports the wine from Australia within 60 days after giving Epicure an invoice for the supply.

*Example 2 – Export of goods by **recipient***

18. Live Ex, an Australian livestock company, supplies cattle to Stock Co, an Iranian company. Stock Co enters into an arrangement whereby it takes possession of the cattle consignment in Australia. This means that Live Ex does not export the cattle. Stock Co takes possession of the cattle consignment in Australia and arranges its freight to Iran.

19. The supply made by Live Ex to Stock Co is not GST-free because Stock Co (the recipient) exports the goods. For the export of goods to be GST-free, the supplier must export the goods. However, it is to be noted that subsection 38-185(3) sets out circumstances when exports are GST-free where ownership of goods passes to an overseas purchaser, who is not registered or required to be registered, before the goods are removed from Australia.

Leases etc of goods used outside Australia

20. Under section 38-187 a lease or hire of goods used outside Australia is GST-free. Specifically, the section provides that a supply of goods is GST-free if:

(a) the supply is by way of lease or hire; and

(b) the goods are used outside Australia.

The note to the section provides that if goods are leased or hired and used partly in Australia and partly outside Australia, the supply could be taxable to the extent that the goods are used in Australia (section 9-5).

Example 3 – GST-free supply of goods by way of lease

21. Aero Co (an Australian resident company) leases a light aircraft to Flite Co (an Australian resident company). The aircraft is used partly in Australia and partly in New Zealand. The supply by Aero Co is GST-free under section 38-187 to the extent that the goods are used outside Australia. A fair and reasonable basis of apportionment is to be adopted in working out the extent that the goods are used outside Australia.

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

22. Some supplies of things other than goods or real property, that are for consumption outside Australia are GST-free under section 38-190.

23. Items 1 to 5 in the table in subsection 38-190(1) list supplies of things that may be GST-free. The items appear in the table as follows:

Supplies of things, other than goods or real property, for consumption outside Australia		
Item	**Topic**	**These supplies are GST-free**[9A]
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 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
4	Rights	a supply that is made in relation to rights if: (a) the rights are for use outside Australia; or (b) the supply is to an entity that is not an Australian resident and is outside Australia when the thing supplied is done

[9A] Except to the extent that they are supplies of goods or real property.

Supplies of things, other than goods or real property, for consumption outside Australia		
Item	**Topic**	**These supplies are GST-free**[9A]
5	Export of services used to repair etc. imported goods	a supply is constituted by the repair, renovation, modification or treatment of goods from outside Australia whose destination is outside Australia

24. Subsection 38-190(2) provides that a supply covered by any of the items 1 to 5 in the table in subsection 38-190(1) is not GST-free if it is the supply of a right or option to acquire something the supply of which would be connected with Australia and would not be GST-free.[9B] For example, an Australian vehicle rental firm supplies car rental rights to a UK travel agency. The travel agency supplies car rental vouchers to UK tourists who may use the vouchers to obtain car rental in Australia. The supply of the car rental to the tourists is a supply that is connected with Australia. The supply of car rental rights to the UK travel agency is, therefore, not GST-free.

24A. Subsection 38-190(2A) provides that a supply covered by any of items 2 to 4 in the table in subsection 38-190(1) is not GST-free if the acquisition of the supply relates (whether directly or indirectly, or wholly or partly) to the making of a supply of real property situated in Australia that would be input taxed under Subdivision 40-B or 40-C. For example, a non-resident individual, who owns residential rental property situated in Australia and who is not registered or required to be registered, acquires gardening services for the property and also acquires the services of a local real estate agent to advertise the property for rent. The acquisition of each service relates to the making of an input taxed supply of real property. The supplies of those services are therefore not GST-free.

25. Under subsection 38-190(3) a supply covered by item 2 in subsection 38-190(1) is not GST-free if:

(a) it is a supply under an agreement entered into, whether directly or indirectly, with a **non-resident**; and

(b) the supply is provided, or the agreement requires it to be provided, to another entity in Australia.

Example 4 – A supply covered by item 2 of subsection 38-190(1) and subsection 38-190(3)

26. A school in Australia provides tuition to overseas students in Australia. However, it bills the overseas parents of the students

[9B] Refer to paragraphs 41 to 42 and 143 to 150 of GSTR 2003/8 Goods and services tax: supply of rights for use outside Australia – subsection 38-190(1), item 4, paragraph (a) and subsection 38-190(2).

directly. As the supply is being made to students in Australia the supply will not be GST-free under item 2.[9C]

26A. Subsection 38-190(4) extends the scope of item 3.[9D] The subsection provides that a supply is taken, for the purposes of item 3, to be a supply made to a recipient who is not in Australia if:

(a) it is a supply under an agreement entered into, whether directly or indirectly, with an Australian resident; and

(b) the supply is provided, or the agreement requires it to be provided, to another entity outside Australia.

An example of the type of supply to be covered is a supply to an Australian business of a training course to be conducted overseas.[9E]

Importations[9F]

27. The importation of goods into Australia may be a 'taxable importation' and subject to GST.[10] The importation of things other than goods, that are supplied from overseas for use in Australia (and are, therefore, in that sense 'imported') are not taxable importations. However, the importation of things other than goods or real property may be subject to GST because of the operation of Division 84 (refer paragraphs 35 to 42 below).

Taxable importations

28. If you make an importation of goods into Australia, you must pay GST on that importation but only if that importation is a 'taxable importation.[11]

29. Under subsection 13-5(1) you make a 'taxable importation' if:

(a) goods are imported; and

(b) you enter the goods for home consumption (within the meaning of the *Customs Act 1901*).

[9C] However, such a supply may be GST-free under Subdivision 38-C. (This is the example that is provided in the Supplementary Explanatory Memorandum accompanying the A New Tax System (Indirect Tax and Consequential Amendments) Bill (No. 2) 1999 which inserted subsection 38-190(3). The example refers to the actual 'supply….being made' to students. Consistent with the wording used in subsection 38-190(3) the word 'provided' should have been used instead of 'made'.)

[9D] Refer to Goods and Services Tax Rulings 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 Australia resident' 'outside Australia when the thing supplied is done'?

[9E] Refer to Explanatory Memorandum accompanying the Indirect Tax Legislation Amendment Bill 2000 at paragraph 3.27.

[9F] Refer to GSTR 2003/15 Goods and services tax: importation of goods into Australia.

[10] Subsection 7-1(1) and Division 13.

[11] Section 13-15.

However, the importation is not a taxable importation to the extent that it is a non-taxable importation.[12]

30. An importation of goods into Australia does not include an importation of money.[13]

31. If you make a 'creditable importation'[14] you are entitled to an input tax credit for that importation.[15]

32. Under section 15-5, you make a 'creditable importation' if:

(a) you import goods solely or partly for a creditable purpose; and

(b) the importation is a taxable importation; and

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

33. You import goods for a creditable purpose to the extent that you import the goods in carrying on your enterprise.[16] However, you do not import goods for a creditable purpose to the extent that the importation relates to making supplies that would be input taxed or the importation is of a private or domestic nature.[17]

Taxable supply and taxable importation

34. Generally, a taxable importation is distinguishable from a taxable supply. However, sometimes a supplier may make a supply that gives rise to both a taxable importation and a taxable supply. This is explained in the Explanations section at paragraphs 152 to 162 below.

Offshore supplies other than goods or real property

35. If the supply of a thing other than goods or real property is either not connected with Australia, or is connected with Australia because of paragraph 9-25(5)(c), the supply is a taxable supply under section 84-5 and subject to GST if:

- the recipient of the supply acquires the thing supplied solely or partly for the purpose of an enterprise that the recipient carries on in Australia, but not solely for a creditable purpose (paragraph 84-5(1)(c)); and
- the supply is for consideration (paragraph 84-5(1)(d)); and

[12] Non-taxable importations is defined section 13-10.
[13] Subsection 13-5(3).
[14] Section 15-5.
[15] Section 15-15.
[16] Subsection 15-10(1).
[17] Subsection 15-10(2). Note subsections 15-10(3) and (4) prescribe certain circumstances where the importation is not treated as one that relates to making supplies that would be input taxed.

- the recipient is registered, or required to be registered (paragraph 84-5(1)(e)).

However the supply is not a taxable supply to the extent that it is GST–free or input taxed.[18]

36. Under subsection 11-15(2) you do not acquire a thing for a creditable purpose to the extent that the acquisition relates to making supplies that would be input taxed or the acquisition is of a private or domestic nature.[19]

37. Thus if the acquisition of the thing (other than goods or real property) by the recipient relates to making supplies that would be input taxed or the acquisition is partly of a private or domestic nature, the supply is treated under Division 84 as a taxable supply.

38. If the recipient acquires the thing solely for a creditable purpose it is not a taxable supply under section 84-5. This is because if you acquire the thing solely for a creditable purpose and the supply is a taxable supply, you are entitled to an input tax credit equal to the GST payable on that supply.

39. The GST on a supply that is treated as a taxable supply under section 84-5 is payable by the recipient of the supply and is not payable by the supplier.[20] The charge for GST is reversed, hence this Division is commonly referred to as a 'reverse charge' provision.

Example 5 – The importation of things other than goods or real property to which Division 84 applies

40. Invest Bank, an Australian financial institution, engages Legal UK, solicitors operating in the UK, to prepare an opinion on the legal aspects of a proposed joint venture banking operation in Australia with a subsidiary of a UK bank. The legal advice is prepared in the UK and provided to Invest Bank in Australia. Under subsection 9-25(5) the supply of that advice is not connected with Australia because the advice is not prepared in Australia, Legal UK has no permanent establishment in Australia and the supply is not of a right or option to acquire another thing, the supply of which would be connected with Australia. As the supply is not connected with Australia paragraph 84-5(1)(a) is satisfied. (Refer to paragraphs 175 to 225E of this Ruling which explain the operation of subsection 9-25(5).)

41. In this example, we assume that the requirements of paragraphs 84-5(1)(d) and 84-5(1)(e) are satisfied. Invest Bank acquires the supply for the purpose of its enterprise carried on in Australia. By virtue of subsection 11-15(2), the acquisition made by Invest Bank is not solely for a creditable purpose because the

[18] Subsection 84-5(1).
[19] Subsections 11-15(3) and (4) set out certain acquisitions that are not to be treated as acquisitions that relate to making supplies that would be input taxed.
[20] Section 84-10 the reverse charge on offshore intangible supplies.

acquisition relates to making supplies that are input taxed.[21] Thus the requirements of paragraph 84-5(1)(c) are satisfied and the supply by Legal UK is a taxable supply under section 84-5.

42. Under section 84-10 Invest Bank, the recipient of the supply, is liable to pay GST on the taxable supply.[21A]

Non-residents making supplies connected with Australia

43. Non-resident entities that make supplies that are connected with Australia are required to register if the registration turnover threshold is met.[22] A non-resident enterprise is required to be registered if its GST turnover is at or above $75,000. The turnover threshold for a non-profit body is $150,000. Supplies that are not connected with Australia or are connected with Australia because of paragraph 9-25(5)(c)[22A] are disregarded in working out the GST turnover. Further supplies of rights or options to use commercial accommodation[22B] in Australia that are made on or after 1 October 2005 are also disregarded in working out GST turnover if the supplies are not made in Australia and are made through an enterprise that the supplier does not carry on in Australia.[22C]

43A. Division 83 (non-residents making supplies connected with Australia) allows a non-resident supplier and the recipient of a supply by the non-resident supplier to agree that the GST liability is to be borne by the recipient where certain requirements[23] are met (that is, the GST on the taxable supply is 'reverse charged' to the recipient).

43B. A non-resident supplier that is making taxable supplies (on the basis that it is required to be registered for GST) need not apply to register for GST if the only reason that the supplier is required to be registered is because the registration turnover threshold is met when taxable supplies covered by section 83-5 are taken into account.[23A]

43C. However, Division 83 does not apply to all supplies. Under subsection 83-5(2) the following supplies cannot be reverse charged:

- a taxable supply under Division 84;
- a taxable supply made by a non-resident through a resident agent;
- a supply that is disregarded under paragraph 188-15(3)(b) or 188-20(3)(b). That is, the

[21] It is assumed here that Invest Bank only makes input taxed supplies (Division 40).
[21A] If a supply is taxable under both sections 9-5 and 84-5, GST is only payable under section 84-5. It is not payable under section 9-40: subsection 84-10(3).
[22] Sections 23-5 and 23-15.
[22A] Paragraph 188-15(3)(a) and (b) (current GST turnover); paragraphs 188-20(3)(a) and (b) (projected GST turnover) respectively.
[22B] Commercial accommodation has the meaning given by section 87-15 and refers to 'commercial residential premises' as defined in section 195-1.
[22C] Paragraph 188-15(3)(c) (current GST turnover); paragraph 188-20(3)(c) (projected GST turnover).
[23] These requirements are set out in section 83-5.
[23A] Sections 83-25 and 83-30.

supply is connected with Australia because of paragraph 9-25(5)(c); and

- a supply that is disregarded under paragraph 188-15(3)(c) or 188-20(3)(c). That is, the supply is of a right or option to use commercial accommodation in Australia that is made on or after 1 October 2005, is not made in Australia and is made through an enterprise that the supplier does not carry on in Australia.

Ruling

Supplies connected with Australia

Supplies of goods[23B]

44. A supply of goods is a supply of any form of tangible personal property, that is, any form of personal property that has a physical existence but does not include intangible personal property such as intellectual property like a copyright. A supply of goods can occur by way of sale, lease, hire etc.

Supplies of goods wholly within Australia

45. A supply of goods is connected with Australia if the goods are delivered, or made available, in Australia to the recipient of the supply (subsection 9-25(1)). If goods are delivered or made available in Australia to the recipient of the supply, the supply of goods is wholly within Australia.

46. In the context of subsection 9-25(1), goods are delivered in Australia if the goods are physically delivered in Australia. Goods are made available in Australia if the goods are physically made available in Australia.

47. Goods which are delivered or made available in Australia to the recipient may be goods that the supplier has acquired domestically or imported (see the example at paragraph 124 of the Explanations section).

48. Also, an overseas supplier may make a supply of goods that is wholly within Australia. For example, an overseas supplier may acquire goods in Australia and supply those goods to a recipient in Australia.

49. Where the recipient imports the goods into Australia, the supply of goods is not connected with Australia under subsection

[23B] Refer to paragraph 81 of GSTR 2003/7 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*?

9-25(1) because the goods are not delivered, or made available, in Australia to the recipient of the supply.

Supplies of goods from Australia

50. A supply of goods is connected with Australia, if the supply involves those goods being removed from Australia (subsection 9-25(2)). Removal of goods from Australia is a supply from Australia.

51. Goods removed from Australia means the goods are physically taken out of Australia.[23C]

Supplies of goods to Australia

52. A supply of goods is connected with Australia if the supply involves those goods being brought to Australia and the supplier either imports the goods into Australia (paragraph 9-25(3)(a)) or installs or assembles the goods in Australia (paragraph 9-25(3)(b)). The import of the goods into Australia or the installation or assembly of the goods in Australia is a supply of goods to Australia.[23D]

53. This means that the supplier is either an exporter from outside Australia and importer into Australia, or an exporter from outside Australia and installer or assembler in Australia.

54. Paragraph 9-25(3)(a) does not apply to a supply of goods that involves goods being brought to Australia where the recipient imports the goods into Australia.[24]

55. Under paragraph 9-25(3)(a) a supply of goods brought to Australia is connected with Australia if the supplier imports the goods regardless of whether or not the supplier engages a Customs broker to arrange customs clearance of the goods.

56. A supply that is connected with Australia under paragraph 9-25(3)(a) may give rise to a taxable supply and a taxable importation where the supplier imports the goods into Australia.

Supplies of real property[24A]

57. Real property is defined to include:

[23C] Refer to paragraphs 173 to 187 of GSTR 2002/6 Goods and services tax: Exports of goods, items 1 to 4 of the table in subsection 38-185(1) of the *A New Tax System (Goods and Services Tax) Act 1999*.

[23D] Refer to paragraphs 71 to 74 and 221 to 222 of GSTR 2003/15 Goods and services tax: importation of goods into Australia.

[24] In this case the goods are supplied on an FOB or CIF basis. FOB and CIF are defined in the definitions section of the Ruling.

[24A] Refer to paragraphs 82 to 97 of GSTR 2003/7 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*?

(a) any interest in or right over land; or

(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.[25]

58. A supply of real property is connected with Australia if the real property, or the land to which the real property relates, is in Australia (subsection 9-25(4)). Land in this context means the physical land.

59. The reference in subsection 9-25(4) to 'land to which the real property relates' means that an interest in, or right over land is connected with Australia if the physical land to which the interest or right over it relates, is in Australia.

60. A supply of real property is connected with Australia if it involves, for example:

- the sale of land situated in Australia;
- the grant, assignment or surrender of any interest in or right over land in Australia – for example, a lease of land;
- a personal right to call for or be granted any interest or right over land in Australia;
- a licence to occupy land in Australia; or
- any other contractual right exercisable over or in relation to land in Australia.[25A]

Supplies of anything else

61. A supply of anything other than goods or real property is connected with Australia if:

- the thing is done in Australia (paragraph 9-25(5)(a));
- the supplier makes the supply through an enterprise that the supplier carries on in Australia (paragraph 9-25(5)(b)); or
- all of the following apply:
  - (i) neither paragraph 9-25(5)(a) nor (b) applies in respect of the thing;
  - (ii) the thing is a right or option to acquire another thing; and

[25] Section 195-1.

[25A] In *Saga Holidays Limited v. Commissioner of Taxation* [2006] FCAFC 191 (*Saga Holidays*) it was held that the supply of the accommodation component of an Australian tour package by a United Kingdom tour operator (Saga) to non-residents was a contractual right exercisable over or in relation to land and thus was a taxable supply of real property connected with Australia.

(iii) the supply of the other thing would be connected with Australia (paragraph 9-25(5)(c)).

Thing is done in Australia

62. Thing is defined to mean anything that can be supplied or imported such as a service, advice, information or a right.[26] It is the subject of the supply.

63. Under paragraph 9-25(5)(a) the connection with Australia requires that the 'thing' being supplied is 'done' in Australia.

64. The meaning of 'done' depends on the nature of the 'thing' being supplied. 'Done' can mean, for example, performed, executed, completed, finished etc depending on what is supplied.

Supply of a service

65. If the 'thing' being supplied is a service, the supply of that service is typically done where the service is performed. If the service is performed in Australia, the service is done in Australia and the supply of that service is connected with Australia under paragraph 9-25(5)(a). This is the case even if the recipient of the supply is outside Australia.

66. However, the supply of a service to an offshore recipient may be GST-free under section 38-190. That section is outlined at paragraphs 23 to 26 above.

67. The supply of a service may be GST-free where the requirements in items 1, 2, 3 or 5 in the table in subsection 38-190(1) are satisfied. These items are reproduced above at paragraph 23. To determine, for the purposes of item 1, if a supply is the supply of a service that is 'directly connected with goods or real property' situated outside Australia, or if a supply is the supply of a service that is 'a supply of work physically performed on goods situated in Australia when the work is done' or a supply 'directly connected with real property' situated in Australia for the purposes of items 2 and 3, refer to GSTR 2003/7 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*?

68. For the purposes of items 2 and 3 the pre-condition that the recipient is not in Australia at the relevant time, requires that the recipient is not in Australia in relation to the supply. To determine, for the purposes of items 2 and 3 (and paragraph (b) of item 4) when a recipient (that is an individual, company , partnership, corporate limited partnership or trust) is in Australia in relation to the supply

[26] Section 195-1.

refer to 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'?

69. Sometimes a service may involve both work being done and the creation of a product for the recipient. However, this does not alter the nature of the supply as one for the performance of a service.

70. For example, if an architect is engaged to prepare and provide a plan for the recipient, the plan is the product produced as a result of the services provided by the architect. The service is done where the work is done, that is, where the plan is prepared or drawn. This is the case even if the contract is to deliver a completed plan. If the plan is prepared in Australia, the service is performed in Australia and the supply is connected with Australia. The delivery of the plan does not determine where the service is done. The product of that service, the plan, is not a separate supply from the supply of that service.

Provision of advice or information

71. If a supply is the provision of advice or information and the supply involves work to create, develop or produce that information or advice for the recipient, the supply is one of the performance of services. The advice or information is done where it is prepared, produced, or created, as the case may be. The supply of that advice or information is connected with Australia if the advice or information is prepared, created or produced in Australia.

72. For example, if a lawyer prepares a legal opinion in Australia and provides that opinion to an offshore recipient, the provision of that opinion is connected with Australia because the opinion is prepared in Australia. The provision of advice or information in cases of this kind is akin to the provision of a service which is done where the service is performed. Again, delivery of the end product is not relevant. The supply may be GST-free under subsection 38-190(1).

Instantaneous supply of advice or information

73. If the provision of advice or information is an instantaneous supply of advice or information, that advice or information is done where the advice or information is provided. The meaning of provided will depend on the facts in any given case. For example, if a client rings his or her accountant to obtain advice on an urgent matter and the accountant responds there and then over the phone, the advice is done where it is provided by the accountant. Again, depending on the

circumstances, the supply may be GST-free under subsection 38-190(1).

The creation, grant, transfer, assignment or surrender of a right

74. If the supply is the creation, grant, transfer, assignment or surrender of a right, the creation of that right in another, the granting, transfer or assignment of that right to another, or the surrender of that right, is done where the right is created in that other person, granted, transferred or assigned to that other person or surrendered respectively.

75. The act that creates that right in another or grants, transfers or assigns that right to another, or surrenders the right, will depend on the facts of each individual case.

76. If, for example, a right is granted under an agreement to another to use certain intellectual property, the granting of that right to another is done where the agreement is made. If the agreement is made[27] in Australia, the supply of that right is connected with Australia. If the agreement is made outside Australia, the supply is not connected with Australia under paragraph 9-25(5)(a). However, even if the agreement is made outside Australia the supply is connected with Australia under paragraph 9-25(5)(b) if the supplier makes the supply through an enterprise that the supplier carries on in Australia (refer paragraphs 78 to 89 below).

Entry into, or release from, an obligation

77. If the supply is the entry into, or release from, an obligation to do anything, or to refrain from an act, or to tolerate an act or situation, the entering into that obligation or the release from that obligation is done where the obligation is entered into or the release is effected.

The supply is made through an enterprise carried on in Australia

78. If a supply of a thing is not connected with Australia because the thing is not done in Australia, the supply is connected with Australia if, under paragraph 9-25(5)(b), the supplier makes the supply through an enterprise that the supplier carries on in Australia.

79. The concept of carrying on an enterprise in Australia is defined in terms of the definition of 'permanent establishment' in subsection 6(1) of the *Income Tax Assessment Act 1936*.

80. Specifically, under subsection 9-25(6) the supplier carries on an enterprise in Australia if the enterprise is carried on through:

[27] A contract is made where the last act necessary to create a binding contract is performed (see *W. A. Dewhurst and Co. Pty. Ltd. v. Cawrse* [1960] V.R. 278 at 282.

(a) a permanent establishment (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*); or

(b) a place that would be such a permanent establishment if paragraph (e), (f) or (g) of that definition did not apply.

81. An enterprise is defined in section 9-20 (see the definitions section of the Ruling at paragraph 238). Broadly speaking, an enterprise is an activity, or series of activities done in a particular manner. For example, an enterprise is an activity, or series of activities, done in the form of a business.[28]

82. Carrying on an enterprise includes doing anything in the course of the commencement or termination of the enterprise.[29]

83. A supply of a thing other than goods or real property, is connected with Australia under paragraph 9-25(5)(b) if the supplier:

(i) carries on an enterprise through a permanent establishment (as defined) in Australia; and

(ii) the supply is made through that permanent establishment (as defined).

84. For a supply to be connected with Australia under paragraph 9-25(5)(b), a connection must exist between the Australian permanent establishment and the supply. If the supplier carries on an enterprise through a permanent establishment in Australia any supply made in the course or furtherance of this enterprise will be a supply made through the permanent establishment for the purposes of paragraph 9-25(5)(b). This will be the case even if the supply can also be said to be connected with a place of business in another country.

85. The business profits articles of various double tax agreements[30] entered into by Australia provide for primary but not exclusive taxing rights in the country of source, of the business profits that 'are attributable to a permanent establishment'. Similar language is also used in the *Income Tax Assessment Act 1936*. Despite the differences in terminology the underlying concept of connection to a permanent establishment is similar. Thus in establishing whether a supply is made through a permanent establishment it may be possible to draw some guidance from existing case law and commentaries such as the commentaries on the 'OECD Model Tax Convention on Income and on Capital'.

86. There is no specific set of circumstances which must be satisfied before a supply is connected with a permanent establishment. Rather, each case will be determined on the basis of the individual facts and circumstances. However, some factors that will usually indicate that the supply is made through a permanent establishment include:

[28] Paragraph 9-20(1)(a).
[29] Section 195-1.
[30] Double Taxation Agreements are agreements entered into by Australia with other countries to provide relief from the double taxation of income or gains.

- the permanent establishment has the authority to sign contracts or accept purchase orders for the supply;
- the permanent establishment has the authority to make important decisions in respect of the supply;
- the permanent establishment physically makes for example, manufactures or produces, the supply;
- if the supply is a service, the service is provided by the permanent establishment;
- if the supply is the provision of advice or information such as a legal opinion, the permanent establishment provides that advice or information;
- if the supply is the grant, creation, assignment, transfer or surrender of a right, the permanent establishment grants, creates, assigns, transfers or surrenders that right.

87. The definition of permanent establishment for the purposes of subsection 9-25(6) is wider than the definition of permanent establishment found in subsection 6(1) of the *Income Tax Assessment Act 1936*. This is because the exclusions from a permanent establishment in subsection 6(1) of the *Income Tax Assessment Act 1936* – paragraphs (e), (f) and (g) are not similarly excluded from the definition of permanent establishment for the purposes of subsection 9-25(6).

88. Thus, permanent establishment for the purposes of subsection 9-25(6) means a place at or through which a person carries on any business and, without limiting the generality of the foregoing, includes:

(a) a place where the person is carrying on business through an agent;

(b) a place where the person has, is using or is installing substantial equipment or substantial machinery;

(c) a place where the person is engaged in a construction project; and

(d) where the person is engaged in selling goods manufactured, assembled, processed, packed or distributed by another person for, or at or to the order of, the first-mentioned person and either of those persons participates in the management, control or capital of the other person or another person participates in the management, control of both of those persons – the place where the goods are manufactured, assembled, processed, packed or distributed.

89. Both a resident and a non-resident can have a permanent establishment in Australia for the purposes of the application of paragraph 9-25(5)(b). The paragraph is not limited in operation to a

non-resident (see Example 38 at paragraph 221 in the Explanation section).

Supply is of a right or option to acquire another thing and the supply of the other thing would be connected with Australia

89A. If a supply is of a right or option to acquire some other thing and the supply of the right or option is not done in Australia (that is, it is not connected with Australia under paragraph 9-25(5)(a)) and the supplier does not make the supply of the right or option through an enterprise that the supplier carries on in Australia (that is, it is not connected with Australia under paragraph 9-25(5)(b)), the supply of the right or option is connected with Australia under paragraph 9-25(5)(c) if the supply of the other thing would be connected with Australia.

89B. As the note to paragraph 9-25(5)(c) indicates, the provision may apply if an overseas tour operator, that does not carry on an enterprise in Australia, makes a supply overseas of an Australian holiday package to a non-resident tourist and the holiday package gives the non-resident tourist rights or options to acquire goods, services or other things the supply of which would be connected with Australia under section 9-25. Where paragraph 9-25(5)(c) applies the supply of the rights or options is connected with Australia.[30A]

Supplies that are partly connected with Australia

Supplies of the one kind that are partly connected with Australia

Supply of goods

90. The extent to which a supply of goods is connected with Australia is ascertained by applying subsections 9-25(1), 9-25(2) and 9-25(3) to the relevant parts of the supply. A supply of goods may involve part of the supply of the goods being connected with Australia in accordance with one or more of those subsections and part of the supply of the goods not being connected with Australia under any of those subsections.

Supply of real property

91. Where a supply of real property consists of real property in Australia and real property outside Australia, the supply is connected with Australia to the extent that the supply of real property, or the land to which the real property relates, is in Australia. The supply is not connected with Australia to the extent that the supply of real property, or the land to which the real property relates, is not in Australia.

[30A] The supply of rights exercisable over or in relation to land is a supply of real property and thus connected with Australia if the land is in Australia. In such cases the right is connected with Australia under subsection 9-25(4) and not paragraph 9-25(5)(c). See *Saga Holidays* [2006] FCAFC 191 which is mentioned at footnote 25A.

Supply of anything other than goods or real property

92. The supply of anything other than goods or real property may be partly connected with Australia if the thing is partly done in Australia or the supplier makes the supply partly through an enterprise that the supplier carries on in Australia. If a thing is only partly done in Australia, the supply is connected with Australia to the extent that the thing is done in Australia. However, the part of the supply that is not connected with Australia under paragraph 9-25(5)(a) may nonetheless be connected with Australia if the supply is made through an enterprise that the supplier carries on in Australia (refer to paragraph 9-25(5)(b) which is discussed at paragraphs 213 to 220 below).

93. If the doing of one part of a thing may reasonably be regarded as merely incidental to the doing of another part of the supply, the incidental part is taken to be done where the part to which it is incidental is done.

94. Where a supplier makes a supply partly through an enterprise that the supplier carries on in Australia, the supply is connected with Australia to the extent that the supply is made through that enterprise. However, the part of the supply that is not connected with Australia under paragraph 9-25(5)(b) may nonetheless be connected with Australia if the thing is done in Australia.

94A. It is the Commissioner's view that the supply of a right or option to acquire another thing may be partly connected with Australia under paragraph 9-25(5)(c). This is consistent with the accompanying Explanatory Memorandum[30B] which explains (at paragraph 3.1) that paragraph 9-25(5)(c) is to 'ensure that the GST Act applies to the offshore supply of options or rights to goods, services and other things, where the goods, services and other things are connected with Australia'. Thus to the extent that the goods, services or other things are not connected with Australia it follows that the supply of the right or option should not be connected with Australia.

94B. Therefore, a supply of the right or option to acquire another thing is partly connected with Australia if the supply of the other thing would be partly connected with Australia.

Supplies of more than one kind that are partly connected with Australia – Division 96

95. A supply may be a supply of more than one kind of the following:

- a supply of goods;
- a supply of real property;

[30B] Explanatory Memorandum accompanying Tax Laws Amendment (2005 Measures No. 1) Bill 2005 enacted as *Tax Laws Amendment (2005 Measures No. 1) Act 2005*.

- a telecommunication supply; and
- a supply of anything, other than goods or real property, that is not a telecommunication supply.

96. Under section 96-5, if as a result of the application of section 9-25, only part of the actual supply is connected with Australia, the actual supply is treated as if it were separate supplies.

97. Under subsection 96-5(2) the part of the actual supply that is connected with Australia is treated as if it were a separate supply that is connected with Australia.

98. Under subsection 96-5(3) the part of the actual supply that is not connected with Australia is treated as if it were a separate supply that is not connected with Australia.

99. Under subsection 96-5(4) if one of the kinds of supply that forms part of the actual supply may reasonably be regarded as incidental to:

(a) the other kind of supply that forms part of the actual supply; or

(b) one (but not both) of the other kinds of supply that form part of the actual supply;

and its value (if it were a separate taxable supply) would not exceed $50,000, it is treated as part of that other kind of supply.

100. A part of a supply is reasonably regarded as incidental to another part of a supply if it is minor relative to the other part of the supply.[30C]

101. If a part of a supply is reasonably regarded as incidental to another part of a supply, and its value is below the dollar threshold, the incidental supply is treated in the same way as that other part of the supply rather than treating the two parts of the supply as separate supplies.

102. Section 96-10 provides special rules for calculating the value of the taxable components of supplies that are only partly connected with Australia.

Progressive or periodic supplies

103. Division 156 provides for certain supplies and acquisitions made for a period or on a progressive basis to be treated as if each

[30C] This is consistent with the view of the Full Federal Court in *Saga Holidays* [2006] FCAFC 191. In determining the meaning of 'incidental' for the purposes of subsection 96-5(4), Stone J (at paragraph 49) referred to ordinary dictionary meanings with the most apposite being 'of secondary importance' and 'happening or likely to happen in fortuitous or subordinate conjunction with something else'. Stone J also noted (at paragraph 52) that Division 96 is not concerned with the purpose of the contract but with the supply made under the contract. *Saga Holidays* is also mentioned at footnote 25A.

progressive or periodic component of the supply or acquisition were a separate supply or acquisition.

104. Under section 156-15, if:

(a) a taxable supply is made for a period or on a progressive basis; and

(b) the supply is made for consideration that is to be provided on a progressive or periodic basis; and

(c) the whole of a progressive or periodic component of the supply would not be connected with Australia if it were a separate supply;

that component of the supply is treated as if it were a separate supply that is not connected with Australia.

Explanation (this forms part of the Ruling)

Supply

105. A supply is defined to mean 'any form of supply whatsoever'.[31] Without limiting the fact that a supply is any form of supply, a supply is defined in subsection 9-10(2), to include any of the following:

(a) a supply of goods;

(b) a supply of services;

(c) a provision of advice or information;

(d) a grant, assignment or surrender of real property;

(e) a creation, grant, transfer, assignment or surrender of any right;

(f) a financial supply;

(g) an entry into, or release from, an obligation:

(i) to do anything; or

(ii) to refrain from an act; or

(iii) to tolerate an act or situation;

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

However, 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.[32]

[31] Subsection 9-10(1).
[32] Subsection 9-10(4).

106. Section 9-25 sets out when a supply of something is connected with Australia. A distinction is drawn between a supply of goods, a supply of real property, and a supply of anything else. This distinction means that it is critical to ascertain what it is that is being supplied.

107. Sections 38-185, 38-187 and 38-190 which set out the circumstances in which a supply is GST-free also make a distinction between the different kinds of supply.

A supply of goods

108. 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 good is any form of personal property that has a physical existence but does not include intangible personal property such as intellectual property like a copyright.

109. A supply of goods commonly occurs by way of sale of goods by the supplier to the recipient. A supply of goods also occurs by way of a hire purchase agreement.[33]

110. Where tangible personal property is the subject of a lease or hire arrangement the GST Act contemplates that the supply is a supply of goods rather than the supply of use of the goods. For example, section 38-187 provides that a supply of goods is GST-free if the supply is by way of lease or hire and the goods are used outside Australia.

111. Further, a supply of goods by way of lease involves goods being made available on an on-going basis to the lessee. The treatment of a supply of goods by way of a lease as a supply of goods is consistent with the notion that a supply of goods is connected with Australia, if the goods are delivered, or made available, in Australia to the recipient of the supply.

Alternative view

112. There is an alternative view that a supply of goods by way of lease is a supply of a thing other than goods or real property. Whether a supply of this kind is connected with Australia depends on satisfying the requirements of subsection 9-25(5).

113. Contrast a hire of property that is not tangible personal property, for example, a licence to use a copyright. The supply is of a thing, being the creation of the right to use that thing in the recipient and subsection 9-25(5) applies in determining whether the supply of that thing is connected with Australia (see paragraphs 175 to 212 below).

[33] Refer GSTR 2000/29 Goods and services tax: attributing GST payable, input tax credits and adjustments and particular attribution rules made under section 29-25.

114. We consider that the better view is that a supply of goods by way of lease or hire is a supply of goods and not a supply of a thing that is a supply of the use of the goods. This means that for the purposes of determining whether a supply of goods by way of lease or hire is connected with Australia, the relevant subsections are subsections 9-25(1), (2) and (3), which set out when a supply of goods is connected with Australia.

Supplies of goods connected with Australia

115. 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, supplies of goods *from* Australia, and supplies of goods to Australia.

Supplies of goods wholly within Australia

116. The heading to this subsection, '*Supplies of goods wholly within Australia*', 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 also supported by the Explanatory Memorandum[34] accompanying the GST Act which shows, diagrammatically, the supply and receipt of goods wholly within Australia.

117. Subsection 9-25(1) provides that a supply of goods is connected with Australia if the goods are 'delivered, or made available', in Australia to the recipient of the supply. The recipient, in relation to a supply, is the entity to which the supply is made.[35]

118. In the context of subsection 9-25(1) the phrase 'delivered, or made available' takes the meaning that the goods are either physically delivered, or if not physically delivered, physically made available in Australia.

119. 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. For example, a supplier may make goods available for collection by the recipient. This is the case where a supplier of sand sells a load of sand to a customer and the customer takes away the sand which the supplier makes available.

120. Thus, goods are 'delivered' in Australia if the goods are actually physically delivered in Australia. Goods are made available in Australia if the goods are physically available for the recipient in Australia. Both 'delivered' and 'made available' look at the place where the physical goods are at the relevant time.

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[34] Further Supplementary Explanatory Memorandum accompanying the A New Tax System (Goods and Services Tax Transition) Bill 1998 at pages 28 to 29.
[35] Section 195-1.

Example 6 – Goods delivered in Australia

121. Richard, a computer wholesaler in Perth, sells computers to JB Co, a computer retailer in Adelaide. The computers are delivered to the premises of JB Co in Adelaide. This supply of goods is connected with Australia as the computers (goods) are delivered to JB in Australia.

122. Subsection 9-25(1) does not apply to goods 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 (refer paragraphs 126 and 131 respectively).

123. However, this does not mean that the goods, the subject of a supply wholly within Australia, have to be domestic goods only. The goods being supplied may be domestic or imported goods. This is illustrated in the example below.

Example 7 – Supplies of imported goods wholly within Australia

124. 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.

125. 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 in Australia.

126. This example illustrates that although the goods are supplied wholly within Australia, the goods themselves may be imported goods.

127. Under section 13-15 the car dealer, being the importer of the car, is liable to pay GST on the taxable importation that he makes. The car dealer is registered and the supply to Joe is a taxable supply, with GST payable by the car dealer on that supply.[36] The car dealer is entitled to an input tax credit for the GST payable on the importation.[37]

128. Also, a supply of goods wholly within Australia can be made by an overseas supplier. For example, if the overseas supplier acquires goods in Australia and supplies those goods to the recipient in Australia that supply is connected with Australia under subsection 9-25(1).

129. A supply of goods that involves the recipient importing the goods into Australia is not connected with Australia under subsection 9-25(1) as the goods are not delivered, or made available, in Australia to the recipient of the supply. Also, the supply of goods is not

[36] Subsection 7-1(1).
[37] Sections 15-15 and 15-20.

connected with Australia under paragraph 9-25(3)(a) because the supplier does not import the goods. However, the recipient importer will make a taxable importation.

Example 8 – Goods supplied by resident supplier and imported by resident recipient

130. Joe decides to fit his car with specialised seat covers. He approaches Seat Co in Sydney to supply the seat covers. However, the seat covers have to be imported from Italy. Under the arrangements with Seat Co, Joe imports the seat covers into Australia and pays Seat Co for the goods once the seat covers are cleared through Customs. The supply of goods, specialised seat covers by Seatco to Joe, is not connected with Australia because the goods are not delivered, or made available to Joe, in Australia. However, Joe makes a taxable importation upon which GST is payable.[38]

131. A supply of goods by way of lease may be a supply wholly within Australia. This is illustrated in the following example.

Example 9 – Goods supplied by way of lease

132. Finance Co (an Australian resident Co) leases portable computers to domestic and overseas customers. If the portable computers are delivered, or made available in Australia, to the recipient of the supply, the supply of those computers by way of lease is connected with Australia. However, if the portable computers are used outside Australia, the supply is GST-free under section 38-187. If the computers are partly used in Australia and partly used outside Australia the supply is GST-free to the extent that the computers are used outside Australia. A fair and reasonable basis of apportionment is to be adopted in working out the extent that the computers are used outside Australia.

Supply of goods – from Australia[38A]

133. A supply of goods is connected with Australia if that supply involves the goods being removed from Australia. '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.[39] Goods being removed from Australia means the goods are physically taken out of Australia.

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[38] Sections 13-5 and 13-15.
[38A] Refer to paragraphs 173 to 187 of GSTR 2002/6 Goods and services tax: Exports of goods, items 1 to 4 of the table in subsection 38-185(1) of the *A New Tax System (Goods and Services Tax) Act 1999*.
[39] *The Macquarie Dictionary,* The Macquarie Library Pty Ltd, 2nd ed.

134. Subsection 9-25(2) is about a supply that involves the removal of the goods from Australia. The subsection does not apply where removal is not part of the supply.

Example 10 – Goods removed from Australia

135. BrisCo, a Brisbane company, sells souvenirs to overseas retailers. The souvenirs are to be shipped to their overseas purchasers. The souvenirs are removed from Australia by export. The supply is connected with Australia.

136. Notwithstanding that this supply is connected with Australia, it may be GST-free. If BrisCo exports the souvenirs from Australia within a specified time (refer paragraphs 15 to 16) the supply is GST-free.

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

Example 11 – Goods supplied by way of lease

138. Aust Co is an Australian biscuit manufacturer. It leases specialised manufacturing 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). As the goods are used outside Australia, the supply of those goods is GST-free under section 38-187.

Supply of goods – to Australia[39A]

139. A supply of goods is connected with Australia if that supply involves goods being brought to Australia and the supplier either:

(a) imports the goods into Australia (paragraph 9-25(3)(a)); or

(b) installs or assembles the goods in Australia (paragraph 9-25(3)(b)).

Example 12 – Goods imported into Australia by supplier

140. US Co, a US company sells a tractor to Tract Co, an Australian earthmoving operator, on a DDP[40] basis. US Co has to import the tractor into Australia. The supply made by US Co to Tract Co is a supply connected with Australia as the tractor (goods) is

[39A] Refer to paragraphs 71 to 74 and 221 to 222 GSTR 2003/15 Goods and services tax: importation of goods into Australia.

[40] DDP – means delivered duty paid. The seller is responsible for all costs and risks to a specific destination in the importing country (includes costs such as unloading fees at port, storage, import license fees, duties and taxes, insurance, etc.).

brought to Australia and it is US Co (the supplier) that imports it into Australia.

141. 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. The supply is not a taxable supply under section 9-5. However, the importation is a taxable importation and the recipient is liable to pay GST on the taxable importation.[41]

Example 13 – Goods imported into Australia by recipient

142. If in Example 12 US Co sells the tractor to Tract Co on an FOB[42] basis, the tractor is imported into Australia by the recipient and the supply of the tractor is not connected with Australia under paragraph 9-25(3)(a). As the tractor is not delivered, or made available, in Australia to Tract Co, the supply of the tractor is not connected with Australia under subsection 9-25(1). However, the supply is a taxable importation made by Tract Co and Tract Co is liable to pay GST on the taxable importation.[43]

Example 14 – Goods imported into Australia by recipient through a permanent establishment

143. Aust Cork Ltd, an Australian resident cork importer, has a permanent establishment in Portugal and contracts for the supply of cork from a Portuguese cork supplier. The cork is delivered to the permanent establishment of Aust Cork Ltd in Portugal and Aust Cork Ltd then imports the cork into Australia.

144. The supply of cork from the Portuguese cork supplier to Aust Cork Ltd is not connected with Australia because the arrangement between them does not involve the cork being brought to Australia and the supplier is not the party which imports the goods into Australia. However, the importation of the cork into Australia by Aust Cork Ltd is a taxable importation.[44]

145. Under paragraph 9-25(3)(b), if a supply of goods involves the goods being brought to Australia and the supplier installs or assembles the goods in Australia, the supply of the goods is connected with Australia. In the case of goods assembled in Australia, the unassembled goods and the assembled goods are the same goods.

[41] Sections 13-5 and 13-15.
[42] Defined in definitions section of the Ruling.
[43] Sections 13-5 and 13-15.
[44] Section 13-5.

Example 15 – Goods imported into Australia by recipient and assembled in Australia by supplier

146. Aero Lite , an Australian resident, decides to buy a light aircraft manufactured by Flight UK in the UK. The light aircraft parts need to be imported into, and assembled in, Australia. Flight UK agrees to supply and assemble the aircraft in Australia on the basis that Aero Lite arranges for the importation of the aircraft parts. Aero Lite imports the goods on a FOB basis.[45]

147. The supply of the aircraft is connected with Australia because the supply involves the aircraft parts being brought to Australia and the supplier assembling the aircraft in Australia. This is so regardless of the fact that it is the recipient who imports the parts of the aircraft into Australia.

148. Flight UK makes a taxable supply to Aero Lite and GST is payable by Flight UK on the taxable supply made to Aero Lite. The importation of the parts of the aircraft into Australia by Aero Lite is a taxable importation and Aero Lite is liable to pay GST on the importation.[46] Aero Lite is entitled to an input tax credit for the GST payable on the importation provided the importation is a creditable importation.[47]

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

Example 16 – Goods supplied by way of lease

150. UK Crane Co (a United Kingdom resident company) leases a specialised crane to Construct Co (an Australian resident company) for use in Australia. The supplier imports the crane into Australia from the United Kingdom.

151. As the supplier 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.

[45] FOB – defined in the definitions section of Ruling.
[46] Subsection 7-1(1) and section 13-15.
[47] Section 15-15.

Interaction of the GST concepts of taxable supply and taxable importation

152. A supply that is connected with Australia under paragraph 9-25(3)(a) 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.[48] However, if the supplier makes a creditable importation the supplier is entitled to an input tax credit for the GST payable on the importation.[49]

Example 17 – Taxable supply and taxable importation

153. The supply in Example 12 above is both a taxable supply and a taxable importation. A taxable supply is made by US Co to Tract Co and US Co is liable to pay GST on that supply. As US Co imported the tractor into Australia (on a DDP basis), US Co is liable to pay GST on the importation. US Co is entitled to an input tax credit for the creditable importation it makes.[50]

Example 18 – Supply of goods connected with Australia and taxable importation

154. NZ Co, a New Zealand ice-cream equipment supplier enters into a contract with Aust Ice, a Brisbane ice-cream production company, to supply Aust Ice with an ice-cream maker on a DDP[51] basis. NZ Co is registered for GST purposes in Australia.[52]

155. The supply of the equipment (goods) is connected with Australia under paragraph 9-25(3)(a) because the supplier imports the goods into Australia. The supply is a taxable supply and NZ Co is liable to pay GST on that supply.[53]

156. The importation of the equipment by NZ Co is a taxable importation.[54] GST is payable by NZ Co on the importation, but NZ Co is entitled to an input tax credit for the importation because it is a creditable importation.[55]

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[48] Section 13-15.
[49] Sections 15-15 and 15-20.
[50] Sections 13-5 and 15-15.
[51] DDP – Delivered Duty Paid.
[52] Subsection 23-5 and 23-10.
[53] Subsection 7-1(1) and section 9-5.
[54] Section 13-15.
[55] Subsection 7-1(1) and section 15-5.

Example 19 – taxable supply/taxable importation

157. Tracey operates a business in New Zealand. Tracey regularly imports things into Australia. Bruce operates a business in Australia. Tracey and Bruce are both registered. Tracey sells some goods to Bruce which he is going to use in his business in Australia. The sale is done under a supply and install contract, so Tracey imports the goods and also installs them at Bruce's factory.

158. The importation of the goods by Tracey is a taxable importation. GST is charged on the importation, but she is entitled to an input tax credit for the importation because the importation is also a creditable importation.[56] Under paragraph 9-25(3)(a) the supply of the goods is connected with Australia and is a taxable supply. Bruce is entitled to an input tax credit for the creditable acquisition of the goods.

159. Bruce pays Tracey a GST inclusive price of $110,000 under the contract for the supply and installation of the goods. This is the consideration for the supply. GST on a supply is charged in relation to the consideration for the supply. GST on an importation is charged on the customs value of the goods, plus the transport and insurance costs, plus the customs duty. Here, the customs value plus the transport and insurance costs plus the duty adds up to $70,000.

160. Tracey pays $7,000 GST on the importation (10% of $70,000) and is entitled to an input tax credit of $7,000 on the importation, netting out to zero GST.

161. Tracey also pays $10,000 GST (1/11 of the price of $110,000) on the supply. Bruce is entitled to an input tax credit of $10,000 on the acquisition.

162. This means that Tracey pays $7,000 GST on the importation, which she gets back as an input tax credit and accounts for $10,000 GST for the supply, which Bruce gets back as an input tax credit.

Supply of real property[56A]

163. Under subsection 9-25(4) a supply of real property is connected with Australia if the real property, or the land to which the real property relates, is in Australia.[57]

164. Land in the context of subsection 9-25(4) means the physical land. Thus the supply of any interest in, or right over, land is connected with Australia if the physical land is in Australia. The test is the location of the land and not the location of the right.

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[56] Section 15-15.

[56A] Refer to paragraphs 82 to 97 of GSTR 2003/7 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*?

[57] Subsection 9-25(4).

Example 20 – Interest in or right over land – sale

165. Mr Ho, a resident of Hong Kong, sells a commercial property in Perth to Franco, a resident of the United States. The commercial property is land located in Australia. The supply is connected with Australia because the land is in Australia.

Example 21 – Interest in or right over land - lease

166. NZ Co (a New Zealand resident company) enters into a lease agreement with Irish Co (an Irish resident company) to occupy three floors of an office building owned by Irish Co. in the Melbourne CBD. The supply made by Irish Co. is connected with Australia because the land to which the lease agreement relates is in Australia.

Example 22 – Personal right to call for any interest in or right over land – option

167. Sing Co (a Singaporean resident company) pays UK Co (a United Kingdom resident company) $120,000 for an option to purchase land owned by UK Co in Sydney. The option to purchase is real property as it is a right to call for an interest in land. The supply of the option to purchase is connected with Australia because the physical land to which the right relates is in Australia.

Example 22A – Contractual right exercisable over or in relation to land

167A. A non-resident tour operator acquires Australian holiday packages from Australian tour operators and supplies those tour packages to non-resident individuals. The supply of the tour package by the non-resident tour operator includes a supply of rights to accommodation in Australia. The supply of rights to accommodation in Australia is a supply of a contractual right exercisable over or in relation to land in Australia and is therefore a supply of real property that is connected with Australia.[57A]

[57A] *Saga Holidays* [2006] FCAFC 191. See also Goods and Services Tax Determination GSTD 2004/3 Goods and services tax: is a supply of rights to accommodation a supply of real property for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999*?

Example 23 – A supply of real property that is not a taxable supply

168. Mr Chan (a Singaporean resident individual) inherited a block of land in an outer suburb of Melbourne from his Australian uncle. Mr Chan later decided to sell the land as he needed the money to pay for the education of his children in the United states. The sale of the land is a supply of real property connected with Australia as the real property is in Australia. As the supply is not in the course or furtherance of an enterprise that Mr Chan carries on, the supply of the land is not a taxable supply under section 9-5.

Supply of anything other than goods or real property

169. Under subsection 9-25 a supply of anything other than goods or real property is connected with Australia if:

- the thing is done in Australia (paragraph 9-25(5)(a));
- the supplier makes the supply through an enterprise that the supplier carries on in Australia (paragraph 9-25(5)(b)); or
- all of the following apply:
  - (i) neither paragraph 9-25(5)(a) nor (b) applies in respect of the thing;
  - (ii) the thing is a right or option to acquire another thing; and
  - (iii) the supply of the other thing would be connected with Australia (paragraph 9-25(5)(c)).

170. 'Thing', as defined in section 195-1, means anything that can be supplied or imported. It is the subject matter of the supply or importation.

171. Paragraph 9-25(5)(a) looks at what is being supplied and then, if the 'thing' that is being supplied is done in Australia, the supply of that 'thing' is connected with Australia. Thus, if the supplier does the thing in Australia, the supply of that thing is connected with Australia. If the supplier does not do the thing in Australia, the supply of that thing is not connected with Australia under paragraph 9-25(5)(a) but it may be connected with Australia under paragraph 9-25(5)(b) or paragraph 9-25(5)(c).

172. Paragraph 9-25(5)(b) looks at where the supply is made. If the supply is made through an enterprise that the supplier carries on in Australia, the supply of a 'thing' is connected with Australia, even though the 'thing' that is supplied is not done in Australia.

173. Paragraph 9-25(5)(b) is examined in more detail at paragraphs 213 to 224 below. However, broadly speaking, the paragraph has the effect that if the supply is part and parcel of an Australian based operation of the supplier, the supply of that thing is connected with Australia. If the Australian operation does the thing outside Australia, the supply of the thing is connected with Australia, if the supply is made by the Australian based operation.

174. The supplier under paragraph 9-25(5)(b) may be an Australian resident[58] or a non-resident of Australia.[59]

174A. Paragraph 9-25(5)(c) is examined in more detail at paragraphs 225A to 225E of this Ruling. If a supply is of a right or option to acquire some other thing and the supply of the right or option is not done in Australia (that is, it is not connected with Australia under paragraph 9-25(5)(a)) and the supplier does not make the supply of the right or option through an enterprise that the supplier carries on in Australia (that is, it is not connected with Australia under paragraph 9-25(5)(b)), the supply of the right or option is connected with Australia under paragraph 9-25(5)(c) if the supply of the other thing would be connected with Australia.

174B. As the note to paragraph 9-25(5)(c) indicates, the provision may apply where an overseas tour operator, that does not carry on an enterprise in Australia, makes a supply overseas of an Australian holiday package to a non-resident tourist and the holiday package gives the non-resident tourist rights or options to acquire goods, services or other things the supply of which would be connected with Australia under section 9-25. Where paragraph 9-25(5)(c) applies the supply of the rights or options is connected with Australia.[59A]

Paragraph 9-25(5)(a)

Thing is done in Australia

175. 'Thing' in paragraph 9-25(5)(a) is defined in section 195-1. It means anything that can be supplied or imported. 'Thing', in the context of paragraph 9-25(5)(a), is what is supplied. It is the subject matter of the supply.

176. Examples of things that can be supplied, that are not goods or real property (including rights in relation to real property) are illustrated by reference to the meaning of supply in section 9-10. Looking at subsection 9-10(2) things other than goods or real property that can be supplied include services, advice, information, rights, obligations to do anything, or any combination of these things.

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[58] Australian resident means a person who is a resident of Australia for the purposes of the ITAA 1936.
[59] Non-resident means an entity that is not an Australian resident.
[59A] See footnote 30A.

177. A supply of any one or more of these things is connected with Australia, if the thing is done in Australia. Thus, in establishing whether a thing is done in Australia it is important to identify:

(i) what is the 'thing' that is being supplied; and

(ii) where that 'thing' is done.

178. 'Done' is not defined in the GST Act nor does it have a specific legal meaning. According to *The Macquarie Dictionary* 'done' means:

1. past participle of do.

3. executed; completed; finished; settled.[60]

179. It is helpful to consider the meaning of 'do'. In *The Macquarie Dictionary* 'do' means:

1. to perform (acts, duty, penance, a problem, a part etc.).

2. to execute (a piece or amount of work, etc.).

3. to accomplish; finish.[61]

180. It is also useful to consider the meaning of perform. In *The Macquarie Dictionary* 'perform' means:

1. to carry out; execute; do.

4. to carry into effect; fulfil.

8. to fulfil a command, promise, or undertaking to execute or do something.[62]

181. 'Performance' in legal terms means 'the doing of that which is required by a contract, undertaking or statute'.[63]

182. It follows that the meaning of 'done' in the context of paragraph 9-25(5)(a) depends on the nature of the thing being supplied.

Supply of services

183. If the supply is the supply of services, services are commonly performed. 'Done' in this context means performed and a service is connected with Australia, if it is performed in Australia. Examples of such services include accounting services, legal services, repair services, maintenance services, preparation of, or developing, designs, models, plans, drawings or other like property for the recipient, as wells as, research, testing, experimental or other like services.

[60] *The Macquarie Dictionary* 2nd ed. Macquarie University NSW 1995 p521.
[61] *The Macquarie Dictionary* 2nd ed. Macquarie University NSW 1995, p514.
[62] *The Macquarie Dictionary* 2nd ed. Macquarie University NSW 1995, p1317.
[63] *The CCH Macquarie Dictionary of Law* 2nd ed. June 1993 at p.129.

Example 24 – Services done in Australia

184. Account Co, an accounting firm with offices in Melbourne and Sydney, supplies accounting and taxation services. The supply of any accounting and taxation services, which are performed in Australia, is connected with Australia.

Example 25 – Services not done in Australia

185. If, in Example 24, an employee of Account Co flies to London and performs taxation services in that country, the supply of those services is not connected with Australia under paragraph 9-25(5)(a) because the services are not performed in Australia. It would still be necessary to consider whether the supply of that service is connected with Australia under paragraph 9-25(5)(b) – (refer to paragraphs 213 to 224 below).

Example 26 – Services done in Australia but consumed outside Australia – accounting services

186. If Account Co performs taxation services in Australia but the recipient of the supply of those services is not an Australian resident and is not in Australia while the taxation service is performed, the supply of those taxation services is GST-free under paragraph (a) of item 2 provided the service is neither a supply of work physically performed on goods situated in Australia when the service is performed nor a supply directly connected with real property situated in Australia. The supply is GST-free under paragraph (b) of item 2 if the non-resident is not in Australia when the taxation service is performed and the non-resident acquires the service in carrying on the non-resident's enterprise, but the non-resident is not registered or required to be registered for GST.

Example 27 – Service done in Australia but consumed outside Australia – research assistance

187. Dobe is a self-employed marine biologist and he is providing research assistance to Phillip, a New Caledonian resident who is conducting research in marine biology. The research assistance is in the form of collating and providing details of sources of information and finding and providing available papers on specific areas.

188. The research work is carried out by Dobe in Australia. The performance of the service occurs in Australia. The supply of the information and papers to Phillip is connected with Australia.

189. The service provided by Dobe in this example is neither a supply of work physically performed on goods situated in Australia when the service is performed nor a supply directly connected with real property situated in Australia and, therefore, is GST-free under paragraph (a) of item 2 provided that while the research work is done by Dobe, Phillip is not in Australia in relation to the supply.

Example 28 – Service done in Australia – architectural plans

190. An architect draws up a plan in Australia for renovations of a building in Perth. The recipient is not an Australian resident and is not in Australia while the services of the architect are performed. As the supply of the service is directly connected with real property situated in Australia, the supply of the service is only GST-free under paragraph (b) of item 2 if the non-resident acquires the service in carrying on its enterprise and the non-resident is not registered or required to be registered for GST.

Example 29 – Service done in Australia in relation to goods for export

191. Huon is an Australian widget manufacturer. Huon agrees to supply a consignment of widgets to MSCo, a Malaysian retailer, at a special price. This special price is possible due to the arrangement whereby Huon does not carry out a quality assurance check on the widgets before leaving its factory. However, MSCo is able to hire another contractor, Contract Co, to carry out the testing of the widgets before Huon exports them to Malaysia.

192. There are two separate supplies in this example. They are:

- a supply of widgets (goods) made by Huon to MSCo; and
- the provision of a quality testing (service) by Contract Co to MSCo.

193. The supply of widgets is connected with Australia under subsection 9-25(2). The widgets (goods) are removed from Australia by export and provided the conditions of Item 1 in the table in subsection 38-185(1) are met, the export of the goods is GST-free.[63A]

194. The provision of a quality testing service by Contract Co is connected with Australia as the service is performed in Australia (paragraph 9-25(5)(a)). The supply is GST-free under paragraph (a) of item 2 if MSCo is not in Australia when the thing supplied is done and the supply is not a supply of work physically performed on goods situated in Australia when the work is done.[63B] The supply of the service is GST-free under paragraph (b) of item 2 if MSCo is not in Australia when the thing supplied is done and MSCo acquires the service in carrying on its enterprise and MSCo is not registered or required to be registered for GST.

[63A] Refer to GSTR 2002/6 Goods and services tax: Exports of goods, items 1 to 4 of the table in subsection 38-185(1) of the *A New Tax System (Goods and Services Tax) Act 1999.*

[63B] Refer to paragraphs 68 to 77 of GSTR 2003/7 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*?

Provision of advice or information

195. If the supply is the provision of advice or information and the supply involves the creation, development etc of that advice or information, the supply of that advice or information is done where it is created, developed etc. The supplier would apply existing knowledge, skill and expertise to produce that product for the recipient of the supply. For example, the supply by a QC of a legal opinion is done in Australia, if that opinion is prepared in Australia.

Example 30 – Legal advice prepared in Australia

196. Lidis QC in Adelaide provides legal advice in the form of a written opinion to AngCo in Darwin. The supply of this advice is connected with Australia because the advice is prepared in Australia.

Example 31 – Legal advice prepared in Australia, but used outside Australia

197. An Australian resident lawyer supplies legal advice to a US resident company. The US company has a permanent establishment in Australia but that US permanent establishment is not representing the US company in Australia in relation to that supply. The supply of the legal advice to the US company is GST-free under item 2 because the company is not an Australian resident and the company is not in Australia in relation to the supply while the legal services are performed. It is assumed in this example that the supply is not directly connected with real property situated in Australia.

Example 32 – Information prepared outside Australia

198. MahaCo is an Indonesian company with a permanent establishment in Hobart. MahaCo is applying for a loan from the Hobart Bank. In order to determine the creditworthiness of MahaCo, Hobart Bank acquires some information from a credit rating agency in Indonesia. The supply of this information relating to the creditworthiness of MahaCo is not connected with Australia because the information is not prepared in Australia.

199. However, the supply of information by the Indonesian credit rating agency is treated as a taxable supply under Division 84. Hobart Bank the recipient of the supply is liable to pay GST on that supply under sections 84-5 and 84-10.

Example 33 – Information prepared in Australia but used outside Australia

200. Oz Co is an Australian resident which has a permanent establishment in New Zealand. It is applying for a loan from Kiwi Bank in New Zealand. Kiwi Bank has no operations outside of New Zealand. Kiwi Bank acquires information from a credit rating agency in Australia about the creditworthiness of Oz Co. This supply of information by the credit rating agency in Australia is connected with Australia because the information is prepared in Australia. However, as the recipient (Kiwi Bank) is not an Australian resident and has no operations outside of New Zealand (that is, it is not in Australia in relation to the supply when the information services are performed) the supply is GST-free under item 2.

An instantaneous provision of advice or information

201. If the supply is an instantaneous provision of advice or information, the provision of that advice or information is done where it is provided. The meaning of provided will depend on the facts in any given case. For example, a supply of information that is already developed or created or already in existence, such as a supply of information by way of a telephone service, is 'done' where the advice is provided.

The creation, grant, transfer, assignment or surrender of any right

202. If the supply is the creation, grant, transfer, assignment or surrender of any right, the thing that is being supplied is the creation of that right in the recipient, the granting, transfer, or assignment of that right to the recipient or the surrendering of that right. In this context, the thing is done where the right is created, granted, transferred, assigned or surrendered respectively.

203. Whether a right is created, granted, transferred, assigned or surrendered in Australia will depend on how, in any given case, the creation, grant, transfer assignment or surrender is effected. For example, if the right to use intellectual property is granted by the execution of a written contract, the grant of that right is done in Australia if that contract is made in Australia.

Example 34 – Right to use intellectual property provided in Australia

204. Boffin Co (a US resident) grants Cyber Co (an Australian resident) the right to use the Boffin II software in Australia for 3 years. The right to use the intellectual property is granted under a written agreement. That agreement is made in Australia and accordingly the granting of the right is a supply that is connected with Australia.

Example 35 – Right to use intellectual property not provided in Australia

205. Cyber Co (an Australian resident) supplies LinxCo (another Australian resident) the right to use the Cyber III software in New Zealand for 5 years. The right is granted by way of a contract made in New Zealand. The supply is not connected with Australia under paragraph 9-25(5)(a). However the supply is connected with Australia under paragraph 9-25(5)(b) if the supply is made through the Australian business of Cyber Co (refer paragraph 213 to 224 below).

Example 36 – Right to use intellectual property provided in Australia for use partly outside Australia

206. Distributor Co (an Australian resident company) is granted by Cartoon Co (a US resident company) the right to reproduce and sell certain cartoons in Australia and certain cartoons in New Zealand. The right is granted under an agreement made in Australia. The supply is connected with Australia under paragraph 9-25(5)(a). However, the supply is of a right for use in Australia and New Zealand. To the extent that the supply is a right for use outside Australia, the supply is GST-free under item 4 of table 1 in subsection 38-190(1). A taxable supply is only made in respect of the supply of the right for use in Australia. A fair and reasonable basis is to be used to work out the extent that the supply is for use outside Australia.[63C]

Alternative view

207. On one view, where the thing is a right, the right is 'done' in Australia if the right is exercised/used in Australia.

208. However, we consider that this alternative view is at odds with the construction of the GST Act as a whole. For example, Division 84 is premised on the possibility that a right to use intellectual property is not connected with Australia where the right is made outside Australia. It is stated at page 213 of the Explanatory Memorandum[64] that:

> Under subsection 9-25(5) supplies of things other than goods or real property are connected with Australia if the thing is done in Australia or the supplier makes the supply through an enterprise the supplier carries on in Australia. Under these rules a supply of a thing that is not goods or real property, such as an intellectual property right, could be made from outside of Australia when the thing is for consumption in Australia, such as an intellectual property right that is to be exercised in Australia, and the supply would not be connected with Australia. The supply would not be taxable. The supply would not be taxable even if the other requirements of section 9-5 are met.

[63C] Refer to GSTR 2003/8 Goods and services tax: supply of rights for use outside Australia – subsection 38-190(1), item 4, paragraph (a) and subsection 38-190(2).

[64] Explanatory Memorandum accompanying the A New Tax System (Goods and Services Tax) Bill 1998, p 126, par 6.126.

The obligation to do anything or the obligation to refrain from an act or the obligation to tolerate an act or situation

209. If the supply is *the obligation* to do anything or the obligation to refrain from an act or the obligation to tolerate an act or situation, the thing that is being supplied is the obligation to do something, to refrain from something, or to tolerate something, and the thing is done where that obligation is entered into.

Example 37 – Obligation to refrain from an act - done in Australia

210. T Co Aust (an Australian resident) enters into a restrictive covenant with UK Co (a UK resident) requiring T Co Aust not to compete in Melbourne with a subsidiary of UK Co based in Melbourne. The supply of the obligation to refrain from an act by T Co Aust is connected with Australia if that obligation is entered into in Australia. If, for example, the obligation arises under a contract made in Australia, the supply is connected with Australia.

The release from an obligation

211. If the supply is the release from an obligation, the thing that is being supplied is that release and the thing is done where the release is effected.

212. Whether an obligation is entered into, or the release from an obligation occurs, in Australia, will depend on how, in any given case, the entry into, or the release from, the obligation is effected. For example, if the supplier enters into a restrictive covenant obliging the supplier to refrain from operating business within a certain area, the obligation is done in Australia if the supplier enters into that obligation under a written contract made in Australia.

Paragraph 9-25(5)(b)

The supplier makes the supply through a permanent establishment

213. Paragraph 9-25(5)(b) applies to determine whether a supply of anything other than goods or real property, is connected with Australia if the thing is not done in Australia. Under that paragraph if the 'thing' is not done in Australia, the supply is connected with Australia if the supplier makes the supply 'through' an 'enterprise that the supplier carries on in Australia'.

214. An enterprise is an activity, or series of activities, done in one of the ways prescribed in subsection 9-20(1) – see the definitions section of the Ruling at paragraph 228.

215. The concept of carrying on an enterprise in Australia is defined in terms of the definition of 'permanent establishment' in subsection 6(1) of the *Income Tax Assessment Act 1936* (the 1936 Act).

216. Specifically, subsection 9-25(6) provides that an enterprise is carried on in Australia if the enterprise is carried on through:

(a) a permanent establishment (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*); or

(b) a place that would be such a permanent establishment if paragraph (e), (f) or (g) of that definition did not apply.

217. This means that an enterprise is carried on in Australia if the enterprise is carried on through a place in Australia that is a permanent establishment or would be a permanent establishment if the definition in subsection 6(1) of the *Income Tax Assessment Act 1936* excluded (i.e., did not have) the specific exclusions set out in paragraphs (e) to (g). Under paragraph 9-25(5)(b) the qualifying or excluding paragraphs of (e) to (g) in the *Income Tax Assessment Act 1936* are disregarded and the concept of permanent establishment in the GST Act is wider in scope.

218. A supply of a thing other than goods or real property, is connected with Australia under paragraph 9-25(5)(b) if the supplier carries on in Australia an enterprise by means of a permanent establishment in Australia and the supply is made through that permanent establishment.

219. This means that if there is a permanent establishment in Australia, as defined, it must be established that the supplier makes the supply through that permanent establishment. This requires that a connection be established between the permanent establishment and the supply. This is covered in paragraphs 83 to 86 of the Rulings section of this Ruling.

220. Both a resident and a non-resident can have a permanent establishment in Australia for the purposes of the application of paragraph 9-25(5)(b). It is not limited in operation to a non-resident.

Example 38 – Supply made through a permanent establishment in Australia, but GST-free

221. An Australian resident which has all its business premises in Australia (i.e., has no offshore operations) grants a resident of New Zealand a right to use a patent in New Zealand. The supply is the grant of the right to use the patent in New Zealand. The right is granted under a legal agreement made in New Zealand to which the managing director of the Australian resident travels for the signing.

222. Under paragraph 9-25(5)(a) the thing supplied, the granting of the right to use the patent, is not done in Australia because the right is granted in New Zealand. However, as the supply is made by the Australian business operation (i.e., the Australian permanent establishment of the Australian resident) the supply of the right to use is connected with Australia under paragraph 9-25(5)(b).

223. While the supply is connected with Australia the supply is not a taxable supply because it is GST-free under item 4. This is because the rights are for use outside Australia.

Example 38A – Supply made by Australian resident through an offshore agent

223A. Friday Pty Ltd, an Australian resident company, sells software to Australian customers under an exclusive distribution agreement it has with its parent entity. It has premises and employees in Australia. Friday Pty Ltd appoints Offshore Co, a non-resident company, as its general agent. Following its appointment, Offshore Co handles, on behalf of Friday Pty Ltd, most aspects of the supplies made to Australian customers by (amongst other things) entering into contracts with the customers (on behalf of Friday Pty Ltd) and distributing software via offshore servers. Friday Pty Ltd continues to carry on related marketing and support activities in Australia.

223B. The supply of software is connected with the enterprise carried on by Friday Pty Ltd in Australia. Friday Pty Ltd has a fixed and permanent presence in Australia through which it carries on the enterprise of selling software to Australian customers. The software sold by Friday Pty Ltd is sold through this enterprise. The supplies are therefore connected with Australia under paragraph 9-25(5)(b). The fact that Offshore Co may perform aspects of the supply on behalf of Friday Pty Ltd outside of Australia does not alter this outcome.

Example 39 – Supply made through permanent establishments in and outside Australia

224. Aus Co, an Australian company, has a branch in Taiwan. Aus Co provides immigration consultancy services and its management is based in Australia. The Taiwanese branch does not account separately from the head office, and there is regular collaboration between employees in Taiwan and those in Australia. All administrative functions of Aus Co are performed centrally in Australia. Senior management are also based in Australia. At times, employees in the Australian office will refer work to the Taiwanese branch and vice versa.

224A. The Taiwan branch undertakes to prepare and provide an immigration report to a client in Australia. The supply made by Aus Co is connected with Australia under paragraph 9-25(5)(b) because there is a sufficient connection between the enterprise carried on by Aus Co in Australia and the supply of immigration services. Accordingly, the supply by Aus Co will be subject to GST if the other requirements of section 9-5 are met (note that if Aus Co had instead provided services to a local Taiwanese customer, or another non-resident of Australia, the supply by Aus Co may be GST-free under section 38-190).

Example 39A – Supply made through a permanent establishment outside Australia

224B. Foreign Co, a non-resident bank, operates branches in a number of countries including Australia and Singapore. Each of its branches is separately registered as a branch with local regulators, maintains separate accounts, operates from its own premises, has its own employees and on-site management, and is an enterprise in its own right. Michelle, an Australian resident, opens an account with the Singaporean branch of Foreign Co. The supplies that Foreign Co makes to Michelle in relation to this account are not connected with Australia under paragraph 9-25(5)(b). This is because, even though Foreign Co is carrying on an enterprise through a permanent establishment in Australia, the enterprise carried on through the Australian branch is sufficiently distinct from the enterprise carried on by Foreign Co through its Singaporean enterprise.

Permanent establishment

225. The meaning of permanent establishment is discussed at paragraphs 87 to 89 in the Rulings section.

Paragraph 9-25(5)(c)

Supply of a right or option to acquire another thing and the supply of the other thing would be connected with Australia

225A. Where neither paragraph 9-25(5)(a) nor 9-25(5)(b) applies to the supply of a right or option to acquire another thing, the supply of the right or option is connected with Australia if the supply of the other thing would be connected with Australia.

Example 39B – Supply of rights or options to things connected with Australia

225B. Cuisineworld is a non-resident entity in the United Kingdom (UK) that specialises in supplying cooking classes at renowned restaurants around the world, along with accommodation and bus tours. Cuisineworld has no business operations outside of the UK. Cuisineworld acquires the Australian holiday cooking package on a GST inclusive basis from Oz Travel, a resident tour wholesaler in Sydney.[64A] The Australian holiday cooking packages are on-sold by Cuisineworld to tourists as rights or options to acquire cooking classes and accommodation at selected five star hotels and to take bus tours in Australia.

[64A] The supply by Oz Travel to Cuisineworld is not GST-free. The supply of the right or option to acquire accommodation in Australia is a supply of real property and thus section 38-190 does not apply. Subsection 38-190(2) applies to negate the GST-free status of the supply under subsection 38-190(1) of the right or option to acquire cooking classes and bus tours in Australia, as the supply of those things would be connected with Australia and would not be GST-free.

225C. The supply by Cuisineworld of rights or options to acquire accommodation in Australia, is a contractual right that is exercisable over or in relation to land in Australia. It is therefore a supply of real property that is connected with Australia under subsection 9-25(4).

225D. The supply by Cuisineworld of rights or options to acquire cooking classes (training services) and bus tours (services) is the supply of things other than goods or real property. It is therefore necessary to consider subsection 9-25(5). Neither paragraph 9-25(5)(a) nor (b) is applicable as the supply of the rights is done in the UK and Cuisineworld does not carry on an enterprise in Australia. As the rights or options are to acquire cooking classes and bus tours in Australia and those services would be connected with Australia under either paragraphs 9-25(5)(a) or (b), the supply of the rights or options to acquire those services is connected with Australia under paragraph 9-25(5)(c).

225E. The supplies of the Australian holiday cooking packages by Cuisineworld are therefore connected with Australia. However, this does not necessarily mean that Cuisineworld must register for GST in Australia. Cuisineworld, in working out if it meets the registration turnover threshold (section 23-15) disregards supplies that are connected with Australia because of paragraph 9-25(5)(c) or that are of a right or option to use commercial accommodation in Australia that are not made in Australia and are made through an enterprise that the supplier does not carry on in Australia.[64B] Assuming that Cuisineworld makes no other supplies that are connected with Australia it may choose not to register for GST. If Cuisineworld chooses not to register for GST it is not entitled to claim any input tax credits for the acquisition of the Australian holiday cooking packages from Oz Travel and it is not liable for GST on the supply of the Australian holiday cooking packages to tourists. Thus even though Cuisineworld makes supplies of holiday packages that are connected with Australia it can choose to stay outside the Australian GST system.

Supplies that are partly connected with Australia

Supplies of the one kind that are partly connected with Australia

226. The intention of the legislation is that supplies that are not connected with Australia will be outside the GST system. Where a supply is of the one kind and part of the supply is connected with Australia and part is not connected with Australia, the supply is connected with Australia to the extent that part of the supply is connected with Australia. The concept of apportionment is widely applied in taxation law in determining source of income and in determining the extent to which expenditure is incurred in gaining or producing assessable income: *Ronpibon Tin NL v. F C of T* (1949) 78 CLR 47.

[64B] This is the effect of paragraphs 188-15(3)(b) and (c) (current GST turnover) and 188-20(3)(b) and(c) (projected GST turnover).

227. The extent to which supplies of the one kind [that] are partly connected with Australia is discussed in paragraphs 90 to 94 in the Rulings section.

Example 40 – Supply of services partly connected with Australia

228. A non-resident consultant business, EuroCo, is engaged to conduct a feasibility study for an Australian resident business, ResCo. The feasibility study is carried out partly in Europe and partly in Australia. The supply made by EuroCo is connected with Australia to the extent that the service is performed in Australia. A fair and reasonable basis of apportionment is to be adopted in working out the value of the part of the supply that is connected with Australia.

Supplies of more than one kind that are partly connected with Australia – Division 96

229. Sometimes a supply may be a mixture of goods, real property and/or things other than goods or real property. The application of section 9-25 may mean that only part of a supply is connected with Australia. Division 96 treats that part of the actual supply that is connected with Australia as if it were a separate supply that is connected with Australia.[65]

230. The amount of GST or input tax credits in respect of a supply are calculated under the general rules in relation to the value of the supply.[66] In the circumstances to which Division 96 applies, the GST or input tax credit should not be calculated in relation to the whole value of the supply, only to the value of the supply that is connected with Australia. Section 96-10 provides how to work out the value of the part of the supply that is connected with Australia. The value of the part of the supply that is connected with Australia is the proportion of the whole supply that is connected with Australia multiplied by the value of the whole supply.

Example 41 – Supply of more than one kind partly connected with Australia

231. Jay Co, a Japanese resident company, is an aquaculture specialist. Pursuant to an agreement with Aqua Co, an Australian resident prawn farming company, Jay Co provides Aqua Co with equipment (imported by Jay Co) and initial training in Japan. Under the agreement, Aqua Co pays in one lump sum ($600,000) for this supply.

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[65] Section 96-5.
[66] Subdivision 9-C and section 11-25.

232. The supply of the equipment is connected with Australia under subsection 9-25(3). That part of the supply that is for training courses provided in Japan, is not connected with Australia because the services are performed in Japan (paragraph 9-25(5)(a)) and the supply is not made through a permanent establishment of Jay Co in Australia (paragraph 9-25(5)(b)). Also Division 84 does not apply. As only part of the actual supply is connected with Australia, then the actual supply is to be treated as if it were separate supplies as follows.

233. The part of the actual supply that is connected with Australia, that is, the part that relates to the supply of the equipment, is treated as if it were a separate supply that is connected with Australia.

234. The part of the actual supply that is not connected with Australia, that is, the provision of training in Japan, is treated as if it were a separate supply that is not connected with Australia.

235. Jay Co is registered, and the part of the supply that is connected with Australia is a taxable supply. Jay Co works out that the taxable supply represents 80% of the value of the actual supply, that is, 80% of $600,000.

Section 156-15 – progressive or periodic supplies that are partly connected with Australia

236. Division 156 applies to supplies and acquisitions made on a progressive or periodic basis, where the consideration is also provided on a progressive or periodic basis.

237. Under section 156-15 if a component part of a supply to which section 156-5 applies is not connected with Australia, then that part is treated as if it were a separate supply not connected with Australia.

Definitions

238. Under subsection 9-20(1) an **enterprise** is an activity, or series of activities, done:

(a) in the form of a business; or

(b) in the form of an adventure or concern in the nature of trade; or

(c) on a regular or continuous basis, in the form of a lease, licence or other grant of an interest in property; or

(d) by the trustee of a fund that is covered by, or by an authority or institution that is covered by, Subdivision 30-B of the *Income Tax Assessment Act 1997* and to which deductible gifts can be made; or

(e) by a charitable institution or by a trustee of a charitable fund; or

(f) by a religious institution; or

(g) by the Commonwealth, a State or a Territory, or by a body corporate, or corporation sole, established for a public purpose by or under a law of the Commonwealth, a State or a Territory.

239. However under subsection 9-20(2) enterprise does not include an activity, or a series of activities, done:

(a) by a person as an employee or in connection with earning withholding payments covered by subsection (4) (unless the activity or series is done in supplying services as the holder of an office that the person has accepted in the course of or in connection with an activity or series of activities of a kind mentioned in subsection (1)); or

(b) as a private recreational pursuit or hobby; or

(c) by an individual (other than a trustee of a charitable fund), or a partnership (all the members of which are individuals), without a reasonable expectation of profit or gain;

(d) as a member of a local governing body established by or under a State law or Territory law (except a local governing body to which subsection 12-45(3) in Schedule 1 to the *Taxation Administration Act 1953* applies).

240. **Australia** as defined in section 195-1 does not include any external Territory. However, it includes an installation (within the meaning of the *Customs Act 1901*) that is deemed by section 5C of the *Customs Act 1901* to be part of Australia (section 195-1).

241. Under section 23-5 you are required to be **registered** under the GST Act if:

(a) you are **carrying on** an enterprise; and

(b) your GST turnover meets the registration turnover threshold.

242. Under section 195-1 **carrying on** an enterprise includes doing anything in the course of the commencement or termination of the enterprise.

243. GST turnover is defined in section 195-1. Registration turnover threshold is defined in section 23-15.

244. Under subsection 9-30(1) a supply is **GST-free** if:

(a) it is GST-free under Division 38 or under a provision of another Act; or

(b) it is a supply of a right to receive a supply that would be GST-free under paragraph (a).

245. If a supply is GST-free then no GST is payable on the supply and an entitlement to an input tax credit for anything acquired or imported to make the supply is not affected (refer section 7-1 and Division 11).

246. Under subsection 9-30(2) a supply is **input taxed** if:

(a) it is input taxed under Division 40 or under a provision of another Act; or

(b) it is a supply of a right to receive a supply that would be input taxed under paragraph (a).

247. If a supply is input taxed there is no entitlement to an input tax credit for the things that are acquired or imported to make the supply.

248. **Recipient**,[67] in relation to a supply, means the entity to which the supply was made.

249. **Australian Resident**[68] – means a person who is a resident of Australia for the purposes of the *Income Tax Assessment Act 1936*.

250. **Non-resident**[69] – means an entity that is not an Australian Resident.

251. **FOB** – means Free On Board. Seller is responsible for all costs and risks until the ships rail (loading onto ship).

252. **CIF** – Cost, insurance and freight. Seller responsible for all transportation costs and marine insurance against buyers risk of loss to port of destination.

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Commissioner of Taxation
30 June 2000

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Subject references:

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NO 99/182636
FOI: I 1021078
ISSN: 1443-5179