GSTR 2025/1 - Goods and services tax: supplies of things (other than goods or real property) made to non-residents but provided to another entity in Australia

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Goods and Services Tax Ruling

Goods and services tax: supplies of things (other than goods or real property) made to non-residents but provided to another entity in Australia

Relying on this Ruling

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If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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What this Ruling is about

1. This Ruling is about the operation of subsection 38-190(3) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). That subsection negates, in certain circumstances, the GST-free status that would otherwise apply to a supply covered by table item 2 of subsection 38-190(1) (item 2). Under item 2, supplies of things (other than goods or real property) made to non-residents are GST-free if the requirements of that item are met.

2. Unless otherwise indicated, all legislative references in this Ruling are to the GST Act and all references to an item number are to a table item of subsection 38-190(1).

3. From 1 July 2015, the term 'Australia' was replaced in nearly all instances within the goods and services tax (GST), luxury car tax and wine equalisation tax legislation with the term 'indirect tax zone'. The scope of the term, however, remains the same as the now repealed definition of 'Australia' used in those Acts. This change was made for consistency

of terminology across the tax legislation, with no change in policy or legal effect. In this Ruling, the 'indirect tax zone' is referred to as 'Australia'.

4. In explaining the operation of subsection 38-190(3) in this Ruling, we address in particular:

- the meaning of 'a supply covered by item 2'
- when a supply covered by item 2 is 'under an agreement entered into, whether directly or indirectly, with a non-resident' (see paragraph 38-190(3)(a))
- how to determine whether 'the supply is provided, or the agreement requires it to be provided, to another entity in Australia' (see paragraph 38-190(3)(b))
- when the GST-free status of a supply is not negated by subsection 38-190(3) because the supply is not an input taxed supply and one of the subparagraphs of subsection 38-190(3)(c) applies, and
- what apportionment is required if subsection 38-190(3) applies, in part, to a supply covered by item 2.

5. In this Ruling, we give many examples illustrating the application of subsection 38-190(3) to a range of supplies covered by item 2, including subcontract and global supply arrangements. The examples are not in themselves statements of principles to be applied generally. They show how, by examining the facts and circumstances of the supply in question, you can determine whether the supply is provided to another entity in Australia.

6. This Ruling does not otherwise address the operation of the provisions of section 38-190. However, as the wording in subsection 38-190(3) is similar to that used in subsection 38-190(4), parts of this Ruling are also relevant to the application of subsection 38-190(4).

7. This Ruling reflects the law following the amendments made by the *Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016*, which impact how GST applies to cross-border supplies. Schedule 1 of that Act (about business to consumer supplies) applies from 1 July 2017 and Schedule 2 (generally about business to business supplies) applies from 1 October 2016.

8. This Ruling is divided into sections as outlined in Table 1 of this Ruling.

Table 1: Sections of this Ruling

Provisions	Summary
Item 2 and subsection 38-190(3)	This section provides a general overview of when a supply will be 'a supply covered by item 2', as this is a precondition for the application of subsection 38-190(3) (paragraphs 32 to 36 of this Ruling).
Paragraph 38-190(3)(a)	This section explains the first condition that must be satisfied for subsection 38-190(3) to apply – the supply must be made under an agreement entered into, whether directly or indirectly, with a non-resident (paragraphs 37 to 43 of this Ruling). This includes an explanation of the meaning of 'non-resident' (paragraphs 41 to 43 of this Ruling).

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Provisions	Summary
Paragraph 38-190(3)(b)	This section explains the second condition that must be satisfied for subsection 38-190(3) to apply – the supply must be provided, or an agreement requires the supply to be provided, to another entity in Australia. This includes explanation of: • the meaning of 'another entity' (paragraphs 49 to 55 of this Ruling) • the meaning of 'provided to another entity' (paragraphs 56 to 60 of this Ruling) • the meaning of 'the agreement requires it [the supply] to be provided to another entity in Australia' (paragraphs 61 to 62 of this Ruling) • how to determine whether the supply is provided to another entity (paragraphs 63 to 83 of this Ruling) • how to determine whether the supply is provided to the other entity in Australia (paragraphs 84 to 123 of this Ruling) • how to determine whether a supply covered by item 2 is provided to an employee, agent or partner in Australia (paragraphs 124 to 135 of this Ruling).
Paragraph 38-190(3)(c)	This section explains the third condition that must be satisfied for subsection 38-190(3) to apply – for a supply that is not an input taxed supply, none of the subparagraphs in paragraph 38-190(3)(c) should apply. This includes explanation of when a supply: • is an input taxed supply (paragraphs 142 to 145 of this Ruling) • is provided to an entity that would be an Australian-based business recipient of the supply, if the supply had been made to it (paragraphs 146 to 148 of this Ruling) • is provided to an individual as an employee or officer of an entity that would be an Australian-based business recipient of the supply if the supply had been made to it (paragraphs 149 to 152 of this Ruling) • is provided to an individual, as an employee or officer of the recipient of the supply, and the recipient's acquisition of the thing is solely for a creditable purpose and is not a non-deductible expense (paragraphs 153 to 157 of this Ruling).
Apportionment	This section explains when apportionment may be necessary because a supply covered by item 2 is only partly GST-free as a result of the application of subsection 38-190(3) (paragraphs 160 to 170 of this Ruling).
Subcontract arrangements and global supplies	This section explains the application of subsection 38-190(3) to certain complex arrangements involving subcontracted and global supplies (paragraphs 171 to 180 of this Ruling).
Examples	This section provides many examples illustrating the application of subsection 38-190(3) to a range of supplies covered by item 2 (paragraphs 190 to 487 of this Ruling).

Date of effect

9. This Ruling applies both before and after its date of issue subject to the commencement and application of each Act to which it refers. 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 (refer to paragraphs 75 and 76 of Taxation Ruling TR 2006/10 *Public Rulings*).

Related rulings

10. The suite of other GST public rulings which explain the operation of section 38-190 are:

- Goods and Services Tax Ruling 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?*
- Goods and Services Tax Ruling 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)*
- Goods and Services Tax Ruling 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'?*
- Goods and Services Tax Ruling 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*
- Goods and Services Tax Ruling GSTR 2025/2 *Goods and services tax: supplies of things (other than goods or real property) where effective use or enjoyment of the supply takes place outside Australia*
- Goods and Services Tax Determination GSTD 2007/3 *Goods and services tax: if a non-resident entity owns residential rental premises in Australia and an Australian accountant makes a supply to that entity consisting of advice about the premises and tax return preparation services, is that supply wholly or partly GST-free if made on or after 1 April 2005?*

11. GSTR 2004/7, which discusses the application of item 2, is of particular importance in relation to this Ruling as subsection 38-190(3) only applies to a supply that is covered by item 2.

12. Other relevant public rulings include:

- Goods and Services Tax Ruling GSTR 2006/9 *Goods and services tax: supplies*, which examines the meaning of 'supply' and explains how a supply can be 'made' to one entity but 'provided' to another entity
- Goods and Services Tax Ruling GSTR 2019/1 *Goods and services tax: supply of anything other than goods or real property connected with the indirect tax zone (Australia)*, which explains when a supply of anything other than goods or real property is connected with Australia.

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Legislative context

13. Under section 9-5, a supply is not a taxable supply to the extent that it is GST-free or input taxed.

14. A supply is GST-free if it is GST-free under Division 38 or under a provision of another Act.[1]

15. Subdivision 38-E sets out when exports of goods and other supplies for consumption outside Australia are GST-free.

16. The relevant section for the purposes of this Ruling is section 38-190.

17. Subsection 38-190(1) comprises 5 items which set out supplies of things, other than goods or real property, that are GST-free. A supply that is not GST-free under one item in subsection 38-190(1) may be GST-free under one of the other items. If the requirements of one of those items are met, the supply is GST-free, provided subsections 38-190(2), (2A), (3) or (5)[2] do not negate that GST-free status.

The negating provisions

18. Subsection 38-190(2) provides that a supply covered by any of table items 1 to 5 of 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.[3]

19. Subsection 38-190(2A) provides that a supply covered by any of table items 2 to 4 of 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, wholly or partly, input taxed under Subdivision 40-B or 40-C.[4]

20. Subsection 38-190(3) states it does not limit subsection 38-190(2) or (2A).

21. Subsections 38-190(2) and 38-190(2A) may negate the GST-free status of a supply covered by any of items 1 to 5 and items 2 to 4 respectively. However, subsection 38-190(3) only negates the GST-free status of a supply covered by item 2.

22. Subsection 38-190(2) considers 2 distinct supplies – a supply of a right or option and the supply of something else, the subject of the right or option.

23. In contrast, subsection 38-190(3) applies where a supply covered by item 2 is made to a non-resident, but that same supply is provided, or is required to be provided, to another entity in Australia.

24. This Ruling is about the interpretation and application of subsection 38-190(3) to a supply covered by item 2 (and, as mentioned at paragraph 6 of this Ruling, is of assistance in interpreting and applying subsection 38-190(4)).[5]

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[1] Paragraph 9-30(1)(a).
[2] Subsection 38-190(5) applies from 1 July 2010. The provision specifies that subsection 38-190(4) does not apply to specific types of supplies.
[3] Refer to GSTR 2003/8.
[4] Refer also to Goods and Services Tax Determination GSTD 2007/3 *Goods and services tax: if a non-resident entity owns residential rental premises in Australia and an Australian accountant makes a supply to that entity consisting of advice about the premises and tax return preparation services, is that supply wholly or partly GST-free if made on or after 1 April 2005?*
[5] Refer to GSTR 2025/2 for a discussion of subsection 38-190(4).

25. If the GST-free status of a supply covered by item 2 is negated by the application of subsection 38-190(3), that supply may still be GST-free if the requirements of another item in the table are satisfied and subsections 38-190(2) and (2A) do not apply.

26. If the item 2 supply is not GST-free under another item in the table in subsection 38-190(1) and is not GST-free or input taxed under another provision of the GST Act or another Act, the supply is a taxable supply where all the other conditions for making a taxable supply are met.[6]

Policy behind subsection 38-190(3)

27. Item 2 applies to certain supplies of things, other than goods or real property, made to non-residents who are not in Australia when the thing supplied is done.

28. The requirement that the non-resident is not in Australia when the thing supplied is done is based on the underlying presumption that if the non-resident recipient (that is, the non-resident entity to which the supply is made) is not in Australia at that time, the supply is for consumption outside Australia and should be GST-free (provided the other requirements of the item are met).

29. However, if a non-resident enters into an agreement for the supply of a thing, they are not always the entity to which the supply is provided. If the supply is provided to another entity in Australia, the presumption that the supply is for consumption outside Australia because the non-resident recipient is not in Australia is not sound.

30. Subsection 38-190(3) addresses this circumstance. If the supply is provided (or is required to be provided) to another entity in Australia, subsection 38-190(3) negates the GST-free status that would otherwise apply under item 2. Although the non-resident recipient of the supply is not in Australia, consumption of the supply is considered to be in Australia because the supply is provided to another entity in Australia.

31. The following example is provided in the Supplementary Explanatory Memorandum to the Bill[7] which inserted subsection 38-190(3).

> A school in Australia provides tuition to overseas students in Australia. However, it bills the overseas parents of the students directly. As the supply is being made to the students in Australia the supply will not be GST-free under item 2 in the table in subsection 38-190(1).

(Note: the example refers to the 'supply ... being made' to students. To be consistent with the wording used in subsection 38-190(3), the word 'provided' should have been used instead of 'made.')

[6] Section 9-5.
[7] Paragraph 1.108 of the Supplementary Explanatory Memorandum to the A New Tax System (Indirect Tax and Consequential Amendments) Bill (No. 2) 1999 (the Supplementary EM).

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Ruling

Item 2 and subsection 38-190(3)

32. A supply of a thing (other than goods or real property) made to a non-resident is GST-free under item 2 if the non-resident is not in Australia when the thing supplied is done[8] and:

- 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[9], or
- the non-resident acquires the thing in carrying on their enterprise, but is not registered or required to be registered.

33. However, if the supply covered by item 2 is under an agreement entered into (whether directly or indirectly) with a non-resident entity and that supply is provided to another entity in Australia, or the agreement requires that it be so provided, subsection 38-190(3) may negate the GST-free status of that supply (otherwise afforded under item 2).

34. Subsection 38-190(3), in contrast to item 2, focuses on the entity to which the supply is provided, not the entity (the non-resident) to which the supply is made. If the supply is provided (or is required to be provided) to another entity in Australia, subsection 38-190(3) may negate the GST-free status that would otherwise apply to the supply covered by item 2. Although the non-resident recipient of the supply is not in Australia, consumption of the supply is considered to be in Australia because the supply is provided to an entity in Australia.

35. Subsection 38-190(3) provides that, without limiting subsection 38-190(2) or (2A), a supply covered by item 2 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]; and

(c) for a supply other than an input taxed supply – none of the following applies:

(i) the other entity would be an Australian-based business recipient of the supply, if the supply had been made to it;

(ii) the other entity is an individual who is provided with the supply as an employee or officer of an entity that would be an Australian-based business recipient of the supply, if the supply had been made to it; or

(iii) the other entity is an individual who is provided with the supply as an employee or officer of the recipient, and the recipient's acquisition of the thing is solely for a creditable purpose and is not a non-deductible expense.

The application of subsection 38-190(3)

36. Subsection 38-190(3) applies to negate the GST-free status of a supply covered by item 2 where all the conditions in paragraphs 38-190(3)(a), (b) and (c) are satisfied.

[8] Refer to GSTR 2004/7.
[9] Refer to GSTR 2003/7.

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Paragraph 38-190(3)(a) – an agreement with a non-resident

37. The first condition that must be satisfied for subsection 38-190(3) to apply is that the supply is made under an agreement entered into, whether directly or indirectly, with a non-resident.

38. The agreement may be either a written, oral or an implied agreement.

39. The agreement is entered into directly with a non-resident if the parties to the agreement are the non-resident and the supplier.

40. In the context of subsection 38-190(3), we consider that entering into an agreement *indirectly* with a non-resident includes the case where another entity such as a nominee or agent or the like enters into the agreement on behalf of the supplier or the non-resident. For example, a supplier may enter into an agreement with an agent, or representative, or associate of the non-resident acting on behalf of the non-resident.

The meaning of non-resident

41. The term 'non-resident' is defined in section 195-1 to mean 'an entity that is not an Australian resident'. 'Australian resident' is defined in section 195-1 to mean 'a person who is a resident of Australia for the purposes of the *Income Tax Assessment Act 1936* (ITAA 1936).

42. A non-resident therefore includes:

- an individual who is not a resident of Australia as defined in subsection 6(1) of the ITAA 1936
- a company that is not a resident of Australia as defined in subsection 6(1) of the ITAA 1936
- a partnership the central management and control of which is not located in Australia
- a corporate limited partnership that is not a resident of Australia as defined in section 94T of the ITAA 1936
- a trust of which no trustee is a resident of Australia as defined in subsection 6(1) of the ITAA 1936 and the central management and control of which is not located in Australia.

43. GSTR 2004/7 provides guidance on when an entity will be a non-resident for the purpose of this definition. (See paragraphs 21 to 25 and 111 to 174 of that Ruling.) Residency status is a question of fact and is one of the main criteria that determines an individual's liability to Australian income tax. Taxation Ruling TR 2023/1 *Income tax: residency tests for individuals* provides guidance on determining residency status under the income tax definition.

Paragraph 38-190(3)(b) – the supply is provided to another entity in Australia

44. The second condition that must be satisfied for subsection 38-190(3) to apply is that the supply is provided, or the agreement requires it to be provided, to another entity in Australia.

45. 'The supply' refers to the supply covered by item 2.

46. To work out whether a supply covered by item 2 is provided (or is required to be provided) to another entity in Australia (that is, whether the requirements of paragraph 38-190(3)(b) are satisfied), we follow a 2-step approach.

47. We first work out whether a supply covered by item 2 is provided to another entity or whether an agreement requires the supply to be provided to another entity. We examine this at paragraphs 49 to 62 of this Ruling.

48. Secondly, if the supply covered by item 2 is provided to another entity, we determine whether (when the thing supplied is done) that supply is provided to that other entity in Australia. We examine this at paragraphs 63 to 123 of this Ruling.

The meaning of 'another entity'

49. 'Another entity' is an entity other than the non-resident entity to which the supply is made. The term 'entity' is defined in subsection 184-1(1) and includes an individual, company, partnership, corporate limited partnership or trust.

50. An employee is an individual and, therefore, an entity as defined. If a supply is made to a non-resident employer and that supply is provided, or required to be provided, to an employee, that supply is provided to another entity. It is inherent in the nature of some supplies (for example, the training or entertainment of employees, or travel by employees) that those supplies can only be provided to the employee.

51. An agent that is, for example, an individual or company is also an entity as defined. However, the mere fact that the supply is made to an agent acting for a non-resident does not mean that the supply is provided (or is required to be provided) to another entity. It is a matter of determining to which entity the supply is provided. If all the agent does is to arrange on behalf of the non-resident for the supply to be made and provided to the non-resident, the supply is not provided to the agent.[10]

52. A partner that is, for example, an individual or company is an entity as defined.[11] If a supply is made to a non-resident partnership and the supply is provided, or required to be provided, to a partner, that supply is provided to another entity.

53. As a consequence of the 'separate entity' status given to a partnership for GST purposes, the GST Act applies to partnership transactions (in particular to dealings between partners and the partnership) in a manner that does not reflect the general law treatment of those transactions.[12]

54. Subsection 184-5(1) confirms that supplies and acquisitions that are made by or on behalf of partners in their capacity as partners are treated as supplies and acquisitions by the partnership.

55. If a supply is made to a non-resident partnership[13] and the supply is provided, or required to be provided, to a partner, that supply is provided to another entity. The provision of a supply to a partner is discussed further at paragraphs 132 to 135 of this Ruling.

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[10] In the case of a non-resident entity, other than an individual, the presence of an agent in Australia can sometimes result in the non-resident entity failing the requirement in item 2 that the non-resident is not in Australia. To consider this aspect further, refer to GSTR 2004/7.

[11] Section 184-1.

[12] Refer to Goods and Services Tax Rulings GSTR 2003/13 *Goods and services tax: general law partnerships* and GSTR 2004/6 *Goods and services tax: tax law partnerships and co-owners of property*.

[13] To determine whether a partnership is a non-resident, refer to paragraphs 127 to 157 of GSTR 2004/7.

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The meaning of 'provided to another entity'

56. The word 'provided' is used in subsection 38-190(3) to contrast with the term 'made' in item 2. In the context of section 38-190, the contrasting words indicate that if a non-resident contracts for a supply to be provided to another entity, the place of consumption should be determined with regard to the entity to which the supply is provided, not the entity to which the supply is made.

57. GSTR 2006/9 examines the meaning of 'supply' and explains how a supply can be 'made' to one entity but 'provided' to another entity.

58. The expression 'provided to another entity' means that in the performance of a service (or in the doing of some thing), the actual flow of that supply is, in whole or part, to an entity that is not the non-resident entity with which the supplier made the agreement for the supply. The contractual flow is to one entity (the non-resident recipient) and the actual flow of the supply is to another entity.

59. For example, if a supply of entertainment services is made to a non-resident company and in the performance of that service the employees are the entities that are entertained, the actual flow of that service is to another entity, being each employee. (See paragraphs 49 to 55 of this Ruling where the meaning of 'another entity' is discussed). The supply is made to the non-resident company (the employer) and provided to another entity (each employee).

60. Paragraphs 63 to 83 of this Ruling discuss how to determine whether a supply is provided to another entity.

The meaning of 'the agreement requires it [the supply] to be provided to another entity in Australia'

61. 'The agreement' refers to the agreement entered into with a non-resident, whether directly or indirectly. (See paragraph 35 of this Ruling.)

62. We consider that an agreement requires that a supply be provided to another entity in Australia if it is an express or implied term of the agreement that the supply is to be provided to another entity in Australia.

How to determine whether the supply is provided to another entity

Characterisation and nature of the supply

63. Before it can be determined whether a supply is provided (or is required to be provided) to another entity, it is essential that the supply be properly characterised as the supply of a service, right or some other thing. It is only when the supply is properly characterised that it is possible to determine whether that supply is provided to another entity.

64. In characterising a supply, it is necessary to consider all the circumstances of the transaction to ascertain its essential character.

65. For instance, the Supplementary EM provides Example 1.10 (reproduced at paragraph 31 of this Ruling) where a school in Australia provides tuition to overseas students in Australia but bills the parents overseas. Under the agreement between the supplier and the non-resident parents, the parents are supplied with certain rights which contribute to the supply as a whole. However, the essential character of the supply is a supply of services, not of rights. The services comprise the teaching, tutoring and so on of

the children. That service is made to the non-resident parents and provided to the children. (See also Examples 1 to 9 of this Ruling.)

66. It is also necessary to establish the exact nature of the supply to determine to which entity that service or thing is provided. That is, it is necessary to establish what is really being supplied.

67. A clear understanding of the exact nature of the supply is essential to determining whether that supply is provided to another entity. It is only by having regard to what is in substance and reality being supplied that it is possible to identify to which entity that supply is provided.

68. The exact nature of a supply in any given situation depends on the facts and circumstances of the supply and the agreement made between the parties. In this regard, it is necessary to look at the whole arrangement for the supply (including the contractual arrangements) and the way in which the supply is carried out.

69. If there is no written contract, other documents such as correspondence between the parties may be useful in establishing the nature of the supply.

70. Thus, the focal point in working out whether a supply is provided to another entity is the facts and circumstances of the doing of the thing supplied. By the supplier examining what it is required to do and in what circumstances, the supplier is able to objectively determine to whom the supply is provided.

71. In some instances, it is inherent in the nature of the supply that the supply is provided to a particular entity. For example, travel, training or entertainment services are, by their very nature, provided to the individual that travels, or is trained or entertained respectively.

72. In the case of delivery or freight services where goods from one entity are addressed for delivery to another entity, we accept that the delivery or freight services are provided to that addressee entity. This does not, however, include the delivery of goods that are generically addressed, for example, to 'The Householder' or are for delivery to the public at large. It also does not include the situation where an entity's own goods are simply freighted or moved from one location to another location. In these cases, the circumstances of the particular supply in question must be considered to determine whether the supply is provided to another entity.

73. In this Ruling, we provide the following examples which illustrate this approach:

- Examples 14 and 15 – delivery or freight services provided to an individual
- Example 17 – delivery or freight services provided to an entity other than an individual
- Example 18 – delivery of goods to, for example, 'The Householder', or the public at large.

74. In the case of other supplies (for example, supplies that involve the supply of legal, accounting, auditing or advertising services), the question of whether the supply is provided to another entity depends on the facts and circumstances in any given case.

75. If a supply is the provision of advice or information which involves work to create, develop or produce that advice or information (for example, a legal opinion or an audit report), the supply is the performance of services.[14] Thus, in determining whether a supply

[14] As explained in GSTR 2019/1, 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 performance of services.

is provided to another entity, regard is to be had to the performance of the services in creating, developing or producing the opinion or audit report and whether those services are provided to another entity.

76. For example, consider a supply of tax return preparation services made to a non-resident company. If what is really being supplied are services to complete tax returns for particular employees that meet their personal tax obligations, those services are provided to each employee. If, on the other hand, the tax return services are to complete the non-resident company's tax return, meeting its tax obligations, the tax return preparation services are provided to the non-resident company.

77. In situations where the contractual flow of a supply is to an entity (other than an individual) and it is necessary to determine whether the actual flow of the supply is to another entity (other than an individual), we consider that a strong indicator that the supply is provided to another entity is that the contracting entity has no further interaction with, or participation in, the provision of the supply beyond contracting and paying for the supply. However, the application of subsection 38-190(3) is still dependent upon on all the facts and circumstances of the supply. (See Example 1 of this Ruling.)

78. It is only in limited circumstances that any one fact or a particular combination of facts means or indicates that a supply is provided to another entity. Accordingly, we give numerous examples in this Ruling illustrating the application of subsection 38-190(3) in a wide variety of circumstances.

79. The examples are not in themselves statements of principles to be applied generally. They illustrate the scope of subsection 38-190(3) in a given fact situation. In particular, the examples show how, by examining the facts and circumstances of the supply in question, you can determine whether that supply is provided to another entity.

80. Further explanation about how to characterise and determine the nature of supplies provided to another entity are provided in GSTR 2006/9.

Later use of a supply and benefits flowing from a supply

81. The enquiry for the purposes of subsection 38-190(3) is one of first determining the exact nature of the supply having regard to all the facts and circumstances and then whether that supply, as properly described, is provided to another entity in Australia.

82. If the nature of a supply covered by item 2 is such that the supply is provided to another entity in Australia, the fact that the results or outcomes of the supply are later used outside Australia does not alter the nature of the supply or the application of subsection 38-190(3) to that supply.

83. Similarly, if the nature of the supply is such that the supply is only provided to an entity outside Australia, subsection 38-190(3) does not apply. This outcome is not altered even if another entity in Australia benefits from the supply. (See Example 4 of this Ruling.)

How to determine whether the supply is provided to the other entity in Australia

84. It is only necessary to consider this second step if it is first determined that the supply is provided to another entity.

85. If the supply is 'provided to another entity', this is not in itself sufficient for paragraph 38-190(3)(b) to be satisfied. The supply must be provided to that other entity in Australia.

86. It is therefore relevant to determine when provision of the supply occurs and whether that provision is to that other entity in Australia. (See paragraphs 90 to 112 of this Ruling for individuals and paragraphs 113 to 123 of this Ruling for entities other than individuals.)

Provision of the supply occurs as and when the thing supplied is done

87. A supply is provided as and when the thing supplied is done. This is the relevant time for determining whether a supply is provided to an entity in Australia.

88. Consistent with the views expressed in GSTR 2004/7[15] and GSTR 2019/1[16] as to when the thing supplied is done, we consider that:

- if the thing provided is a service – the provision of that service occurs during the period of time when the service is performed
- if the thing provided is advice or information and the supply involves work to create, develop or produce that information or advice for the other entity – the thing provided is the performance of services; the provision of that thing occurs when the service is performed and includes the period of time during which the advice is prepared, produced or created, as the case may be
- if the thing provided is an instantaneous provision of advice or information – the provision of that thing occurs at the time at which the advice or information is instantaneously provided
- if the thing provided is the creation, grant, transfer, assignment or surrender of a right – the provision of that thing occurs at the time that the right is created, granted, transferred, assigned or surrendered, and
- if the thing provided is the entry into or release from an obligation to do anything, or refrain from an act, or to tolerate an act or situation – the provision of that thing occurs at the time at which the obligation is entered into or the release is effected.

89. In the case of a service performed over time (for example, provision of advice or information created, developed or produced over time), the relevant period for determining whether any part of the supply is provided to another entity in Australia is the period during which the advice or information is created, developed or produced.

When provision of the supply is to an individual (another entity) in Australia

90. Consistent with the approach in GSTR 2004/7, we determine whether an individual is in Australia by reference to their physical location. An individual is in Australia when the thing supplied is done if that individual is physically in Australia.

91. However, while 'in Australia' has the same meaning in item 2 (and paragraph (a) of item 3 and paragraph (b) of item 4) and subsection 38-190(3), the reference to 'in Australia' in subsection 38-190(3) is not simply a presence test.

92. In item 2 (and paragraph (a) of item 3 and paragraph (b) of item 4) it is necessary to determine whether the entity to which the supply is made is not in Australia when the thing supplied is done. This is a presence test at a particular time. We resolve this issue by

[15] Refer to paragraph 199 of GSTR 2004/7.
[16] Refer to paragraphs 29 to 60 of GSTR 2019/1.

answering the question whether a recipient is in Australia in relation to the supply at the relevant time.[17]

93. However, in subsection 38-190(3), the question at issue is whether there is provision of a supply to another entity in Australia. We resolve this issue not by determining whether that other entity is in Australia in relation to the supply, but by determining whether provision is to that other entity in Australia.

94. To determine whether there is provision to an individual in Australia, we distinguish between non-resident and resident individuals according to whether they are physically in or outside Australia when the thing supplied is done.

Non-resident individual not physically in Australia when the thing supplied is done

95. If a supply is provided (or is required to be provided) to a non-resident individual who is not physically in Australia when the thing supplied is done, the supply is not provided to that individual in Australia. Paragraph 38-190(3)(b) is not satisfied and therefore subsection 38-190(3) does not negate the GST-free status of the supply.

96. While the services that effect provision of a supply to a non-resident individual might take place in Australia, the supply is not provided to that non-resident individual in Australia if the individual is physically outside Australia when the services are performed. There must be provision to the non-resident individual in Australia for subsection 38-190(3) to apply.

Non-resident individual physically in Australia when the thing supplied is done

97. If a supply is provided (or is required to be provided) to a non-resident individual who is physically in Australia when the thing supplied is done and that individual's presence in Australia is integral to, as distinct from being merely coincidental with, the provision of the supply, we consider that the supply is provided to that individual in Australia. The requirement in paragraph 38-190(3)(b) is satisfied.

98. Conversely, if a non-resident individual's presence in Australia is not integral to the provision of the supply, we consider that the supply is not provided to that individual in Australia. Paragraph 38-190(3)(b) is not satisfied and therefore subsection 38-190(3) does not negate the GST-free status of the supply.

99. Apportionment may be required if, for part of the time when the thing supplied is done, a non-resident individual is physically in Australia and that individual's presence is integral to the provision of the supply. That part of the supply is taxable as subsection 38-190(3) negates the GST-free status of the supply (assuming that the other requirements of subsection 38-190(3) are satisfied). Apportionment is discussed further at paragraphs 160 to 170 of this Ruling.

100. At paragraphs 106 to 112 of this Ruling, we explain when a non-resident individual's presence in Australia is integral to the provision of the supply.

[17] Refer to paragraphs 31 to 33 of GSTR 2004/7.

Resident individual physically in Australia when the thing supplied is done

101. If a supply is provided (or is required to be provided) to a resident individual who is physically in Australia when the thing supplied is done, the supply is provided to that individual in Australia. The requirement in paragraph 38-190(3)(b) is satisfied.

Resident individual not physically in Australia when the thing supplied is done

102. If a supply is provided (or is required to be provided) to a resident individual who is not physically in Australia when the thing supplied is done and that individual's presence outside Australia is integral to (as distinct from being merely coincidental with) the provision of the supply, we consider that the supply is provided to that individual outside Australia, not in Australia. Paragraph 38-190(3)(b) is not satisfied and therefore subsection 38-190(3) does not negate the GST-free status of the supply.

103. Conversely, if a resident individual's presence outside Australia is not integral to the provision of the supply, we consider that the supply is provided to that individual in Australia. The requirement in paragraph 38-190(3)(b) is satisfied.

104. Apportionment may be required if, for part of the time when the thing supplied is done, a resident individual is physically outside Australia and that presence is integral to the provision of the supply. That part of the supply is GST-free as subsection 38-190(3) does not negate the GST-free status of the supply (assuming the other requirements of subsection 38-190(3) are satisfied). Apportionment is discussed further at paragraphs 160 to 170 of this Ruling.

105. We explain at paragraphs 106 to 112 of this Ruling when a resident individual's presence outside Australia is integral to the provision of the supply.

How to determine whether an individual's presence at a particular location (that is, in Australia if a non-resident or outside Australia if a resident) is integral to the provision of a supply

106. Determining whether an individual's presence at a particular location is integral to the provision of the supply requires an examination of the facts and circumstances of the supply. However, some indicators that an individual's presence at a particular location is integral to the provision of the supply and is not merely coincidental include:

- the need for the supply arises from the individual's presence at that location, or
- the presence of the individual at that location is integral to the performance, receipt or delivery of the supply.

107. Some examples of supplies where the need for the supply arises from an individual's presence at a particular location are:

- a supply of immigration advice to a non-resident individual who wants to extend their stay in Australia
- a supply of customs broker services to a non-resident individual who is in Australia and requires the services of a customs broker to enter goods for home consumption in Australia
- a supply of legal services in relation to an offence committed by that individual while at that location, and

- a supply of repair services which are provided to an individual at that location to repair a piece of equipment (for example, a laptop) at that location.

108. Some examples of supplies where the presence of the individual at that location is integral to the performance, receipt or delivery of the supply are:

- supply of training or entertainment – the services are to be received by the individual at that location (see Examples 11, 19 and 20 of this Ruling)
- supply of travel – the travel is to be undertaken by the individual at that location
- supply of hairdressing or other similar services applied to the person – the services are to be performed on the individual at that location.

109. In the following circumstance, the individual's presence at a particular location is not integral to the provision of the supply:

- A service is provided to an individual who is a non-resident and, during the period when those services are performed, the individual comes to Australia on holiday. While on holiday in Australia, the non-resident individual takes the opportunity to visit a supplier to check on the progress of the supply of services. The need for the supply does not arise from the individual's presence in Australia and their presence in Australia is not integral to the performance, receipt or delivery of the supply. (See Example 12 of this Ruling.)
- A service is provided to an individual who is a resident of Australia and, during the period when those services are performed, the individual goes overseas on holiday. While on holiday outside Australia, the resident individual checks on the progress of the supply of services. The need for the supply does not arise from the individual's presence outside Australia and the individual's presence outside Australia is not integral to the performance, receipt or delivery of the supply. (See Example 13 of this Ruling.)

110. In the case of delivery or freight services which are provided to an individual in the circumstances described at paragraph 72 of this Ruling, we accept those services are provided to that individual in Australia if the goods are addressed to that individual in Australia. Alternatively, if the goods are addressed to the individual outside Australia, we accept that those services are provided to that individual outside Australia. This outcome is not dependent upon the residency status of the individual to whom the goods are addressed See Examples 14 and 15 of this Ruling, which illustrate and further explain this approach.

111. This does not, however, include the delivery of goods that are generically addressed to 'The Householder' or are for delivery to the public at large. (See Example 18 of this Ruling.) It also does not include the situation where an individual's goods are simply freighted or moved from one location to another location. For example, where the individual is relocating overseas and the individual's household goods are freighted to an address overseas. The circumstances of the particular supply in question must be considered to determine whether the supply is provided to another entity and whether the supply is provided to that other entity in Australia.

112. Further examples about an individual's presence at a particular location being integral to the provision of a supply are provided at paragraphs 236 to 282 of this Ruling.

Page status: **legally binding**

When provision of the supply is to a company, partnership, corporate limited partnership or trust (another entity) in Australia

113. Unlike individuals, an entity such as a company, partnership, corporate limited partnership or trust does not have a precise physical location. The entity, through its representatives, may be present in more than one location at the same time and can be both in and outside Australia at the same time. If a company, partnership, corporate limited partnership or trust does not have a presence in Australia, the supply is not provided to that entity in Australia.

114. A company, corporate limited partnership or trust is in Australia (irrespective of its residency status) if the entity carries on business (or in the case of an entity that does not carry on business, carries on activities) in Australia at or through a fixed and definite place of its own, or through an agent at a fixed and definite place, for a sufficiently substantial period of time.[18]

115. Additionally, a company or corporate limited partnership is in Australia if it is incorporated or formed in Australia respectively.[19]

116. A partnership is in Australia if the entity carries on business (or, in the case of a partnership that is in receipt of ordinary income or statutory income jointly, carries on other activities which generate that income) in Australia at or through a fixed and definite place of its own or through an agent at a fixed and definite place, for a sufficiently substantial period of time.[20]

117. If a company, partnership, corporate limited partnership or trust has a presence in Australia, we consider that a supply is provided to that entity in Australia if the supply is for the purposes of its Australian presence (for example, an Australian branch, representative office or agent if it is a non-resident company or the Australian head office if it is an Australian-incorporated company). If the supply is for the purposes of the entity's presence outside Australia (for example, an offshore branch), the supply is not provided to the entity in Australia.

118. This also means that if a company, partnership, corporate limited partnership or trust is present only in Australia, the supply is necessarily provided to that entity in Australia.

119. In the case of delivery or freight services which are provided to an entity other than an individual in the circumstances described at paragraph 72 of this Ruling, we accept those services are provided to that entity in Australia if the goods are addressed to that entity in Australia. Alternatively, if the goods are addressed to that entity outside Australia, we accept those services are provided to that entity outside Australia. This outcome is not dependent upon the residency status of the entity to which the goods are addressed. See Example 17 of this Ruling.

120. This approach recognises the inherent practical difficulties in otherwise determining whether the supply is provided to another entity in Australia, particularly if the freight or delivery services are the subject of subcontract arrangements.

121. This approach does not, however, apply to the delivery of goods that are generically addressed to 'The Householder' or are for delivery to the public at large. (See Example 18 of this Ruling.) It also does not apply to circumstances where an entity's own

[18] Refer to GSTR 2004/7 at paragraphs 230 to 379 (company), paragraphs 412 to 416 (corporate limited partnership) and paragraphs 422 to 429 (trust).
[19] Refer to GSTR 2004/7 at paragraphs 333 to 339 (companies) and paragraphs 414 to 416 (corporate limited partnerships).
[20] Refer to GSTR 2004/7 at paragraphs 380 to 397.

goods are freighted or moved from one location to another location. The circumstances of the particular supply in question must be considered to determine whether the supply is provided to another entity and whether the supply is provided to that other entity in Australia.

122. Apportionment may be required if the supply is partly for the purposes of an entity's Australian presence. Apportionment is discussed further at paragraphs 160 to 170 of this Ruling.

123. Further examples of when a supply is provided to an entity other than an individual are provided at paragraphs 407 to 440 of this Ruling.

Determining whether a supply made to a non-resident employer is provided to an employee in Australia

124. Where a supply is made to a non-resident employer with employees in Australia, it may be necessary to first consider whether the employer satisfies the 'not in Australia' requirement in item 2.[21]

125. To determine whether a supply is provided to an employee, it is essential to examine the nature of the supply closely. By examining what is really being supplied and how that supply is carried out, it is possible to establish to whom the service or other thing is provided – that is, the employer or another entity, being the employee. If the supply is provided to the employee, it is then necessary to consider if the employee's presence at a particular location is integral to the provision of that supply.

126. For example, a non-resident sole trader engages an Australian accounting firm to prepare Australian tax returns for non-resident employees working in Australia. The service involves the accounting firm meeting with the employees in Australia and preparing their individual tax returns. The tax return services are about the tax obligations of each individual. The tax return preparation services in these circumstances are provided to the individual employee. The employee is in Australia when the service is performed and that employee's presence in Australia is integral to, as distinct from being merely coincidental with, the provision of the supply.

127. Where an employee is involved with the provision of a supply, the weight to be given to that fact differs according to the circumstances of the supply in question. In the example at paragraph 126 of this Ruling, the fact that the employee has contact with the supplier strongly indicates, in the circumstances of the supply, that the supply is provided to that employee. On the other hand, contact by an employee with a supplier is of little relevance in circumstances where the employee's involvement with the provision of the supply is simply to facilitate the provision of the supply to the non-resident employer. This is the case where, for example, an employee of a non-resident employer interacts with a law firm in circumstances where the firm is providing legal advice concerning a business venture of the non-resident employer.

128. It is inherent in the nature of some supplies (for example, the training or entertainment of employees, or travel by employees) that those supplies can only be provided to the employee. For example, a supply of training services, the nature of which requires the physical attendance of the individual at that training in Australia, is a supply provided to that individual in Australia. However, while the services that effect provision of a supply to an entity might take place in Australia, that supply may nonetheless be provided to an entity that is not in Australia. For example, the supply of online training

[21] GSTR 2004/7 (refer to paragraphs 214 to 220 of that Ruling for a sole trader, paragraphs 230 to 332 for companies and paragraphs 381 to 395 for partnerships).

provided to non-resident employees in another country (not requiring physical attendance in a classroom in Australia) is not provided to another entity in Australia. The non-resident individuals are not in Australia when the training services are performed.

129. For examples concerning employees, see paragraphs 350 to 383 of this Ruling. See also paragraphs 149 to 159 of this Ruling for an explanation of subparagraphs 38-190(3)(c)(ii) and (iii), which apply to preserve the GST-free status of certain supplies where the supply is provided to an individual as an employee of the recipient of the supply.

Determining whether a supply is provided to an agent in Australia

130. Sometimes a non-resident entity makes an acquisition through a resident agent in Australia. If all the agent does is arrange on behalf of the non-resident for the supply to be made and provided to the non-resident, the supply is not provided to the resident agent in Australia.[22]

131. For an example concerning agents, see Example 23 of this Ruling.

Determining whether a supply is provided to a partner in Australia

132. As with other situations, the application of subsection 38-190(3) to a supply involving a partner who is in Australia and a partner of a non-resident partnership depends on the nature of the supply to determine whether a supply which is made to the non-resident partnership is provided to the partner.

133. When the partner of a non-resident partnership contracts for the supply of a thing in their capacity as partner, the supply is taken to be made to the partnership. However, the supply of a thing can be made to the partnership and provided in whole or in part to that partner or another partner for the purposes of subsection 38-190(3).

134. If it is determined that the supply is provided to the partner, it is then necessary to determine whether that partner's presence in Australia is integral to the provision of that supply (if the partner is an individual) or if the supply is for the purposes of the partner's presence in Australia (if the partner is an entity other than an individual).

135. For an example concerning partners, see Example 24 of this Ruling. See also paragraphs 136 to 155 of this Ruling for an explanation of subparagraphs 38-190(3)(c)(ii) and (iii). These subparagraphs preserve the GST-free status of certain supplies provided to an individual as an officer (including a partner of a partnership) of the recipient of the supply.

Paragraph 38-190(3)(c) – preservation of GST-free status for certain supplies that are not input taxed supplies

136. The third condition that must be satisfied for subsection 38-190(3) to negate the GST-free status of a supply covered by item 2 is outlined in paragraph 38-190(3)(c).

[22] In the case of a non-resident entity other than an individual, the presence of an agent in Australia can sometimes result in the non-resident entity failing the requirement in item 2 that the non-resident is not in Australia. To consider this aspect further, refer to GSTR 2004/7.

137. Paragraph 38-190(3)(c) sets out:

> For a supply other than an input taxed supply – none of the following applies:
>
> (i) the other entity would be an Australian-based business recipient of the supply, if the supply had been made to the other entity;
>
> (ii) the other entity is an individual who is provided with the supply as an employee or officer of an entity that would be an Australian-based business recipient of the supply, if the supply had been made to it; or
>
> (iii) the other entity is an individual who is provided with the supply as an employee or officer of the recipient and the recipient's acquisition of the thing is solely for a creditable purpose and is not a non-deductible expense.

138. Paragraph 38-190(3)(c) applies to tax periods commencing from 1 October 2016[23] and was introduced to extend the previous application of the GST-free rules, reducing the GST embedded in supplies made to non-residents and the need for non-residents to register for GST to claim input tax credits.[24]

139. The effect of paragraph 38-190(3)(c) is to preserve the GST-free status of certain supplies covered by item 2 where paragraphs 38-190(3)(a) and (b) are otherwise satisfied. The GST-free status of a supply covered by item 2 is preserved where:

- the supply is not an input taxed supply, and
- any of the subparagraphs of paragraph 38-190(3)(c) apply.

140. Each of the subparagraphs of paragraph 38-190(3)(c) refer to the 'other entity', which is the entity referred to in paragraph 38-190(3)(b) – the entity in Australia to which the supply is provided, or the agreement requires the supply be provided (the 'providee').

141. In practical terms, a supplier must determine that the recipient or providee (as relevant) satisfies the requirements in the relevant subparagraph. Although it is expected that in many cases the supplier would obtain the information required to make this determination through negotiating the terms of the supply (for example, in the agreement specifying that particular services be provided to an employee of the recipient or another entity), the supplier may need to obtain additional information to determine that a particular supply is GST-free.

The meaning of 'other than an input taxed supply'

142. Paragraph 38-190(3)(c) does not need to be considered if the supply would otherwise be an input-taxed supply.[25]

143. An input taxed supply that satisfies the conditions in paragraphs 38-190(3)(a) and (b) will not be GST-free under item 2 (even if one of the subparagraphs of paragraph 38-190(3)(c) applies).

144. Paragraph 2.155 of the Explanatory Memorandum to the Tax and Superannuation Laws Amendment (2016 Measures No.1) Bill 2016 explains:

> The amendments do not preserve the GST-free treatment in item 2 for a supply that would, apart from subsection 9-30(3), be an input taxed supply. Where a supply of this kind would otherwise be input taxed, a non-resident recipient of the supply would not acquire a taxable

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[23] Refer to the *Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016* for transitional rules for existing arrangements.

[24] Refer to paragraph 2.151 of the Explanatory Memorandum to the Tax and Superannuation Laws Amendment (2016 Measures No. 1) Bill 2016.

[25] 'Input taxed' is defined in section 195-1 as having the meaning given by subsection 9-30(2) and Division 40.

supply, and therefore has no incentive to register for GST to claim ITCs on the supply. Additionally, the supplier of an input taxed supply should not have greater access to ITCs. If these input taxed supplies were GST-free, Division 11 would entitle the supplier to ITCs on any acquisitions required in making that supply.

145. However, if the GST-free status of a supply covered by item 2 is negated by the application of subsection 38-190(3), that supply may still be GST-free if the requirements of another table item are satisfied and subsections 38-190(2) and (2A) do not apply.

The meaning of 'Australian-based business recipient'

146. Subparagraph 38-190(3)(c)(i) preserves the GST-free treatment of a supply covered by item 2 that is provided to another entity in Australia if that other entity would have been an 'Australian-based business recipient' of the supply if the supply had been made to it.

147. Section 195-1 provides that 'Australian-based business recipient' has the meaning given by subsection 9-26(2). Subsection 9-26(2) provides that an entity is an Australian-based business recipient of a supply made to it if all of the following apply:

- the entity is registered for GST
- an enterprise of the entity is carried on in Australia[26]
- the entity's acquisition of the thing supplied is not solely of a private or domestic nature.[27]

148. In applying subparagraph 38-190(3)(c)(i), it is necessary to consider the above test as though the relevant supply was made directly to the entity in Australia to which it was provided.

Employee or officer of an Australian-based business recipient

149. Subparagraph 38-190(3)(c)(ii) preserves the GST-free treatment of a supply covered by item 2 that is provided to an individual in Australia where:

- the individual is provided with the supply as an employee or officer of an entity, and
- that entity would have been an Australian-based business recipient of the supply if the supply had been made to it.

150. The term 'employee' is not defined and takes its ordinary meaning.[28] The term 'officer' is defined in section 195-1 as having the meaning given by the *Corporations Act 2001* (Corporations Act). This includes a director or secretary of a corporation and a partner of a partnership.[29]

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[26] Refer to Law Companion Ruling LCR 2016/1 *GST and carrying on an enterprise in the indirect tax zone (Australia)*.
[27] The acquisition does not have to relate to the enterprise that is carried on in Australia.
[28] Refer to the explanation of the ordinary meaning of an employee in Taxation Ruling TR 2023/4 *Income tax and superannuation guarantee: who is an employee?*
[29] Section 9AD of the Corporations Act.

151. An employee or officer of an entity is provided with a supply in their capacity as an employee or officer if the supply was provided to them in the performance of their duties or as part of their remuneration.[30] See Examples 19 and 20 of this Ruling.

152. Paragraphs 146 to 148 of this Ruling explain when an entity would have been an Australian-based business recipient of a supply if the supply had been made to it. Subparagraph 38-190(3)(c)(ii) applies in similar circumstances to subparagraph 38-190(3)(c)(i) and ensures that the GST-free status of a supply is also preserved where the thing that is supplied is provided to an employee or officer of an entity, rather than directly to the entity itself.

Employee or officer of a recipient whose acquisition is solely for a creditable purpose and is not a non-deductible expense

153. Subparagraph 38-190(3)(c)(iii) preserves the GST-free treatment of a supply made to a non-resident that is provided to an individual in Australia where:

- the individual is provided with the supply as an employee or officer of the non-resident recipient, and
- the non-resident recipient's acquisition of the thing is solely for a creditable purpose and is not a non-deductible expense.

154. Paragraph 150 of this Ruling explains when an individual is an employee or officer of an entity and paragraph 151 of this Ruling explains when they are provided with a supply in that capacity. It is expected that the terms of the agreement will generally provide sufficient information for a supplier to ascertain whether the providee is an employee or officer of the non-resident and whether they are provided with the supply in that capacity.

155. Section 11-15 provides that an entity acquires a thing for a creditable purpose to the extent that the entity acquires the thing in carrying on its enterprise (subsection 11-15(1)) but not to the extent that the acquisition relates to making supplies that would be input taxed or the acquisition would be of a private or domestic nature (subsection 11-15(2)).[31]

What is a 'non-deductible expense'?

156. 'Non-deductible expense' is defined in section 195-1 to have the meaning given by subsections 69-5(3) and (3A). Those subsections provide that an acquisition or importation is a non-deductible expense if it is not deductible under Division 8 of the *Income Tax Assessment Act 1997* (ITAA 1997) because of certain provisions in either the ITAA 1997 or the ITAA 1936. The exclusion of non-deductible expenses in subparagraph 38-190(3)(c)(iii) ensures that GST-free treatment is not extended to acquisitions of supplies that would otherwise be denied input tax credits by subsection 69-5(1).

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[30] Refer to paragraph 2.163 of the Explanatory Memorandum to the Tax and Superannuation Laws Amendment (2016 Measures No. 1) Bill 2016.

[31] Refer to Goods and Services Tax Rulings GSTR 2006/3 *Goods and services tax: determining the extent of creditable purpose for providers of financial supplies* and GSTR 2006/4 *Goods and services tax: determining the extent of creditable purpose for claiming input tax credits and for making adjustments for changes in extent of creditable purpose*.

157. Subsection 69-5(3) provides that an acquisition or importation is a non-deductible expense if it is not deductible under Division 8 of the ITAA 1997 because of certain provisions of the income tax law. These provisions are:

(a) section 26-5 of the ITAA 1997 (penalties)

(b) section 26-30 of the ITAA 1997 (relative's travel expenses)

(c) section 26-40 of the ITAA 1997 (maintaining your family)

(d) section 26-45 of the ITAA 1997 (recreational club expenses)

(e) section 26-50 of the ITAA 1997 (expenses for a leisure facility)

(f) Division 32 of the ITAA 1997 (entertainment expenses)

(g) Division 34 of the ITAA 1997 (non-compulsory uniforms)

(h) section 51AK of the ITAA 1936 (agreements for the provision of non-deductible non-cash business benefits).

158. Subsection 69-5(3A) further provides that an acquisition or importation is also a non-deductible expense to the extent that it is not deductible under Division 8 of the ITAA 1997 because of one of the following:

(a) section 51AEA of the ITAA 1936 (meal entertainment – election to use the fifty-fifty split method)

(b) section 51AEB of the ITAA 1936 (meal entertainment – election to use the 12-week register method)

(c) section 51AEC of the ITAA 1936 (entertainment facility – election to use the fifty-fifty split method).

159. Each of the provisions listed in paragraphs 157 and 158 of this Ruling must be considered on its terms, including any exceptions. For example, while section 32-5 denies deductions for entertainment expenses, section 32-20 provides an exception for expenses incurred in respect of providing entertainment by way of providing a fringe benefit.[32]

Apportionment

160. As a result of the application of subsection 38-190(3), a supply covered by item 2 may only be partly GST-free. In this circumstance, the consideration for the supply must be apportioned between the GST-free and taxable parts of the supply.[33]

161. The need to apportion in the context of subsection 38-190(3) can arise because the supply is only provided in part to another entity. For example, a supply may be provided:

- in part to the non-resident entity to which the supply is made and in part to another entity in Australia
- in part to another entity in Australia and in part to another entity that is not in Australia (see Example 26 of this Ruling).

162. Apportionment of a supply as a result of the operation of subsection 38-190(3) may also be required if, for example, a supply is provided to another entity over a period of time

[32] Refer to Goods and Services Tax Ruling GSTR 2001/3 *Goods and Services Tax: GST and how it applies to supplies of fringe benefits*.
[33] Refer to Goods and Services Tax Ruling GSTR 2001/8 *Goods and services tax: Apportioning the consideration for a supply that includes taxable and non-taxable parts.*

and the supply is only provided to that other entity in Australia for part of the time. (See Example 27 of this Ruling.)

163. To work out the value of the taxable part of the supply, the consideration is apportioned to each of the parts to find the consideration for the taxable part. The supplier can use any reasonable method that is supportable in the particular circumstances to apportion the consideration.[34]

164. The supplier should keep records that explain the method used.[35]

165. Sometimes the same supply of services is provided to a non-resident entity outside Australia *and* another entity in Australia and it is not possible to identify separate parts of the supply flowing to each entity.[36] If the supply is covered by item 2, subsection 38-190(3) negates the GST-free status of the supply to the extent that the supply is provided to the other entity in Australia. It is necessary to apportion the consideration for the supply between the GST-free and taxable parts of the supply on a fair and reasonable basis, taking into account the particular circumstances of the supply.

Apportionment when a supply is provided on a periodic or progressive basis

166. Under Division 156 (concerning supplies and acquisitions made on a progressive or periodic basis), if a taxable supply is made for a period or on a progressive basis and the consideration is provided on a periodic or progressive basis, the GST payable is attributed as if each progressive or periodic component of the supply were a separate supply.[37]

167. If a supply is provided for a period with consideration given on a periodic basis and, for part of the time when the thing supplied is done, the supply is provided to another entity in Australia, it may not be possible for the supplier to identify the taxable part of the supply at the beginning of the period over which the thing is provided. This is because there is no way for the supplier to determine in advance whether, and to what extent, the supply is provided to an entity in Australia during the period over which the supply is provided. However, it is possible for the supplier to identify this in relation to the periodic components of the supply. Accordingly, we accept that this is the basis on which GST payable on the supply (and input tax credits on the creditable acquisition) is attributable to tax periods.

Supplier accounts on a cash basis

168. If a supplier, who accounts on a cash basis, makes a supply for a period or on a progressive basis and the consideration is given on a periodic or progressive basis, similar issues may arise to those referred to at paragraph 167 of this Ruling. Example 28 of this Ruling illustrates how to attribute GST payable in these circumstances.

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[34] Refer to paragraphs 92 to 113 of GSTR 2001/8.
[35] Refer to paragraphs 25 to 30 of GSTR 2001/8 and paragraph 382-5(1)(a) of Schedule 1 to the *Taxation Administration Act 1953*.
[36] As explained at paragraph 66 of GSTR 2006/4, the High Court in *Ronpibon Tin NL v Commissioner of Taxation (Cth)* [1949] HCA 15 indicated, in the income tax context, that if a certain expense has a 'double aspect', it will need to be apportioned if it 'cannot be dissected'.
[37] Subsection 156-5(1). Section 156-25 provides that Division 156 does not apply to a supplier who accounts on a cash basis.

Apportionment where the supply is performed over more than one tax period but consideration is paid in earlier tax period

169. If a supply is performed over more than one tax period and the GST (if any) on the supply is attributable to a tax period before the completion of the supply (for example, consideration is fully paid in one tax period but the supply is spread across 2 or more later tax periods), the supplier must use a reasonable basis for determining the extent to which the supply is taxable. That is, the supplier must use a reasonable basis to determine the extent to which the supply is provided to another entity in Australia.

170. If there is a change in circumstance such that the supply is taxable to a greater or lesser extent than determined in an earlier tax period, the supplier has an adjustment event. The adjustment may be either an increasing or a decreasing adjustment depending upon whether the corrected GST amount is greater than, or less than, the previously attributed GST amount.[38]

Application of subsection 38-190(3) to certain complex arrangements

Subcontract arrangements

171. Sometimes a non-resident supplier subcontracts the provision of services to one of its customers in Australia to another supplier located in Australia. There may be various reasons for subcontracting the service. The non-resident supplier may have no physical presence in Australia to undertake the performance of the service or the non-resident supplier may not have the necessary capabilities to perform the service itself.

172. If the non-resident supplier subcontracts the provision of a particular service to a supplier in Australia, the subcontract arrangement does not alter either the character or nature of the supply made by the non-resident supplier to the Australian customer. In particular, the character of the supply is not transformed from the supply of a service to the supply of a right nor is the nature of the supply altered from the supply of an actual service to that of an arranging service.

173. We consider that a supply that is an arranging service typically involves the non-resident supplier arranging for the Australian supplier to enter into a contract of supply with the Australian customer for the supply of the required thing. That is, a supply of an arranging service typically involves 2 separate supply contracts – one contract between the customer and the first supplier for the service of arranging for a second supplier to supply a particular service, and a second contract between the customer and the second supplier for the supply of that service or thing. (See Examples 29 and 30 of this Ruling.)

Global supplies

174. In many multi-national groups, a range of services are made available to group members through an internal service provider, typically the parent company or a separate dedicated entity. Such services include accounting, auditing, legal, information technology, research and development and financial services. Group members for which these services are performed are sometimes directly charged a fee by the group entity that provides the service or in other cases a cost is allocated. The fee or cost allocation may be separately identified or part of a bundled charge or cost allocation, sometimes incorporated into a management fee.

[38] Refer to paragraphs 12 to 15 and 72 to 87 in Goods and Services Tax Ruling GSTR 2000/19 *Goods and services tax: making adjustments under Division 19 for adjustment events*.

175. Sometimes the internal service provider contracts with an external service provider to perform the services for the group. In that case, there is typically a head agreement between the internal service provider and the external provider (the head supplier) and a range of subcontracting agreements to enable the head supplier to fulfil its obligations to provide services to members of the global group.

176. Where the internal service provider subcontracts the provision of a service to another group member or an external provider, this does not alter the character of the supply. The supply by the internal service provider remains a supply of a service and the nature of that service does not change.

177. These global supply arrangements can give rise to a number of GST considerations, including whether the supplies are connected with Australia, the application of subsection 38-190(1) and the application of the reverse charge provisions (Division 84).

178. For the purpose of subsection 38-190(3), it would typically be the actions of the supplier that are to be considered in determining whether a supply is, in fact, provided to another entity. If there is a head agreement between the internal service provider and the external provider (the head supplier) and a range of subcontracting agreements to enable the head supplier to fulfil its obligations to provide services to members of a global group, the actions of the subcontracted supplier are relevant in assessing whether the supply by the head supplier to the internal service provider is provided to another entity (that is, an entity other than the internal service provider) in Australia.

179. However, subsection 38-190(3) is of limited application to global supply arrangements following the introduction of paragraph 38-190(3)(c) such that it is generally not necessary to determine whether the supply by the head supplier to the internal service provider is provided to another entity in Australia.

180. Due to the circumstances in which global supplies arise, where the arrangements involve a supply covered by item 2 being provided to a group entity in Australia, that group entity will generally be an entity that would have been an Australian-based business recipient of the supply if the supply had been made to it. Accordingly, paragraph 38-190(3)(c) will generally preserve the GST-free status of such supplies. See Example 31 of this Ruling.

Application of item 2 and subsection 38-190(3) – flow charts

181. The flow charts in this Ruling illustrate, in broad terms, the application of item 2 and subsection 38-190(3) to a supply made to a non-resident and provided to another entity in Australia.

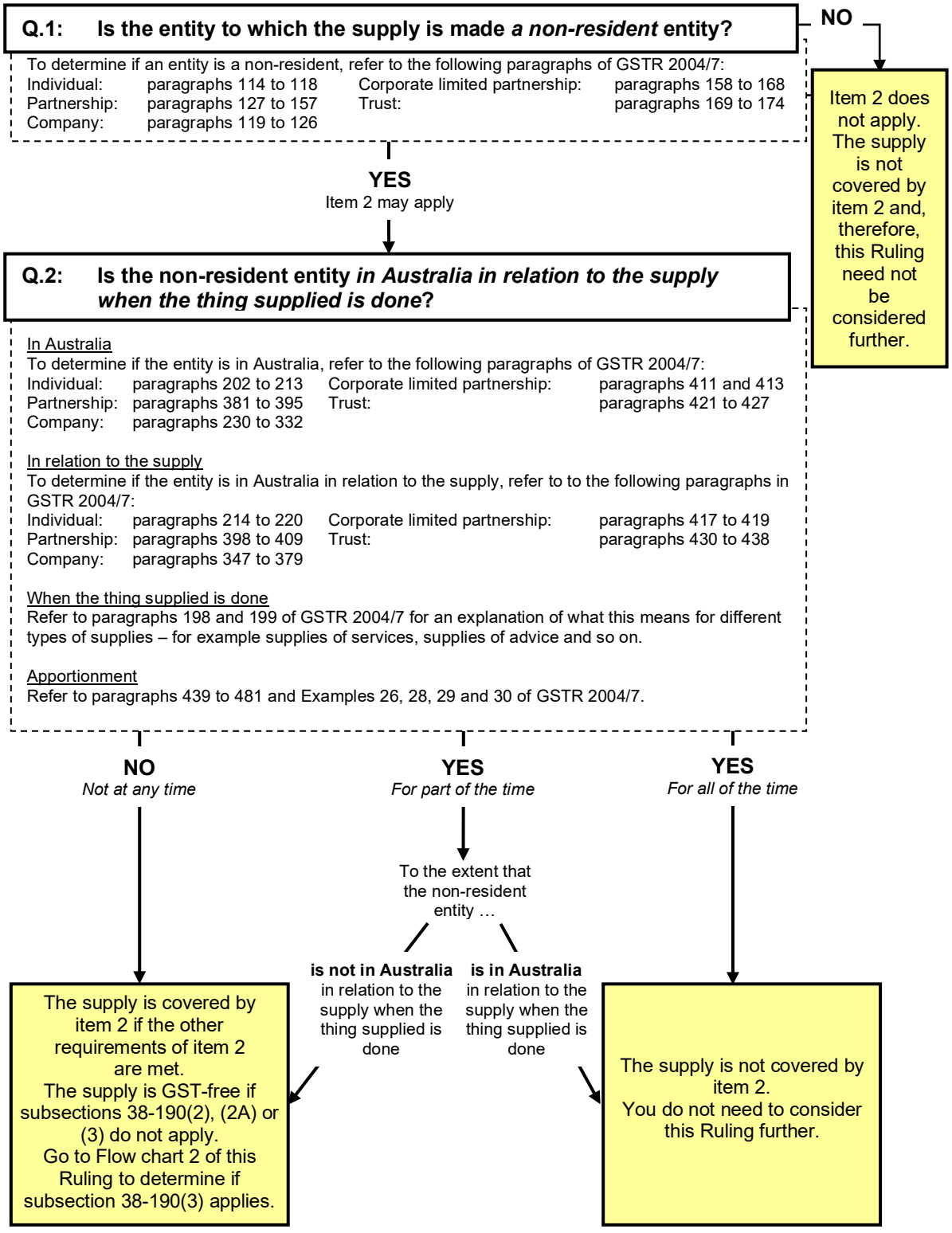
182. Flow chart 1 should be read in conjunction with the relevant paragraphs in this Ruling and GSTR 2004/7.

183. Flow charts 2 to 6 should be read in conjunction with the relevant paragraphs in this Ruling.

Page status: **legally binding**

184. Flow chart 1 of this Ruling illustrates how to determine whether a supply made to an entity is covered by item 2.

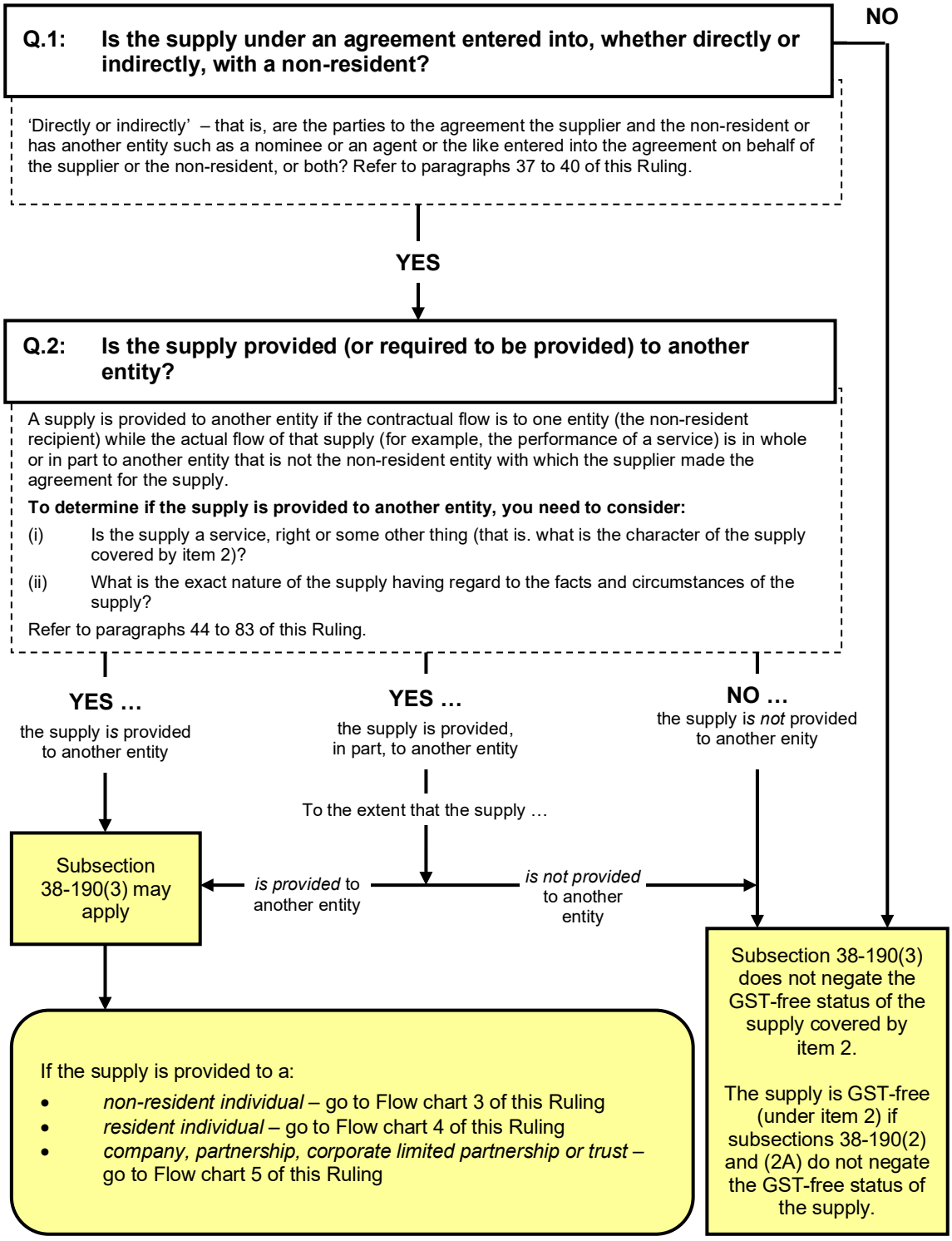
Flow chart 1: How to determine whether a supply made to an entity is covered by item 2



Page status: **legally binding**

185. Flow chart 2 of this Ruling illustrates how, in the application of subsection 38-190(3), to determine whether a supply is provided to another entity.

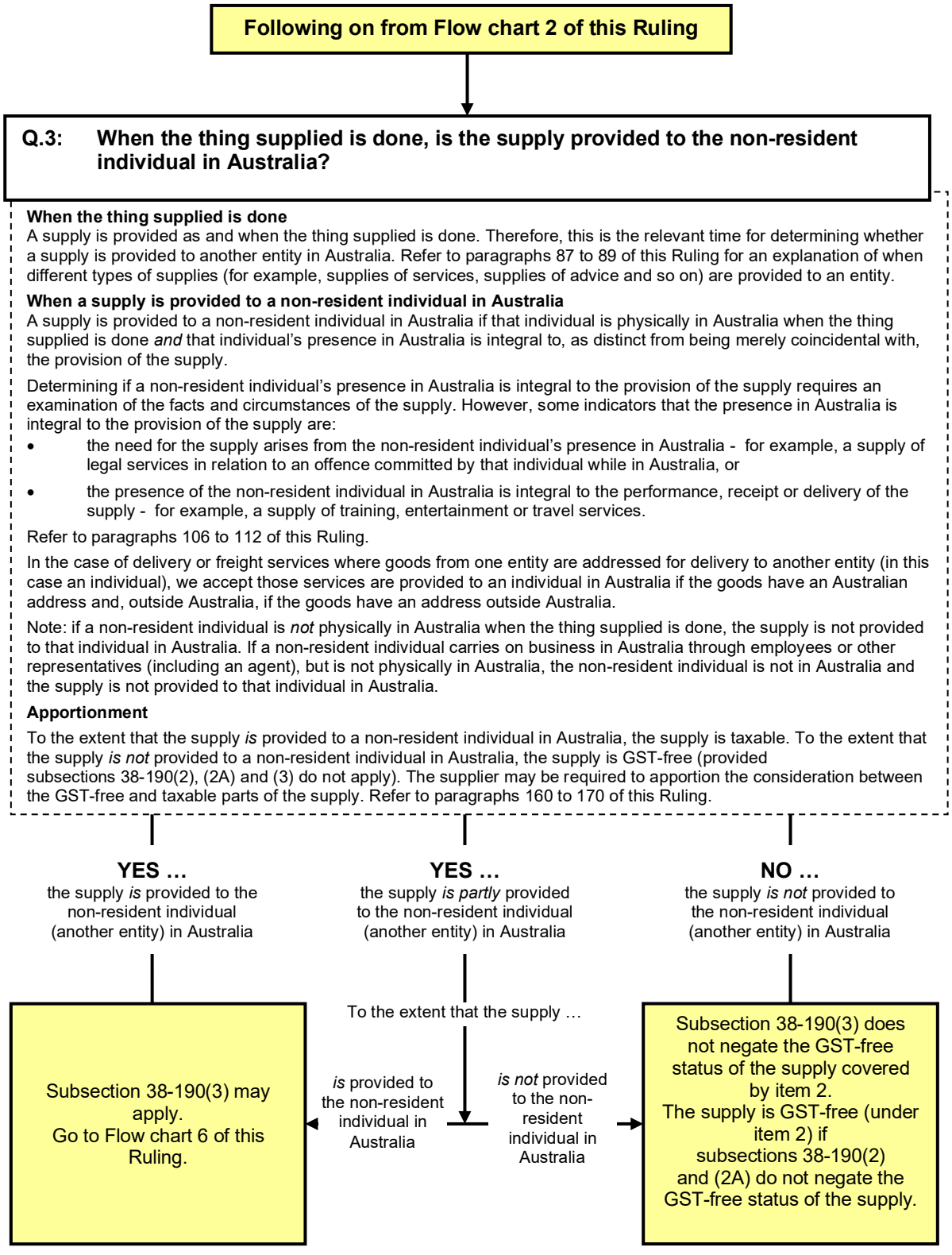
Flow chart 2: In the application of subsection 38-190(3), how to determine whether a supply is provided to another entity



Page status: **legally binding**

186. Flow chart 3 of this Ruling illustrates how, in the application of subsection 38-190(3), to determine whether the supply is provided to another entity, being a non-resident individual, in Australia.

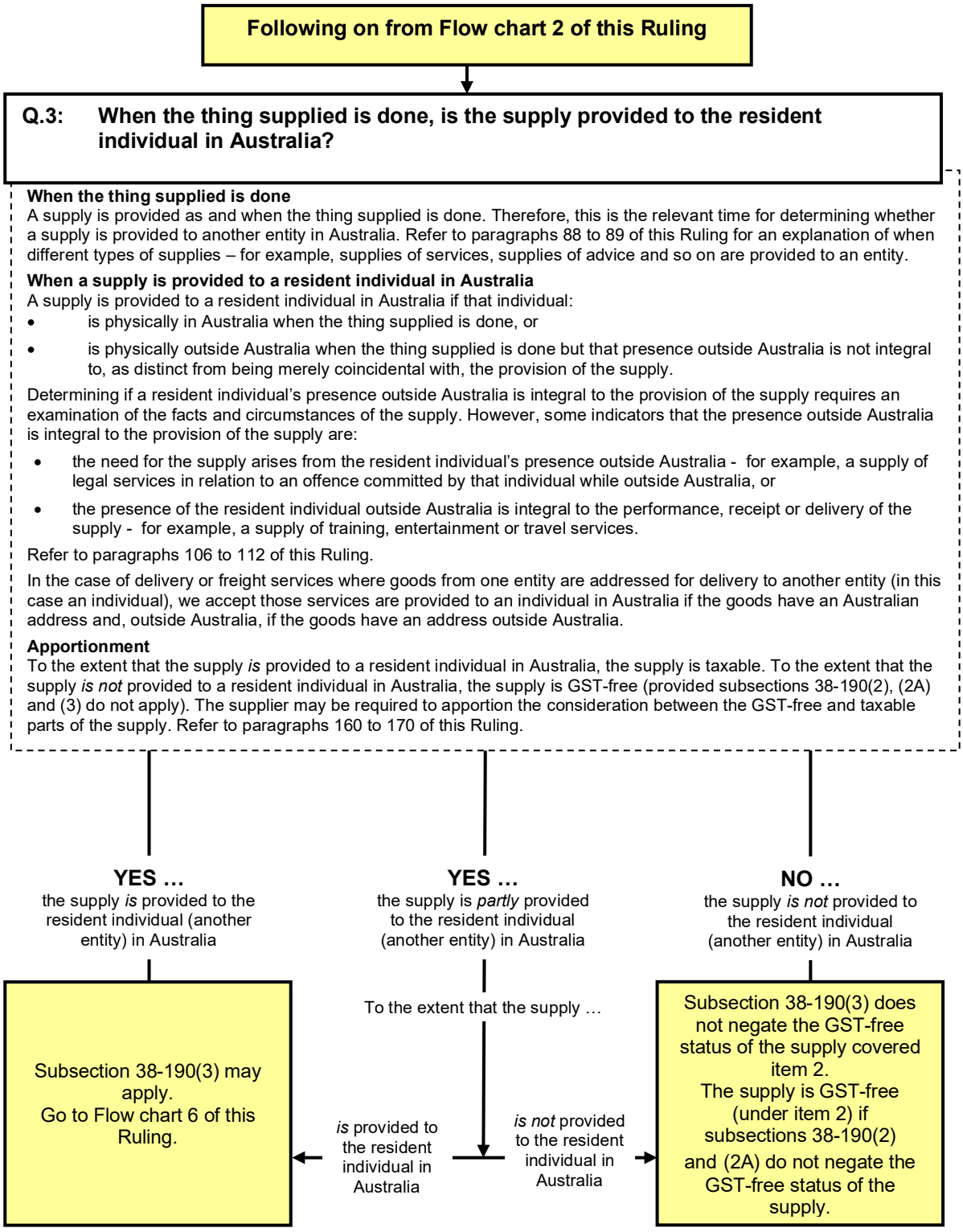
Flow chart 3: In the application of subsection 38-190(3), how to determine whether the supply is provided to another entity, being a non-resident individual, in Australia



Page status: **legally binding**

187. Flow chart 4 of this Ruling illustrates how, in the application of subsection 38-190(3), to determine whether the supply is provided to another entity, being a resident individual, in Australia.

Flow chart 4: In the application of subsection 38-190(3), how to determine whether the supply is provided to that another entity, being a resident individual, in Australia



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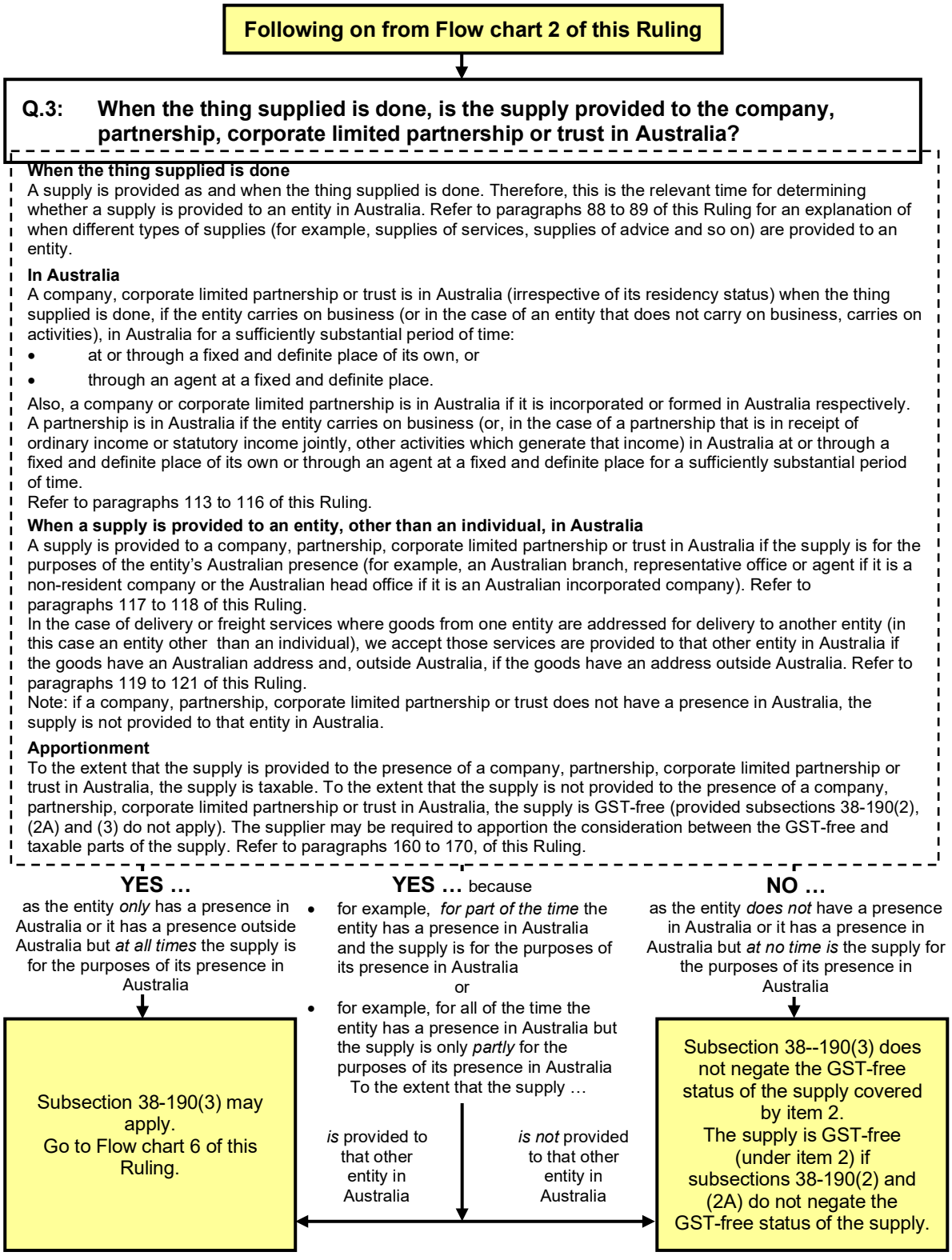
188. Flow chart 5 of this Ruling illustrates how, in the application of subsection 38-190(3), to determine whether the supply is provided to another entity, being a company, partnership, corporate limited partnership or trust, in Australia.

Flow chart 5: In the application of subsection 38-190(3), how to determine whether the supply is provided to that another entity, being a company, partnership, corporate limited partnership or trust, in Australia



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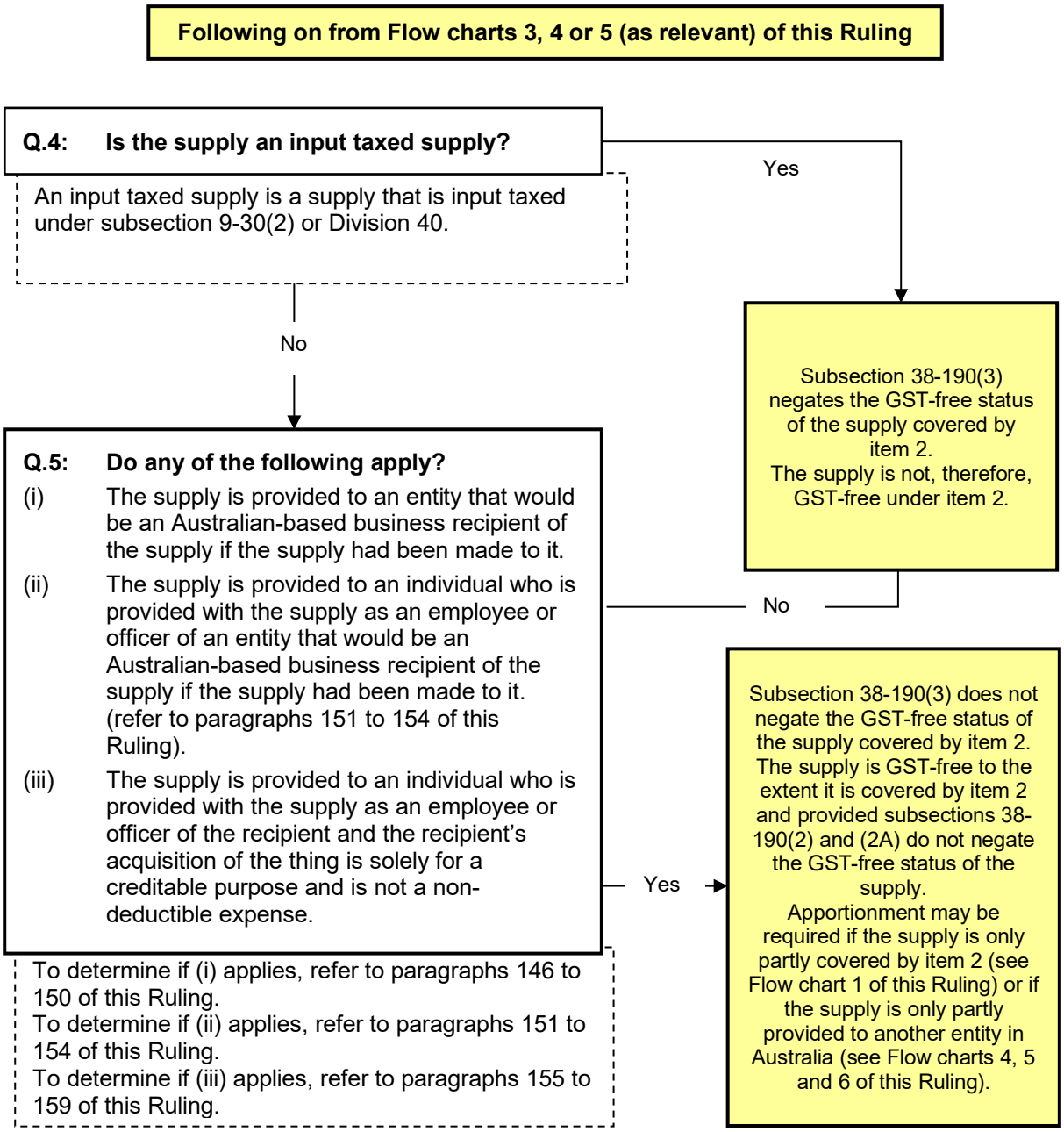
189. Flow chart 6 of this Ruling illustrates how, in the application of subsection 38-190(3), whether paragraph 38-190(3)(c) is satisfied.

Flow chart 6: In the application of subsection 38-190(3), how to determine whether paragraph 38-190(3)(c) is satisfied



Examples

How to determine whether the supply is provided to another entity

Example 1 – supply of technical support services made to a non-resident company and provided to an Australian customer

190. *US Co, a non-resident parent company, supplies personal use software to consumers world-wide, including in Australia. This software is supplied by the granting of a licence to use the intellectual property.*

191. *US Co does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf.*

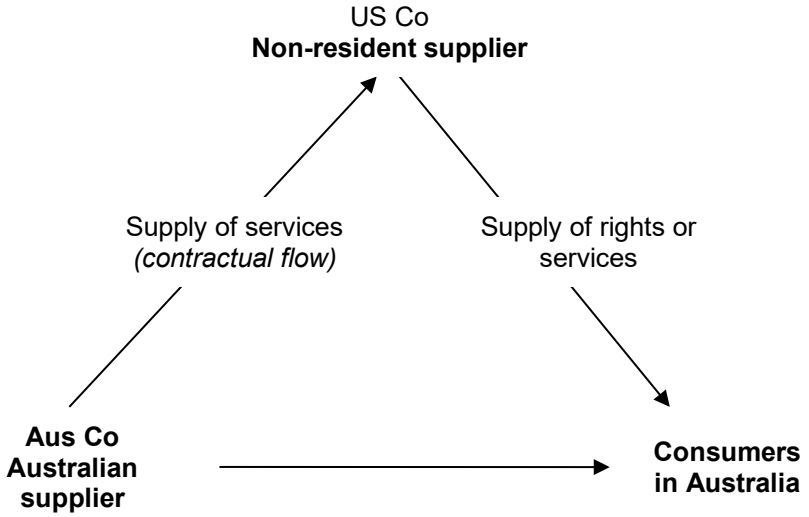
192. *US Co's contracts with its customers require US Co to provide technical support for the software supplied. As US Co has no presence in other countries, the non-resident company contracts with its global subsidiaries to perform the support services in relation to the software.*

193. *Aus Co, a GST-registered Australian subsidiary of US Co, provides the required technical support services in relation to software licensed by US Co to consumers in Australia.*

194. *The issues considered below are the characterisation of the thing supplied by Aus Co to US Co and the impact that characterisation has on the GST treatment of the supply.*

195. *The facts are illustrated in Diagram 1 of this Ruling:*

Diagram 1: Facts of Example 1 of this Ruling



Characterisation of the supply by Aus Co to US Co

196. *Various rights are granted under the contract made between Aus Co and US Co. However, performance of the contract by Aus Co involves providing a service to the consumers in Australia. In this circumstance, we do not consider that the supply by Aus Co to US Co could be characterised as anything other than the supply of a service. The fact that the service is provided to the consumers in Australia by Aus Co and not by US Co does not, in our view, transform the character of the supply made by Aus Co to US Co from a service to a right. Also, the character of the supply by Aus Co to US Co remains the*

same irrespective of whether the supply by US Co to the Australian consumers is determined to be a composite supply of rights or a mixed supply of rights and services.

Item 2

197. *The supply by Aus Co is made to a non-resident, US Co, which is not in Australia when the technical support services are performed. The supply satisfies the requirements of item 2 and is, therefore, a supply covered by item 2.*

Paragraph 38-190(3)(a)

198. *The supply of technical support services by Aus Co to US Co is a supply under an agreement entered into with a non-resident. Paragraph 38-190(3)(a) is therefore satisfied.*

Paragraph 38-190(3)(b)

(i) Provided to another entity

199. *Under the agreement with US Co, Aus Co is required to provide technical support services to consumers (in Australia). US Co, the entity to which the supply is made, has no further involvement with the provision of the supply to the Australian consumers, beyond entering into the contract and making payment for the technical support services rendered. This is a strong indicator that the supply is provided to the Australian consumers. The actual flow of the technical support services is to the Australian consumers. The services are not, therefore, provided to US Co.*

(ii) Provided to that other entity in Australia

200. *The Australian consumers are in Australia when the service is performed. The supply of technical support services is for the purposes of their private purposes in Australia. Paragraph 38-190(3)(b) is therefore satisfied.*

Paragraph 38-190(3)(c)

201. *The supply of technical support services is not an input taxed supply and none of subparagraphs 38-190(3)(c)(i) to (iii) apply. Paragraph 38-190(3)(c) is therefore satisfied.*

202. *Subsection 38-190(3) negates the GST-free status of the supply covered by item 2.*

Example 2 – supply of audit services made to a non-resident company and provided to its Australian subsidiary

203. *A non-resident United States (US) parent company contracts with an Australian accounting firm for the audit of its GST-registered subsidiary in Australia. The US parent company does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. The supply by the Australian accounting firm is properly characterised as the supply of a service.*

204. *The Australian accounting firm is engaged by the non-resident US parent company to carry out an audit of the Australian subsidiary. The audit service is about effecting compliance by the Australian subsidiary with its obligations under the corporation's laws in Australia. Under section 301 of the Corporations Act, the Australian subsidiary must have*

its annual financial report for a financial year audited in accordance with Division 3 of Part 2M.3 of that Act and obtain an auditor's report. The audit service is performed over a period of time culminating in the production of an audit report.

Item 2

205. *The supply is made to a non-resident, the US parent company, which is not in Australia when the service is performed. The supply satisfies the requirements of item 2 and is, therefore, a supply covered by item 2.*

Paragraph 38-190(3)(a)

206. *The supply of audit services by the Australian accounting firm is a supply under an agreement entered into with a non-resident. Paragraph 38-190(3)(a) is therefore satisfied.*

Paragraph 38-190(3)(b)

(i) Provided to another entity

207. *What is being supplied is an audit service effecting compliance by the Australian subsidiary with its statutory obligations in Australia. The nature of the service is such that the supply of audit services is provided to the Australian subsidiary. The actual flow of the audit service is to another entity, the Australian subsidiary.*

Alternative view

208. *Under section 308 of the Corporations Act, an auditor who audits the financial report of a company for a financial year must report to members on whether the auditor is of the opinion that the financial report is in accordance with that Act. An alternative view expressed is that this requirement means that the audit services are provided to the US parent company.*

209. *Notwithstanding this requirement, the supply is, in our view, provided to the Australian subsidiary. This additional requirement does not alter the fact that the service is about the Australian subsidiary meeting its obligations under Australian company law. It may be that the requirement under section 308 of the Corporations Act means that the supply is provided to both the non-resident parent company and the Australian subsidiary. However in that case, subsection 38-190(3) still applies. (For further discussion about apportionment where a supply is provided to more than one entity, see paragraphs 160 to 170 of this Ruling.)*

(ii) Provided to that other entity in Australia

210. *The Australian subsidiary is in Australia when the audit service is performed. As the supply of audit services is for the purposes of the Australian subsidiary, the supply is provided to that entity in Australia. Paragraph 38-190(3)(b) is therefore satisfied.*

Paragraph 38-190(3)(c)

211. *The supply of audit services is not an input taxed supply. The Australian subsidiary, is an entity that is registered for GST, carries on an enterprise in Australia and does not acquire the services for a private or domestic purpose. Accordingly, the Australian*

subsidiary would have been an Australian-based business recipient of the supply if the supply had been made to it and subparagraph 38-190(3)(c)(i) applies. Paragraph 38-190(3)(c) is therefore not satisfied.

212. *The Australian accounting firm must be able to ascertain, based on information and evidence available to it, that subparagraph 38-190(3)(c)(i) applies. (See paragraph 141 of this Ruling.)*

213. *Subsection 38-190(3) does not negate the GST-free status otherwise applicable to the supply of audit services covered by item 2.*

Example 3 – supply of audit services made and provided to a non-resident company

214. *A non-resident US parent company contracts with an Australian accounting firm for the audit of its GST-registered subsidiary in Australia. The audit service is about effecting compliance by the US parent company with US accounting or securities requirements that apply to it. The US parent company does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf.*

Item 2

215. *The supply is made to a non-resident, the US parent company, which is not in Australia when the service is performed. The supply satisfies the requirements of item 2 and is, therefore, a supply covered by item 2.*

Paragraph 38-190(3)(a)

216. *The supply of the audit services by the Australian accounting firm to the non-resident US parent company is a supply under an agreement entered into with a non-resident. Paragraph 38-190(3)(a) is therefore satisfied.*

Paragraph 38-190(3)(b)

(i) Not provided to another entity

217. *What is being supplied is an audit service effecting compliance by the US parent company with its reporting requirements in the US. The nature of the service is such that the supply of audit services is provided to the US parent company. The supply is not provided to another entity. The supply is not provided to the Australian subsidiary. The actual flow of the audit service is to the US parent company, not the Australian subsidiary which is the subject of the audit. Paragraph 38-190(3)(b) is therefore not satisfied.*

218. *Subsection 38-190(3) does not negate the GST-free status of the supply. It is not necessary to consider paragraph 38-190(3)(c).*

219. *Even if the supply was provided to the Australian subsidiary in Australia, the supply would be GST-free because paragraph 38-190(3)(c) would not be satisfied. The supply of audit services is not an input taxed supply and subparagraph 38-190(3)(c)(i) would apply because the Australian subsidiary would have been an Australian-based business recipient of the supply, if the supply had been made to it. (See Example 2 of this Ruling.)*

Example 4 – supply of repair services made and provided to a non-resident landlord

220. *Angela is a non-resident individual who owns a residential apartment in Queensland which is currently being rented. The apartment is managed by a real estate agent on Angela's behalf. The real estate agent advises Angela that the air conditioner needs repairing as it has ceased working. Angela authorises the repairs and the agent arranges for a person to carry out the repairs to the air conditioner. Angela is not physically located in Australia at any time during which the repairs to the air conditioner are performed. Angela is not registered, or required to be registered, for GST in Australia.*

Item 2

221. *The repair services are contracted for by Angela's agent on her behalf. The supply of the repair services to the rental property are therefore made to Angela, a non-resident who is not in Australia when the repair services are performed. As Angela is not registered, or required to be registered, the supply satisfies the requirements of item 2 and is, therefore, a supply covered by item 2.*

Paragraph 38-190(3)(a)

222. *The supply of repair services by the repairer is a supply under an agreement entered into indirectly with a non-resident (that is, through Angela's agent in Australia). Paragraph 38-190(3)(a) is therefore satisfied.*

Paragraph 38-190(3)(b)

(i) Not provided to another entity

223. *What is being supplied is the service of repairing an air conditioner. The circumstances of the supply are that Angela, as landlord, is maintaining the leased premises and all inclusions (such as the air conditioner) in working order as leased by the tenant.*

224. *The supply of the repair services is provided, therefore, to Angela. It is not provided to the tenant. While the tenant benefits from the supply of the repair services as they are able to once again use the air conditioner, this does not alter the nature of the supply and the fact that the supply, as properly described, is not provided to another entity, the tenant. (The supply is also not provided to the agent who merely arranges for the supply to be made to Angela.) Paragraph 38-190(3)(b) is therefore not satisfied.*

225. *Subsection 38-190(3) does not negate the GST-free status of the supply of repair services covered by item 2. It is not necessary to consider paragraph 38-190(3)(c).*

Subsection 38-190(2A)

226. *It is also necessary to consider subsection 38-190(2A) which could negate the GST-free status of the supply under item 2. This provision applies to a supply covered by item 2 if the acquisition of the supply (in this case, the repair services) relates either directly or indirectly to the making of a supply of real property in Australia that would be wholly or partly input taxed under Subdivision 40-B or 40-C.*

227. *As the supply of the residential rental property by Angela would be input taxed and the acquisition of the repair services relates to the making of that supply, the GST-free status of the supply is negated by subsection 38-190(2A) if the supply of the repair*

services is made on or after 1 April 2005.[39] *If the supply of the repair services is made before 1 April 2005, subsection 38-190(2A) does not apply.*

Example 5 – supply of speaking services made to a non-resident company and provided to individuals in Australia

228. *An Australian legal specialist, the sole proprietor of a boutique legal practice in Melbourne specialising in maritime law, is engaged by a non-resident company to speak at an international trade law conference in Sydney. The topic is recent developments in maritime law affecting international trade and, in particular, the impact of a recent High Court decision on current industry arrangements. The conference is attended by members of the legal profession, both from Australia and overseas, who are not employees or otherwise associated with the non-resident company. The non-resident company, the conference organiser, does not carry on business in Australia through a place of business of its own or through an agent acting on its behalf.*

Item 2

229. *The supply of speaking services is made by the Australian legal specialist to the non-resident company. The non-resident company is not in Australia when the speaking services are performed. The supply satisfies the requirements of item 2 and is, therefore, a supply covered by item 2.*

Paragraph 38-190(3)(a)

230. *The supply of speaking services by the Australian legal specialist is a supply under an agreement entered into with a non-resident. Paragraph 38-190(3)(a) is therefore satisfied.*

Paragraph 38-190(3)(b)

(i) Provided to another entity

231. *What is supplied is information and knowledge for the professional development of the members of the audience. The supply of speaking services is akin to a supply of training services. In performing the speaking service, the members are updated and trained on recent developments. Therefore, the nature of the supply is such that the speaking services are provided to the members of the legal profession attending the conference, each another entity, and not to the non-resident company organising the conference.*

(ii) Provided to that other entity in Australia

232. *Each audience member is provided the speaking services for their professional development in Australia. As their presence in Australia is integral to the performance of the supply, the supply is provided to another entity, each member of the audience, in Australia. Paragraph 38-190(3)(b) is therefore satisfied.*

[39] The amendment which inserted subsection 38-190(2A) applies to supplies made on or after 1 April 2005. Refer to clause 3, Schedule 9 of the *Tax Laws Amendment (2004 Measures No. 6) Act 2005*, which received Royal Assent on 21 March 2005.

Paragraph 38-190(3)(c)

233. *The supply of speaking services is not an input taxed supply and subparagraphs 38-190(3)(c)(ii) and (iii) do not apply as the audience members are not employees or officers of the non-resident company.*

234. *Subparagraph 38-190(c)(i) may apply to the extent that any of the attendees would be Australian-based business recipients of the supply if the supply had been made directly to them. However, the Australian legal specialist must be able to ascertain, based on information and evidence available to it, the extent to which subparagraph 38-190(3)(c)(i) applies. (See paragraph 141 of this Ruling.)*

235. *To the extent subparagraph 38-190(c)(i) does not apply, paragraph 38-190(3)(c) is satisfied and subsection 38-190(3) negates the GST-free status otherwise applicable to the supply of speaking services made by the lawyer and covered by item 2.*

Example 6 – supply of promoting and marketing services made and provided to a non-resident company

236. *A non-resident software company sells just-in-time inventory control software designed for the construction industry. To ensure the success of the release of its new software, the non-resident software company holds seminars in Australia for both current users of earlier versions of the software and potential users of the new software from the construction industry. The non-resident software company does not carry on business in Australia, either through a place of business of its own or through an agent acting on its behalf.*

237. *An Australian software expert enters into an agreement with the non-resident software company to speak at various seminars to be held around Australia.*

238. *At the seminars, the software expert promotes the new software. The expert advocates the benefits of its use and highlights the new features for the current users of previous versions to promote and encourage sales of the new version.*

Item 2

239. *The supply of speaking services by the Australian software expert is made to the non-resident software company. As the non-resident software company is not in Australia when the speaking services are performed, the supply of speaking services by the Australian software expert satisfies the requirements of item 2 and is, therefore, a supply covered by item 2.*

Paragraph 38-190(3)(a)

240. *The supply of speaking services by the Australian software expert to the non-resident software company is a supply under an agreement entered into with a non-resident. Paragraph 38-190(3)(a) is therefore satisfied.*

Paragraph 38-190(3)(b)

(i) Not provided to another entity

241. *Unlike Example 5 of this Ruling, the nature of the service is not the professional development of members of the audience. Rather, the nature of the supply is promoting*

and marketing a new product – that is, the new software of the non-resident software company – to potential customers, being the members of the construction industry attending the conference. While knowledge and information about the software capabilities flow to the audience members, this is only a by-product of the supply of speaking services and it does not alter the true nature of the service – that is, the promotion and marketing of the new software.

242. *Therefore, the supply is made and provided to the non-resident software company. Paragraph 38-190(3)(b) is not satisfied.*

243. *As the supply is not provided to another entity, subsection 38-190(3) does not negate the GST-free status of the supply of speaking services covered by item 2. It is not necessary to consider paragraph 38-190(3)(c).*

Example 7 – supply of a telephone booking service made and provided to a non-resident

244. *Trans-Europe Railways Co (Trans-Europe) is a non-resident company which operates passenger rail in Europe. Trans-Europe engages an Australian company, Aus Bookings Co, to operate a telephone bookings centre in Australia. Aus Bookings Co operates a successful telephone bookings centre for other foreign transport operators. Customers call Aus Bookings Co to enquire about timetables, make reservations and buy tickets. Aus Bookings Co passes on the relevant information and money to Trans-Europe.*

245. *Trans-Europe does not carry on business in Australia either through a place of business of its own or through an agent at a fixed and definite place (including through Aus Bookings Co).*[40]

Item 2

246. *The supply of booking services by Aus Bookings Co is made to Trans-Europe, a non-resident company that is not in Australia when the services are performed.*[41] *The supply satisfies the requirements of item 2 and is, therefore, a supply covered by item 2.*

Paragraph 38-190(3)(a)

247. *The supply of booking services by Aus Bookings Co to Trans-Europe is a supply under an agreement entered into with a non-resident. Paragraph 38-190(3)(a) is therefore satisfied.*

Paragraph 38-190(3)(b)

(i) Not provided to another entity

248. *What is being supplied is a service of operating a telephone bookings or enquiry service – the receiving of telephone calls, the giving of train timetable and other information and the taking of telephone bookings and payments for Trans-Europe. The*

[40] Refer to paragraphs 277 to 318 of GSTR 2004/7 for an explanation of when a non-resident company carries on business in Australia through an agent at a fixed and definite place for a sufficiently substantial period of time.

[41] Alternatively, if the facts demonstrate that Trans-Europe carries on business in Australia through Aus Booking Co acting on its behalf, the outcome would not change as Trans-Europe is not in Australia *in relation to the supply* of the booking and agency services by Aus Booking Co.

nature of the service is such that the supply is provided to Trans-Europe. While the customers get information and other benefits, such as their travel booked, by calling Aus Bookings Co, the customers are not provided with the service of operating a bookings and enquiries service. This is provided to Trans-Europe. Paragraph 38-190(3)(b) is not satisfied.

249. *Subsection 38-190(3) does not negate the GST-free status of the supply covered by item 2. It is not necessary to consider paragraph 38-190(3)(c).*

Example 8 – supply of assembly services made to a non-resident and provided to individuals in Australia

250. *UK Co sells furniture in kit form to customers in Australia (individuals) on a delivered duty paid basis. UK Co does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. When ordering goods from UK Co, customers may specify that they would prefer, for an additional fee, that the furniture is assembled prior to delivery.*

251. *UK Co contracts with Aus Engineering to assemble the furniture in Australia if an Australian customer has specified and paid for the furniture to be assembled prior to delivery. If a customer has requested the furniture to be delivered assembled, UK Co arranges for the importation and delivery of the furniture in kit form to the premises of Aus Engineering. who assembles the furniture so that it is ready to be delivered, as assembled, to the Australian customer of UK Co. The supply from Aus Engineering to UK Co is a service of assembling the furniture for the specified Australian customer.*

Item 2

252. *The supply of the assembly services by Aus Engineering Co is made to a non-resident company, UK Co, which is not in Australia when the assembly services are performed. As the supply of assembly services is a supply of work physically performed on goods, the supply does not satisfy the requirements of paragraph (a) of item 2. If UK Co is not registered, or required to be registered, the supply meets the requirements of paragraph (b) of item 2 and the supply is, therefore, a supply covered by item 2. (Note: as UK Co imports the goods, it is making supplies connected with Australia (subsection 9-25(3)) and will be required to register for GST if it meets the registration turnover threshold).*[42]

Paragraph 38-190(3)(a)

253. *The supply of assembling furniture by Aus Engineering to UK Co is a supply under an agreement entered into with a non-resident. Paragraph 38-190(3)(a) is therefore satisfied.*

[42] Division 23. UK Co, as the importer, is also liable for GST on the taxable importation and would need to register for GST to claim any offsetting input tax credits on its creditable importation.

Paragraph 38-190(3)(b)

(i) Provided to another entity

254. *The supply is a service of assembling furniture, supplied in a kit form, for a specified customer of UK Co. In doing this assembly, Aus Engineering assembles the furniture kit for specified customers. The supply is provided to another entity, the customer.*

(ii) Provided to that other entity in Australia

255. *The Australian customer is in Australia when the services are performed. If the customer is a resident individual, the supply is provided to that individual in Australia. If the customer is a non-resident individual, the need for the supply arises from the presence of that individual in Australia. The supply of assembly services is, therefore, provided to another entity (the Australian customer) in Australia, irrespective of whether that customer is a non-resident or resident individual.*

Paragraph 38-190(3)(c)

256. *The supply of assembly is not an input taxed supply and subparagraphs 38-190(3)(c)(ii) and (iii) do not apply.*

257. *Subparagraph 38-190(c)(i) may apply if the Australian customer would be an Australian-based business recipient of the supply if the supply had been made directly to them. However, Aus Engineering must be able to ascertain, based on information and evidence available to it, that subparagraph 38-190(3)(c)(i) applies.*

258. *If subparagraph 38-190(c)(i) does not apply, paragraph 38-190(3)(c) is satisfied and subsection 38-190(3) negates the GST-free status of the supply covered by item 2.*

259. *Note: in relation to the supply made by UK Co to its customer, from 1 October 2016, a supply of goods (other than a luxury car) that involves the goods being brought to Australia and the installation or assembly of the goods in Australia is treated as if it were 2 separate supplies (a supply of the installation and assembly service and a separate supply of goods).*[43]

Example 9 – supply of assembly services made and provided to a non-resident company

260. *Following on from Example 8 of this Ruling, the result would be different if UK Co sold assembled furniture but, to lower costs, they delay assembly of the furniture until it arrives in Australia where upon it is assembled by Aus Engineering. The assembly of the furniture is not an additional or optional component of the supply of the furniture by UK Co to the customer. While in this case the agreement is for the supply of furniture (assembled), sometimes depending on the nature of the goods it may be implicit the goods are supplied in an assembled form (for example, the supply of a car).*

Item 2

261. *The supply of the assembly services by Aus Engineering Co is made to a non-resident company, UK Co, which is not in Australia when the assembly services are*

[43] Subsection 9-26(6). Refer to Goods and Services Tax Ruling GSTR 2018/2 *Goods and services tax supplies of goods connected with the indirect tax zone (Australia)*.

performed. As the supply of assembly services is a supply of work physically performed on goods, the supply does not satisfy the requirements of paragraph (a) of item 2. If UK Co is not registered, or required to be registered, the supply meets the requirements of paragraph (b) of item 2 and the supply is, therefore, a supply covered by item 2. (Note: as UK Co imports the goods, it is making supplies connected with Australia (subsection 9-25(3)) and will be required to register for GST if it meets the registration turnover threshold.[44]

Paragraph 38-190(3)(a)

262. *The supply of assembling furniture by Aus Engineering to UK Co is a supply under an agreement entered into with a non-resident. Paragraph 38-190(3)(a) is therefore satisfied.*

Paragraph 38-190(3)(b)

(i) Not provided to another entity

263. *UK Co sells assembled furniture to customers in Australia. The supply by Aus Engineering is a service of assembling furniture that UK Co has sold to customers in Australia in an assembled form. The nature of the services is such that the supply of assembly services is provided to UK Co, not for a particular customer of UK Co, as in Example 8 of this Ruling.*

264. *On the facts of this case, the supply of the assembly services by Aus Engineering actually flow to UK Co, not the customer in Australia. The supply of assembly services is not provided to another entity in Australia. Paragraph 38-190(3)(b) is not satisfied.*

265. S*ubsection 38-190(3) does not negate the GST-free status of the supply covered by item 2. It is not necessary to consider paragraph 38-190(3)(c).*

How to determine whether a supply is provided to an individual in Australia

How to determine whether an individual's presence at a particular location is integral to the provision of the supply

Example 10 – supply of legal services made to a non-resident and provided to a resident individual who is outside Australia

266. *David, an Australian-resident individual, is arrested and charged with an offence while in New Zealand on holiday. An Australian legal firm is engaged by a non-resident (who is not in Australia at any time) to provide legal services to David. The legal services are provided to David over a 4-week period. During the first week, David is in contact with the firm on a regular basis. However, as the matter is largely resolved during this week, there is no contact between the firm and David during the remaining 3 weeks he is in New Zealand. The firm continues to attend to some matters to finalise the issue on David's behalf during these 3 weeks. David continues on with his holiday in New Zealand.*

[44] Division 23.

Item 2

267. *The supply of legal services is made to a non-resident who is not in Australia when the services are performed. The supply satisfies the requirements of item 2 and is, therefore, a supply covered by item 2.*

Paragraph 38-190(3)(a)

268. *The supply of legal services by the supplier in Australia to the non-resident is a supply under an agreement entered into with a non-resident. Paragraph 38-190(3)(a) is therefore satisfied.*

Paragraph 38-190(3)(b)

(i) Provided to another entity

269. *The legal services are required to be provided to David. The supply, although made to a non-resident, is provided to another entity, David.*

(ii) Not provided to that other entity in Australia

270. *The services are not provided to David in Australia if David is outside Australia when the thing supplied is done and his presence outside Australia is integral to the provision of the supply. The need for the supply of legal services arises from David's presence outside Australia, his presence outside Australia is not merely coincidental with the provision of the supply.*

271. *As David's presence outside Australia is integral to the provision of the legal services, the supply is provided to David outside Australia. Paragraph 38-190(3)(b) is therefore not satisfied.*

272. *Subsection 38-190(3) does not negate the GST-free status of the supply covered by item 2. It is not necessary to consider paragraph 38-190(3)(c).*

273. *Note: if any legal services in relation to this matter are provided to David after his return to Australia, those services are provided to David in Australia. To that extent, subsection 38-190(3) applies to negate the GST-free status of the supply covered by item 2. Paragraph 38-190(3)(c) is satisfied as the supply of legal support services is not an input taxed supply and none of the subparagraphs 38-190(3)(c)(i) to (iii) apply.*

Example 11 – supply of a football game ticket made to a non-resident employer and provided to an employee in Australia

274. *A UK non-resident employer purchases a ticket from a supplier for his employee in Australia to attend a football match in Melbourne. The employee is a non-resident individual who is temporarily in Australia for work purposes.*

275. *The non-resident employer does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. The non-resident employer does not have pay as you go (PAYG) withholding obligations in Australia or obligations under the Fringe Benefits Tax Assessment Act 1986.*

Item 2

276. *The supply of entertainment services is made to a non-resident, the employer, who is not in Australia when the entertainment services are performed. The supply satisfies the requirements of item 2 and is, therefore, a supply covered by item 2.*

Paragraph 38-190(3)(a)

277. *The supply of entertainment services by the supplier in Australia to the non-resident employer is a supply under an agreement entered into with a non-resident. Paragraph 38-190(3)(a) is therefore satisfied.*

Paragraph 38-190(3)(b)

(i) Provided to another entity

278. *What is being supplied is entertainment and the employee is the entity who attends the football match and is entertained. The supply, although made to the employer, is provided to the employee.*

(ii) Provided to that other entity in Australia

279. *The employee attends the football match in Australia and is involved with the supply while in Australia. The employee is the entity that is entertained. Therefore, the supply is provided to another entity, the employee, in Australia. Paragraph 38-190(3)(b) is therefore satisfied.*

Paragraph 38-190(3)(c)

280. *The supply of entertainment services is not an input taxed supply and none of the subparagraphs of paragraph 38-190(3)(c) apply. Even though the supply is provided to an individual who is an employee of the recipient of the supply, the non-resident recipient's acquisition is a non-deductible entertainment expense.*[45] *Accordingly, subparagraph 38-190(3)(c)(iii) does not apply and paragraph 38-190(3)(c) is satisfied.*

281. *Subsection 38-190(3) negates the GST-free status of the supply covered by item 2.*

282. *Note: it is acknowledged that a supplier in these circumstances may not have all the necessary information to determine whether subparagraph 38-190(3)(c)(iii) applies. For example, they may not be aware of the employer and employee relationship between the recipient and the individual to which the supply is provided. They may also not know whether the non-resident recipient's acquisition is a non-deductible expense. If a supplier considers that a supply they make is GST-free because subparagraph 38-190(3)(c)(iii) applies, the supplier must be able to ascertain this based on information and evidence available to it. (See paragraph 141 of this Ruling.)*

[45] An acquisition is a non-deductible expense if it is not deductible because of Division 32 of the ITAA 1997 (entertainment expenses); refer to paragraph 69-5(3)(f) of the GST Act. Entertainment includes 'recreation', which is defined under subsection 995-1(1) of ITAA 1997 to include amusement, sport or similar leisure-time pursuits.

Example 12 – supply of storage services made to a non-resident employer and provided to a non-resident individual outside Australia

283. *John, who is a non-resident, has personal goods stored in Brisbane at a lock-up storage facility. The agreement for the storage is between John's employer, a non-resident company, and an Australian storage provider. John comes to Australia on holidays and calls in to check the condition and safety of the goods he has stored at the facility.*

Item 2

284. *The supply is made to a non-resident, the employer company, which is not in Australia when the storage services are performed. The supply satisfies the requirements of item 2 and is, therefore, a supply covered by item 2.*

Paragraph 38-190(3)(a)

285. *The supply of storage services by the Australian storage provider to the non-resident employer company is a supply under an agreement entered into with a non-resident. Paragraph 38-190(3)(a) is therefore satisfied.*

Paragraph 38-190(3)(b)

(i) Provided to another entity

286. *What is being supplied is storage of personal goods of an employee. John's goods are stored for him. The nature of the service is such that the supply of storage services is provided to John, another entity.*

(ii) Not provided to that other entity in Australia

287. *In the circumstances of this supply, John is merely taking advantage of being in Australia to check on the condition and safety of the goods he has stored at the facility. John's presence is not integral to the provision of the supply, it is merely coincidental. The supply of storage services is therefore not provided to John in Australia. Paragraph 38-190(3)(b) is not satisfied.*

288. *Subsection 38-190(3) does not negate the GST-free status of the supply covered by item 2. It is not necessary to consider paragraph 38-190(3)(c).*

Example 13 – supply of private investigation services made to a non-resident and provided to a resident individual in Australia

289. *Peter's relative, a non-resident individual, who is not in Australia when the thing supplied is done, engages an Australian private investigator to provide services to Peter in Australia. Peter, a resident individual, is trying to find a relative who may be either in Australia or outside Australia. Peter is on holidays outside Australia during part of the time when those services are performed. The private investigator provides weekly email updates to Peter on the progress they are making in finding the missing relative.*

Item 2

290. *The supply of investigation services is made to a non-resident individual who is not in Australia when the services are performed. The supply satisfies the requirements of item 2 and is, therefore, a supply covered by item 2.*

Paragraph 38-190(3)(a)

291. *The supply of investigation services by the supplier in Australia to the non-resident is a supply under an agreement entered into with a non-resident. Paragraph 38-190(3)(a) is therefore satisfied.*

Paragraph 38-190(3)(b)

(i) Provided to another entity

292. *The investigation services are required to be provided to Peter. The supply, although made to a non-resident, is provided to another entity, being Peter.*

(ii) Provided to that other entity in Australia

293. *The weekly emails to Peter while he is overseas are merely necessitated by his absence from Australia on holiday. His presence outside Australia is merely coincidental with the provision of the supply. Peter is only being updated on the progress of the supply. Peter's presence outside Australia is not integral to the provision of the supply. The supply is therefore provided to Peter in Australia. Paragraph 38-190(3)(b) is therefore satisfied.*

Paragraph 38-190(3)(c)

294. *The supply of investigation services is not an input taxed supply and none of subparagraphs 38-190(3)(i) to (iii) apply. Paragraph 38-190(3)(c) is therefore satisfied.*

295. *Subsection 38-190(3) therefore negates the GST-free status of the supply covered by item 2.*

Supplies of certain freight or delivery services

Example 14 – supply of domestic transport services made to a non-resident and provided to another entity outside Australia

296. *A GST-registered Australian exporter sells goods to a Japanese customer on delivered duty paid terms. The exporter is obliged, therefore, to deliver the goods to the Japanese customer at the named place of destination, being Tokyo. The Japanese customer takes delivery of the goods in Tokyo.*

297. *The Australian exporter contracts with an overseas airline, Tokyo Air Freight, to transport the goods from Adelaide to Tokyo. Tokyo Air Freight does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. Tokyo Air Freight contracts with an Australian transport supplier, Aus Transport, to undertake the domestic leg of the transport of the goods from Adelaide to Sydney.*

298. *Aus Transport supplies Tokyo Air Freight with domestic transport services. Aus Transport moves the goods from Adelaide to Sydney on behalf of Tokyo Air Freight.*

299. *Aus Transport arranges a suitable time with the Australian exporter to pick up the goods. The transport service occurs over the time from picking up the goods to delivery in Sydney.*

Item 2

300. *The supply of domestic transport services by Aus Transport to Tokyo Air Freight is a supply made to a non-resident company that is not in Australia when the transport services are performed. The supply of transport services is not a supply of work physically performed on goods.*[46] *The supply satisfies the requirements of item 2 and is, therefore, a supply covered by item 2.*

Paragraph 38-190(3)(a)

301. *The supply of domestic transport services by Aus Transport to Tokyo Air Freight is a supply under an agreement entered into with a non-resident. Paragraph 38-190(3)(a) is therefore satisfied.*

Paragraph 38-190(3)(b)

(i) Provided to another entity

302. *Under the export sale terms, the Australian exporter is required to provide the Japanese customer with the services of delivering the goods to the customer at the named place of destination. The Australian exporter effects provision of delivery services to the Japanese customer through Tokyo Air Freight, who in turn subcontracts part of the provision of delivery services to the Japanese customer to Aus Transport.*

303. *On these facts, the transport services supplied by Aus Transport to Tokyo Air Freight are provided to the Japanese customer. Delivery services are required to be provided to the Japanese customer and those services are provided to the customer under various subcontract arrangements.*

304. *However, we recognise that Aus Transport may not be aware of the full circumstances of the supply of transport, as described above, that it makes to Tokyo Air Freight. At a practical level, the transport services supplied by Aus Transport are provided to the addressee, the Japanese customer. Thus, where goods from one entity are addressed for delivery to another entity, we consider that it is reasonable for Aus Transport to conclude that the transport services are provided to the addressee entity. Therefore, the supply of transport services is provided to another entity, the Japanese customer.*

(ii) Not provided to that other entity in Australia

305. *If the Japanese customer is not in Australia when the transport services are performed, the supply is not provided to another entity in Australia. Paragraph 38-190(3)(b) is not satisfied.*

306. *However, we recognise that Aus Transport is unlikely to know the specific whereabouts of the Japanese customer during the period when the transport services are performed. At a practical level, the goods are addressed to an entity outside Australia and we therefore consider that it is reasonable for Aus Transport to conclude that the transport*

[46] Assuming that the requirements of section 9-5 are otherwise satisfied.

services are provided to that other entity outside Australia, that is, the supply is not provided to another entity in Australia. (Note: this approach does not rely on the individual's residency status. Therefore, the outcome is the same even if the Japanese customer is a resident of Australia.)

307. *Subsection 38-190(3) does not negate the GST-free status of the supply covered by item 2.*[47] *It is not necessary to consider paragraph 38-190(3)(c).*

308. *Note: even though the supply of transport services (that is, the freight services) made by Tokyo Air Freight to the Australian exporter is partly performed in Australia (under a subcontract arrangement with Aus Transport), the supply is not connected with Australia because of table item 1 of subsection 9-26(1). Tokyo Air Freight is a non-resident, it does not make the supply of freight services through an enterprise it carries on in Australia, and the supply is made to an Australian-based business recipient of the supply.*

Example 15 – supply of delivery services made to a non-resident and provided to an individual in Australia

309. *Booklovers Inc is a non-resident company which does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. Booklovers Inc sells books in response to orders placed over the internet. A delivery service is offered by Booklovers Inc for a charge to cover the cost.*[48]

310. *Kate, an individual who does not carry on an enterprise and is not registered for GST, orders a book from Booklovers Inc and pays for delivery by Booklovers Inc to her home address in Australia. Booklovers Inc meets this delivery obligation by engaging a subcontractor, Ace Couriers, to deliver the book. Ace Couriers is an Australian-resident company.*

Item 2

311. *The supply of delivery services is made to a non-resident company, Booklovers Inc, that is not in Australia when the delivery services are performed. The supply satisfies the requirements of item 2 and is, therefore, a supply covered by item 2.*

Paragraph 38-190(3)(a)

312. *The supply of delivery services by Ace Couriers to Booklovers Inc is a supply under an agreement entered into with a non-resident. Paragraph 38-190(3)(a) is therefore satisfied.*

Paragraph 38-190(3)(b)

(i) Provided to another entity

313. *Booklovers Inc is required to provide Kate with the services of delivering a book to her at a particular place. Booklovers Inc effects provision of delivery services to Kate*

[47] The supply of domestic transport services by Aus Transport to Tokyo Air Freight may also be GST-free under table item 5 of subsection 38-355(1).

[48] This is a supply of delivered goods – refer to Goods and Services Tax Determination GSTD 2002/3 *Goods and services tax: how do I account for GST when I supply taxable goods, non-taxable goods and delivery services together?*

through Ace Couriers. The nature of the supply is delivery services to Kate as required under the terms of sale.

314. *However, we recognise that Ace Couriers may never be aware of the full circumstances of the supply of delivery services, as described above, that it makes to Booklovers Inc. At a practical level, the delivery services supplied by Ace Couriers are provided to the addressee, Kate. Thus, where goods from one entity are addressed for delivery to another entity, we consider that it is reasonable for Ace Couriers to conclude that the delivery services are provided to another entity, in this case, Kate.*

(ii) Provided to that other entity in Australia

315. *If Kate is in Australia when the delivery services are performed, the supply is provided to Kate in Australia.*

316. *However, we recognise that Ace Couriers is unlikely to know the specific whereabouts of Kate during the period when the delivery services are performed. At a practical level, the goods are addressed to Kate in Australia and we therefore consider that it is reasonable for Ace Couriers to conclude that the delivery services are provided to Kate in Australia. The supply therefore is provided to another entity in Australia. (Note: this approach does not rely on the individual's residency status. Therefore, the outcome is the same even if Kate is a non-resident.) Paragraph 38-190(3)(b) is satisfied.*

Paragraph 38-190(3)(c)

317. *The supply of delivery services is not an input taxed supply and none of subparagraphs 38-190(3)(c)(i) to (iii) apply. Paragraph 38-190(3)(c) is therefore satisfied.*

318. *Subsection 38-190(3) negates the GST-free status of the supply covered by item 2.*

319. *However, the supply of delivery services by Ace Couriers may be otherwise GST-free under item 5(b) of subsection 38-355(1). In these circumstances, paragraph 38-355(2)(a) is satisfied as the recipient of the supply is Booklovers Inc, a non-resident that is not in Australia when the thing supplied is done. The supply by Ace Couriers will be GST-free from a place outside Australia to the place of consignment in Australia. 'Place of consignment' is defined in section 195-1 and, in this case, would be Kate's home address in Australia.*

How to determine whether a supply is provided to a company, partnership, corporate limited partnership or trust in Australia

Example 16 – supply made to non-resident parent company and provided to an offshore branch of its Australian subsidiary

320. *A non-resident parent company contracts with a customs specialist for the provision of customs advice in relation to operations in the Asia-Pacific region. The non-resident company does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. The customs specialist makes the supply through an enterprise it carries on in Australia.*

321. *The non-resident company has a GST-registered Australian subsidiary with a branch in Malaysia. The branch operates an import and export business in Kuala Lumpur. The customs specialist provides advice to the Malaysian branch on aspects of new import restrictions recently introduced in Malaysia.*

Item 2

322. *The supply of advice is made by the customs specialist to the non-resident parent company that is not in Australia when the services are performed. The supply satisfies the requirements of item 2 and is, therefore, a supply covered by item 2.*

Paragraph 38-190(3)(a)

323. *The supply of advice by the customs specialist to the non-resident parent company is a supply under an agreement entered into with a non-resident. Paragraph 38-190(3)(a) is therefore satisfied.*

Paragraph 38-190(3)(b)

(i) Provided to another entity

324. *What is being supplied is advice on import restrictions impacting the Malaysian operations of the Australian subsidiary and that advice is required to be provided to the Malaysian branch of the Australian subsidiary. The supply is provided to another entity, the Australian subsidiary. The actual services flow to the Australian subsidiary.*

(ii) Not provided to that other entity in Australia

325. *The Australian subsidiary is in Australia when the services are performed. However, the advice is for the purposes of the Malaysian branch.*

326. *The supply is not therefore provided to another entity in Australia. Paragraph 38-190(3)(b) is therefore not satisfied. Subsection 38-190(3) does not negate the GST-free status of the supply covered by item 2. It is not necessary to consider paragraph 38-190(3)(c).*

327. *Note: even if the supply was provided to the Australian subsidiary in Australia, the supply would be GST-free because paragraph 38-190(3)(c) would not be satisfied. The supply of advice is not an input taxed supply and subparagraph 38-190(3)(c)(i) would apply because the Australian subsidiary would have been an Australian-based business recipient of the supply if the supply had been made to it. (See Example 2 at paragraphs 203 to 213 of this Ruling.)*

Example 17 – supply of transport services made to a non-resident and provided to another entity in Australia

328. *A non-resident company, UK Co, supplies goods to an Australian-resident company, Oz Co, on delivered duty paid (or unpaid) terms of sale. UK Co is obliged to deliver the goods to Oz Co. UK Co engages a United Kingdom-resident transport company, UK Trans Co, to undertake the international movement of goods from the United Kingdom to Australia. The goods are to be delivered to Oz Co in Adelaide.*

329. *Neither UK Co, nor UK Trans Co, carries on business in Australia through a place of business of its own or through an agent acting on its behalf.*

330. *Oz Co is registered for GST, carries on an enterprise in Australia and does not acquire the delivery services for a private or domestic purpose.*

331. *UK Trans Co subcontracts to an Australian-resident transport company, Aus Transport, the domestic transport of goods from Sydney to Adelaide.*

332. *Aus Transport picks up the goods in Sydney and delivers them to Adelaide.*

333. *Aus Transport arranges a suitable time with Oz Co to deliver the goods. The transport service occurs over the time from picking up the goods in Sydney, the journey to Adelaide, until they are delivered to Oz Co.*

Item 2

334. *Aus Transport makes a supply of transport services to UK Trans Co that is not in Australia when the services are performed. The supply satisfies the requirements of item 2 and is, therefore, a supply covered by item 2.*

Paragraph 38-190(3)(a)

335. *The supply of transport services by Aus Transport to UK Trans Co is a supply under an agreement entered into with a non-resident. Paragraph 38-190(3)(a) is therefore satisfied.*

Paragraph 38-190(3)(b)

(i) Provided to another entity

336. *Under the export sale terms, UK Co is required to provide Oz Co with the services of delivering the goods to Oz Co in Adelaide. UK Co effects provision of delivery services to Oz Co through UK Trans Co who, in turn, subcontracts part of the provision of delivery services to Oz Co to Aus Transport.*

337. *On these facts, the supply of domestic transport services by Aus Transport to UK Trans Co is provided to the Australian customer of the United Kingdom exporter. Delivery services are required to be provided to the Australian customer and those services are provided to the customer under various subcontract arrangements.*

338. *However, we recognise that Aus Transport may not be aware of the full circumstances of the supply of transport, as described above, that it makes to UK Trans Co. At a practical level, the transport services are provided to the addressee, the Australian customer, Oz Co. Thus, where goods from one entity are addressed for delivery to another entity, we consider that it is reasonable for Aus Transport to conclude that the transport services are provided to another entity, in this case Oz Co.*

(ii) Provided to that other entity in Australia

339. *Oz Co is in Australia when the transport services are performed. If the transport services are for the purposes of Oz Co in Australia, the supply of transport services is provided to another entity, Oz Co, in Australia.*

340. *However, we recognise that Aus Transport is unlikely to know whether the transport services are for the purposes of Oz Co. At a practical level, the goods are addressed to Oz Co in Australia and we therefore consider that it is reasonable for Aus Transport to conclude that the transport services are provided to Oz Co for its purposes. Therefore, the supply is provided to another entity in Australia. Paragraph 38-190(3)(b) is therefore satisfied. (Note: the outcome is the same even if Oz Co is not a resident of Australia.)*

Paragraph 38-190(3)(c)

341. *The supply of transport services is not an input taxed supply. Subparagraph 38-190(3)(c)(i) applies because the entity to which the supply has been provided in Australia, Oz Co, would be an Australian-based business recipient of the supply if the supply had been made directly to it. Paragraph 38-190(3)(c) is therefore not satisfied.*

342. *Subsection 38-190(3), therefore, does not negate the GST-free status of the supply covered by item 2.*[49]

343. *Note: Aus Transport must be able to ascertain, based on information and evidence available to it, that subparagraph 38-190(3)(c)(i) applies. (See paragraph 141 of this Ruling.)*

344. *Even though the supply of transport services (that is, the freight services) made by UK Trans Co to UK Co is partly performed in Australia (under a subcontract arrangement with Aus Transport), the supply is not connected with Australia because of table item 2 of subsection 9-26(1). UK Trans Co is a non-resident, it does not make the supply through an enterprise it carries on in Australia and the supply is made to a non-resident that acquires the thing supplied solely for the purpose of an enterprise that the recipient carries on outside Australia.*

Example 18 – supply of delivery services made and provided to a non-resident

345. *Booklovers Inc (a non-resident company) wants to distribute advertising material in Melbourne and Sydney to the public at large. Booklovers Inc contracts with Ace Couriers to distribute the advertising material on its behalf. Ace Couriers makes the supply through an enterprise it carries on in Australia.*

Item 2

346. *The supply of delivery services is made to a non-resident company that is not in Australia when the delivery services are performed. The supply satisfies the requirements of item 2 and is, therefore, a supply covered by item 2.*

Paragraph 38-190(3)(a)

347. *The supply of delivery services by Ace Couriers to Booklovers Inc is a supply under an agreement entered into with a non-resident. Paragraph 38-190(3)(a) is therefore satisfied.*

Paragraph 38-190(3)(b)

(i) Not provided to another entity

348. *The delivery services are not required to be provided to any entity other than Booklovers Inc. The unsolicited delivery of goods to the public at large is not the provision of delivery services to another entity. The supply of delivery services is therefore made and provided to Booklovers Inc. Paragraph 38-190(3)(b) is not satisfied.*

[49] The supply of transport services by Aus Transport to UK Trans Co may also be GST-free under table item 5 of subsection 38-355(1).

349. *Subsection 38-190(3) does not negate the GST-free status of the supply covered by item 2. It is not necessary to consider paragraph 38-190(3)(c).*

Determining whether a supply made to a non-resident is provided to an employee in Australia

Example 19 – supply of flight training services made to a non-resident company and provided to employees in Australia

350. *An Australian-based flight training school enters into an agreement with a non-resident airline company in China to train employee pilots at its flight training school in Australia.*

351. *The contractual arrangement is between the non-resident airline company and the flight school. The supply is made to the non-resident airline company which does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. The contract between the non-resident airline company and the flight training school stipulates that that the pilots are employees, who are based in China, and they are required to attend the training course in Australia.*

Item 2

352. *The supply of training services is made to a non-resident, being the airline company, which is not in Australia when the training services are performed. The supply satisfies the requirements of item 2 and is, therefore, a supply covered by item 2.*

Paragraph 38-190(3)(a)

353. *The supply of training services by the Australian-based flight training school to the non-resident airline company in China is a supply under an agreement entered into with a non-resident. Paragraph 38-190(3)(a) is therefore satisfied.*

Paragraph 38-190(b)

(i) Provided to another entity

354. *What is being supplied is the teaching and tutoring of the employees of the non-resident airline company. It is in the nature of such training services that it is the individuals that are trained, rather than the individuals' employer, and it is therefore the individual who is provided with the training. These services are of a kind that can only be provided to the employee. The flow of the actual services of teaching and tutoring is to the employee pilots and not to the non-resident airline company. The supply is provided to another entity, the employee.*[50]

[50] The decision in the UK case *Customs and Excise Commissioners v G & B Practical Management Development Ltd* [1979] STC 280 provides support for the view that training is provided in the place where the individual being trained is located when the training is delivered. At [284], the court held that the course participants '… used the supply of services made by the company when they attended the lectures and the other parts of the training programme'. In addition, it was also held at [284] that:

> [t]he fact that the information imparted by the tuition and the visits to various companies could not be used by these particular students until they returned to Nigeria is … irrelevant.

(ii) Provided to that other entity in Australia

355. *The employee pilots are required to physically attend training in Australia. As their presence in Australia is integral to the performance of the supply, the supply is provided to the employees in Australia.*

Paragraph 38-190(3)(c)

356. *The supply of pilot training is not an input taxed supply. The pilots are individuals who are employees of the recipient of the supply and who have been provided the supply in the performance of their duties. The acquisition by the non-resident airline company is solely for a creditable purpose and is not a non-deductible expense. Accordingly, subparagraph 38-190(3)(c)(iii) applies and paragraph 38-190(3)(c) is not satisfied.*

357. *Subsection 38-190(3) does not negate the GST-free status otherwise applicable to the supply of pilot training covered by item 2.*

358. *Note: the flight training school must be able to ascertain, based on information and evidence available to it, that subparagraph 38-190(3)(c)(iii) applies. (See paragraph 141 of this Ruling.)*

Example 20 – supply of flight training services made to a non-resident company and provided to employees of an Australian subsidiary in Australia

359. *The Australian-based flight training school in Example 19 of this Ruling also agrees to train the employee pilots of the non-resident airline's Australian subsidiary. The pilots attend the training in Australia.*

360. *The contractual arrangement is between the non-resident airline company and the flight school and it stipulates that the pilots are employees of the Australian subsidiary. The supply is made to the non-resident airline company which does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. The employees of the Australian subsidiary are required under the agreement to attend the training course in Australia.*

Item 2

361. *The supply of training services is made to a non-resident, the airline company, which is not in Australia when the training services are performed.*[51] *The supply satisfies the requirements of item 2 and is, therefore, a supply covered by item 2.*

Paragraph 38-190(a)

362. *The supply of training services by the Australian-based flight training school to the non-resident airline company is a supply under an agreement entered into with a non-resident. Paragraph 38-190(3)(a) is therefore satisfied.*

[51] The mere presence of a subsidiary in Australia does not mean that a non-resident is carrying on business in Australia. (Refer to paragraphs 319 to 326 of GSTR 2004/7).

Paragraph 38-190(b)

(i) Provided to another entity

363. *What is being supplied is the teaching and tutoring of the employees of the Australian subsidiary. It is in the nature of such training services that it is the individuals that are trained, rather than the individuals' employer, and it is therefore the individuals who are provided with the training. These services are of a kind that can only be provided to the employees. The flow of the actual services of teaching and tutoring is to the employees and not to the non-resident airline company or the Australian subsidiary. The supply is provided to other entities, the employees.*

(ii) Provided to that other entity in Australia

364. *The employee pilots are required to physically attend training in Australia. As their presence in Australia is integral to the performance of the supply, the supply is provided to the employees in Australia.*

Paragraph 38-190(3)(c)

365. *The supply of pilot training is not an input taxed supply. The pilots are individuals who are employees of the Australian subsidiary and who have been provided the supply in the performance of their duties. The Australian subsidiary is registered for GST, carries on an enterprise in Australia, and does not acquire the services for a private or domestic purpose. Accordingly, the Australian subsidiary would have been an Australian-based business recipient of the supply if the supply had been made to it and subparagraph 38-190(3)(c)(ii) applies. Paragraph 38-190(3)(c) is therefore not satisfied.*

366. *The training school must be able to ascertain, based on information and evidence available to it, that subparagraph 38-190(c)(ii) applies. (See paragraph 141 of this Ruling.)*

367. *Subsection 38-190(3) does not negate the GST-free status otherwise applicable to the supply of pilot training covered by item 2.*

368. *Note: the provision of the supply by the non-resident airline company to its Australian subsidiary results in a separate supply between the non-resident (the recipient of the original supply) and the Australian subsidiary (the recipient of the separate supply). A separate supply of this kind may be reverse charged to the recipient of the separate supply in certain circumstances.*[52]

Example 21 – supply of tax return preparation services made to a non-resident employer and provided to employees

369. *An Australian-resident accounting firm enters into an arrangement with a non-resident company to complete foreign tax returns for the non-resident company's employees working in Australia on secondment with a client of the non-resident. The non-resident company does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. While the employees (who are non-residents for Australian income tax purposes) are in Australia, they meet with the Australian-resident accounting firm in the course of preparing their tax returns. The employees are available to answer questions and provide any further information. The returns are completed and signed by each employee while the employee is in Australia.*

[52] Refer to Subdivision 84-A and paragraphs 79 to 87 of GSTR 2019/1.

370. *The Australian-resident accounting firm confirms, through negotiating the terms of the supply, that the non-resident provides this benefit to its seconded employees as part of their salary package.*

Item 2

371. *The supply is made to a non-resident company that is not in Australia when the tax return services are performed.*[53] *The supply satisfies the requirements of item 2 and is, therefore, a supply covered by item 2.*

Paragraph 38-190(a)

372. *The supply of tax return preparation services by the Australian accounting firm to the non-resident company is a supply under an agreement entered into with a non-resident. Paragraph 38-190(3)(a) is therefore satisfied.*

Paragraph 38-190(b)

(i) Provided to another entity

373. *What is being supplied is the service of preparing the foreign tax returns of the employees. The nature of the service is such that the supply of tax return preparation services is provided to each employee, who is another entity.*

(ii) Provided to that other entity in Australia

374. *Each employee is in Australia when the tax return services are performed. On the facts, their presence in Australia is integral to the provision of the supply. It is not merely coincidental to the provision of the supply. The supply is therefore provided to each employee in Australia.*

375. *If the finalised returns are sent to the non-resident company and on-forwarded to its employees in Australia, this does not alter the nature of the supply and the fact that the supply of tax return preparation services is provided to the employees in Australia.*

Paragraph 38-190(3)(c)

376. *The supply of tax return preparation services is not an input taxed supply. The services are provided to individuals who are employees of the recipient of the supply and who have been provided the supply as part of their remuneration. The acquisition by the non-resident company is solely for a creditable purpose and is not a non-deductible expense. Accordingly, subparagraph 38-190(3)(c)(iii) applies and paragraph 38-190(3)(c) is not satisfied.*

377. *Subsection 38-190(3) does not negate the GST-free status of the supply covered by item 2.*

378. *Note: the Australian firm must be able to ascertain, based on information and evidence available to it, that subparagraph 38-190(3)(c)(iii) applies. (See paragraph 141 of this Ruling.)*

[53] See paragraph 124 of this Ruling and paragraphs 230 to 332 of GSTR 2004/7.

Example 22 – supply of stevedoring services made and provided to a non-resident

379. *A non-resident shipping company contracts with an Australian stevedore company to supply stevedoring services (that is, loading or unloading ships) to it when its ships are at Australian ports. The non-resident shipping company does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf.*

Item 2

380. *The supply of stevedoring services is made to the non-resident shipping company that is not in Australia when the loading and unloading services are performed. The supply of stevedoring services is not a supply of work physically performed on goods.*[54] *The supply satisfies the requirements of item 2 and is, therefore, a supply covered by item 2.*

Paragraph 38-190(3)(a)

381. *The supply of stevedoring services by the Australian stevedore company to the non-resident shipping company is a supply under an agreement entered into with a non-resident. Paragraph 38-190(3)(a) is therefore satisfied.*

Paragraph 38-190(3)(b)

Not provided to another entity

382. *The Australian stevedore company loads and unloads the ships for the non-resident shipping company at Australian ports. It is the ship of the shipping company that is loaded and unloaded. The involvement of the employees does not alter the nature of the supply which is to load and unload the ships of the non-resident shipping company. The supply of stevedoring services is provided to the non-resident shipping company. The actual flow of stevedoring services is to the shipping company, not the employees of the non-resident shipping company who are present when the ship is loaded and unloaded and may help to facilitate the loading and unloading process. Paragraph 38-190(3)(b) is therefore not satisfied.*

383. *Subsection 38-190(3) does not negate the GST-free status of the supply covered by item 2. It is not necessary to consider paragraph 38-190(3)(c).*

Determining whether a supply is provided to an agent

Example 23 – supply of legal services made and provided to a non-resident individual

384. *An Australian solicitor acting as agent for a non-resident individual engages an Australian barrister to supply legal services to the non-resident individual on an immigration matter. The individual is not in Australia when the legal services are performed and the supply is not directly connected with real property situated in Australia.*

[54] Refer to paragraphs 59 to 64 of GSTR 2003/7.

Item 2

385. *The supply of legal services by the barrister is made to the non-resident individual (principal) through the solicitor, as agent for the non-resident. The presence in Australia of the solicitor does not mean that the non-resident individual is in Australia for the purposes of item 2.*[55] *The supply by the barrister to the non-resident individual meets the requirements of item 2.*

Paragraph 38-190(3)(a)

386. *The supply of legal services by the barrister to the non-resident individual is a supply under an agreement entered into indirectly with a non-resident (that is, through the resident agent). Paragraph 38-190(3)(a) is therefore satisfied.*

Paragraph 38-190(3)(b)

Not provided to another entity

387. *What is being supplied is advice on immigration matters concerning the non-resident individual. The barrister has been engaged by the Australian solicitor, on behalf of the non-resident individual, to provide advice to the non-resident individual. The legal services are provided to the non-resident, not the agent. The supply by the barrister to the non-resident individual is both made and provided to the non-resident, through the solicitor as agent. The supply by the barrister is neither made nor provided to the solicitor. Paragraph 38-190(3)(b) is therefore not satisfied.*

388. *Subsection 38-190(3) does not negate the GST-free status of the supply covered by item 2. It is not necessary to consider paragraph 38-190(3)(c).*

389. *Note: even if the supply was provided to the Australian solicitor in Australia, the supply will be GST-free if paragraph 38-190(3)(c) is not satisfied. The supply of legal services is not an input taxed supply and subparagraph 38-190(3)(c)(i) will apply if the Australian solicitor would have been an Australian-based business recipient of the supply, if the supply had been made to it.*

Determining whether a supply is provided to a partner

Example 24 – supply of training services made to a non-resident partnership and provided to a partner in Australia

390. *A partner in a non-resident partnership contracts, on behalf of the partnership, for the supply of training to all newly appointed partners. The training is supplied by a training company through an enterprise it carries on in Australia and is conducted in Australia. The non-resident partnership does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf.*

391. *The training company confirms, through negotiating the terms of the supply, that the participants in the training are partners of the partnership, which carries on an enterprise outside Australia.*

[55] Refer to paragraphs 204 to 213 of GSTR 2004/7.

Item 2

392. *The supply of training services is made to a non-resident partnership that is not in Australia when the training services are performed. The supply satisfies the requirements of item 2 and is, therefore, a supply covered by item 2.*

Paragraph 38-190(3)(a)

393. *The supply of training services to the non-resident partnership is a supply under an agreement entered into with a non-resident. Paragraph 38-190(3)(a) is therefore satisfied.*

Paragraph 38-190(3)(b)

(i) Provided to another entity

394. *The training services are provided to each partner as the partners are the persons that are trained. (See the discussion of flight training services in Example 19 of this Ruling.)*

(ii) Provided to that other entity in Australia

395. *The partners are required to physically attend training in Australia. As their presence in Australia is integral to the performance of the supply, the supply is provided to another entity, (that is, each partner) in Australia.*

Paragraph 38-190(3)(c)

396. *The supply of training services is not an input taxed supply. The training services are provided to partners in their capacity as officers of the partnership.*[56] *The partnership is the recipient of the supply and its acquisition is solely for a creditable purpose and is not a non-deductible expense. Accordingly, subparagraph 38-190(3)(c)(iii) applies and paragraph 38-190(3)(c) is not satisfied.*

397. *Subsection 38-190(3), therefore, does not negate the GST-free status otherwise applicable to the supply of training services covered by item 2.*

398. *Note: the Australian training company must be able to ascertain, based on information and evidence available to it, that subparagraph 38-190(3)(c)(iii) applies. (See paragraph141 of this Ruling.)*

Example 25 – supply of legal services made and provided to a non-resident partnership

399. *The partnership carries on business in New Zealand. Central management and control of the partnership is in New Zealand. The partnership is a non-resident partnership for Australian GST purposes.*[57] *All the activities of the partnership are currently conducted outside Australia.*

[56] Section 195-1 and subsection 9AD(3) of the Corporations Act.
[57] Refer to paragraphs 146 to 157 of GSTR 2004/7.

400. *The partnership is contemplating the acquisition of commercial real property in Australia. The partners request legal advice from an Australian law firm on foreign ownership requirements in Australia.*

401. *One of the partners comes to Australia to engage and consult with the Australian law firm about the proposed acquisition. The partner is in Australia when the supply of legal services is performed. As the partner acquires the legal services in their capacity as partner, this is an acquisition made by the partnership for Australian GST purposes.*[58]

Item 2

402. *The supply made by the Australian law firm to the non-resident partnership satisfies the requirements of item 2 and is, therefore, a supply covered by item 2.*

Paragraph 38-190(3)(a)

403. *The supply of legal advice by the Australian law firm to the non-resident partnership is a supply under an agreement entered into with a non-resident. Paragraph 38-190(3)(a) is therefore satisfied.*

Paragraph 38-190(3)(b)

Not provided to another entity

404. *What is being supplied is advice on foreign ownership requirements impacting on the partnership in relation to a potential property acquisition by the partnership in Australia. The advice is about the affairs of the partnership. The presence of the partner in Australia to consult with the law firm does not alter the nature of the supply. The supply of legal advice is made and provided to the partnership. The supply is not provided to another entity. Paragraph 38-190(3)(b) is therefore not satisfied.*

405. *Subsection 38-190(3) does not negate the GST-free status of the supply covered by item 2. It is not necessary to consider paragraph 38-190(3)(c).*

406. *Note: even if the supply was provided to the partner in Australia, the supply would be GST-free because paragraph 38-190(3)(c) would not be satisfied. The supply of advice is not an input taxed supply and subparagraph 38-190(3)(c)(iii) applies. (See Example 24 at paragraphs 390 to 398 of this Ruling.)*

Apportionment

Example 26 – supply provided in part to a non-resident subsidiary and in part to an Australian subsidiary

407. *NZ Co is a non-resident parent company which has a subsidiary company in Australia and a subsidiary company in New Zealand. NZ Co does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. The subsidiary entities have no presence outside of New Zealand or Australia respectively. The Australian subsidiary is not registered or required to be registered for GST.*

[58] Subsection 184-5(1).

408. *The non-resident parent company engages an Australian management consultant company, AMC, to assist each subsidiary company in restructuring its operations. The restructuring operations are required to be effected by each subsidiary to achieve cost savings and efficiency gains.*

Item 2

409. *The supply of management consultancy services by AMC is made to NZ Co, a non-resident company that is not in Australia when the consultancy services are performed. The supply satisfies the requirements of item 2 and is, therefore, a supply covered by item 2.*

Paragraph 38-190(3)(a)

410. *The supply of consultancy services by AMC is a supply under an agreement entered into with a non-resident. Paragraph 38-190(3)(a) is therefore satisfied.*

Paragraph 38-190(3)(b)

(i) Provided to another entity

411. *The consultancy work is undertaken by the consultant with each of the subsidiaries. The management consultant consults with each subsidiary in turn.*

412. *The nature of the service is such that the supply is provided to each subsidiary. The actual flow of the services is to each subsidiary. The supply is, therefore, provided to another entity, each subsidiary, and not the non-resident parent company.*

(ii) Provided to that other entity in Australia

413. *The New Zealand subsidiary is not in Australia and therefore the services are not provided to that subsidiary in Australia. Therefore, to the extent the supply of consultancy services are provided to the New Zealand subsidiary, paragraph 38-190(3)(b) is not satisfied. It is not necessary to consider paragraph 38-190(3)(c).*

414. *The Australian subsidiary is in Australia when the services are performed. That part of the supply that is for the purposes of NZ Co's Australian subsidiary is provided to that subsidiary in Australia. The supply is provided to another entity in Australia to the extent that the supply is provided to the Australian subsidiary. Therefore, to the extent the supply of consultancy services are provided to the Australian subsidiary, paragraph 38-190(3)(b) is satisfied and it is necessary to consider paragraph 38-190(3)(c).*

Paragraph 38-190(3)(c)

415. *The supply of consultancy services is not an input taxed supply and none of subparagraphs 38-190(3)(c)(i) to (iii) apply. As the Australian subsidiary is not registered for GST, it would not have been an Australian-based business recipient of the supply if the supply had been made directly to it. To the extent that the supply is provided to the Australian subsidiary, paragraph 38-190(3)(c) is therefore satisfied.*

416. *Therefore, subsection 38-190(3) negates the GST-free status of that part of the supply that is provided to the Australian subsidiary. The consideration for the supply is therefore required to be apportioned between the GST-free part of the supply (that part of*

the supply which is provided to the New Zealand subsidiary), and the taxable part of the supply (that part of the supply that is provided to the Australian subsidiary).

Example 27 – supply provided to a non-resident individual in Australia for part of the time over which the services are performed

417. *Tom, a non-resident individual holidaying in Australia, falls over while shopping in a store in Australia. While in Australia, Tom seeks legal advice from an Australian legal firm contracted for by his parents in New Zealand. Tom's parents are not in Australia when the legal services are performed. The legal firm, on behalf of Tom, writes to the shopping centre seeking out-of-pocket expenses and an amount for pain and suffering. Tom returns to New Zealand before the claim is settled. Further contact with the legal firm occurs from New Zealand.*

Item 2

418. *The supply of legal services is made to a non-resident, the parents, who are not in Australia when the legal services are performed. The supply satisfies the requirements of item 2 and is, therefore, a supply covered by item 2.*

Paragraph 38-190(3)(a)

419. *The supply of legal services by the Australian legal firm to Tom's parents is a supply under an agreement entered into with a non-resident. Paragraph 38-190(3)(a) is therefore satisfied.*

Paragraph 38-190(3)(b)

(i) Provided to another entity

420. *What is being supplied is a service of seeking, on Tom's behalf, compensation resulting from an accident in Australia. The nature of the service is such that the supply is provided to another entity, Tom.*

(ii) Provided to that other entity in Australia

421. *Tom is a non-resident who is in Australia when part of the services is performed. As the need for the supply arises from Tom's presence in Australia, the supply is provided to Tom while he is in Australia. Once Tom returns to New Zealand, Tom is not in Australia when the services are performed. Paragraph 38-190(3)(b) is satisfied to the extent the supply is provided to Tom while he is in Australia.*

Paragraph 38-190(3)(c)

422. *The supply of legal services is not an input taxed supply and none of subparagraphs 38-190(3)(c)(i) to (iii) apply. Paragraph 38-190(3)(c) is therefore satisfied.*

423. *Subsection 38-190(3) only negates the GST-free status of the supply covered by item 2 in part. The part of the supply that is provided to Tom in Australia is the taxable part of the supply. The part of the supply that is provided to Tom when he is not in Australia is GST-free. The consideration for the supply is therefore required to be apportioned between the GST-free part of the supply and the taxable part of the supply.*

Example 28 – supply provided to a non-resident individual in Australia for part of the time when the legal services are performed

424. *William, an English tourist, is injured while on holidays in Australia. While in Australia recovering from his injuries, William's parents, who are non-residents, engaged Simon, a solicitor, to seek compensation on behalf of William.*

425. *The case took 3 months to finalise. During the first month (April 2005) while William was in Australia, he met with Simon and discussed his case. Simon also commenced action on behalf of William, who continued his holiday before returning home to England at the end of the first month (April 2005). Subsequently, William travelled to Australia to attend a mediation conference on 20 June 2005. William met with Simon prior to and after the conference. The matter was settled as a result of the conference.*

426. *Simon's hourly rate is $200 plus GST (if any) and he bills clients on a monthly basis for work done during the month. He accounts for GST quarterly and on a cash basis.*

427. *Simon receives the following payments for his services to William:*

Table 2: Facts for Example 28

Payment date	***Amount***	***Hours billed***
15 May 2005 *(for services provided in April while William was in Australia)*	*$7,480* *(including $680 GST payable)*	*34*
17 June 2005 *(for services provided in May while William was not in Australia)*	*$2,600* *(no GST payable)*	*13*
20 July 2005 *(for services provided in June while William was in Australia for part of the time and outside Australia for part of the time)*	*$2,100* *(including $100 GST)*	*10* *(5 hours attributable to the period when William was in Australia)*

Item 2

428. *The supply of legal services is made to non-residents who are not in Australia when the services are performed. The supply satisfies the requirements of item 2 and is, therefore, a supply covered by item 2.*

Paragraph 38-190(3)(a)

429. *The supply of legal services by Simon to the parents is a supply under an agreement entered into with a non-resident. Paragraph 38-190(3)(a) is therefore satisfied.*

Paragraph 38-190(3)(b)

(i) Provided to another entity

430. *What is being supplied is a service of seeking compensation, on behalf of William. The nature of the service is such that the supply is provided to William (as required).*

(ii) Provided to that other entity in Australia

431. *William is a non-resident who is in Australia when part of the services are performed. As the need for the supply arises from William's presence in Australia, the supply is provided to William in Australia while he is in Australia. Paragraph 38-190(3)(b) is satisfied to the extent the supply is provided to William while he is in Australia.*

Paragraph 38-190(3)(c)

432. *The supply of legal services is not an input taxed supply and none of subparagraphs 38-190(3)(c)(i) to (iii) apply. Paragraph 38-190(3)(c) is therefore satisfied.*

Apportionment

433. *Subsection 38-190(3) negates the GST-status of the supply covered by item 2 to the extent the supply is provided to William while he is in Australia.*

434. *As Simon accounts for GST on a cash basis, GST payable on the supply of legal services is attributable to a tax period to the extent that the consideration is received in that tax period. Therefore the consideration received in a quarterly tax period for the supply of the legal services must be apportioned on a reasonable basis to the extent that the supply is provided to William in Australia during that quarterly tax period.*

Quarterly tax period ended 30 June 2005

435. *The need for the legal services arises from William's presence in Australia. William is provided with legal services while in Australia in April 2005. The part of the supply performed during this time is therefore the taxable part of the supply. However, the supply is not provided to William in Australia to the extent that he is not physically located in Australia (that is, May 2005). Therefore, the supply performed in the quarterly tax period ending 30 June 2005 is partly taxable[59] and partly GST-free.*

436. *The circumstances of this supply are such that a time basis is a reasonable basis on which to apportion the consideration – that is, using the hours billed while William is in Australia (34 hours × $200 = $6,800) as a proportion of the total hours billed for that tax period (47 hours × $200 = $9,400) to work out the value of the taxable part of the supply.*

437. *The GST attributable to the tax period ended 30 June 2005 is calculated as follows:*

Value of the taxable part: (34 ÷ 47**) × $9,400*** = $6,800*

GST payable: $6,800 × 10% = $680

Consideration payable: $9,400 + $680 = $10,080

Where:

- * is the number of hours billed during the period the supply is provided to William in Australia and to which the consideration received relates,
- ** is the total number of hours billed in the period to which the consideration relates, and
- *** is the consideration (excluding GST) received in the tax period.

[59] Assuming that the requirements of section 9-5 are otherwise satisfied.

Quarterly tax period ended 30 September 2005

438. *There is also GST payable on the supply for the quarterly tax period ending 30 September 2005. The consideration received in that tax period includes consideration for services that are performed when William is in Australia and consideration for services performed while he is not in Australia. The supply is taxable to the extent that the supply is provided to William in Australia. To work out the value of the taxable part of the supply, it is necessary to apportion the consideration on a reasonable basis.*

439. *William is in Australia attending the mediation conference. His presence in Australia is integral to the provision of the supply. That part of the supply is provided to William in Australia and is the taxable part of the supply. The circumstances of this supply are such that a time basis is a reasonable basis on which to apportion the consideration that is, using the hours billed while William is in Australia (5 hours × $200 = $1,000) as a proportion of the total hours billed for that tax period (10 hours × $200 = $2,000) to work out the value of the taxable part of the supply.*

440. *The GST attributable to the tax period ended 30 September 2005 is calculated as follows:*

Value of the taxable part: (5 ÷ 10**) × $2,000*** = $1,000*

GST payable: $1,000 × 10% = $100

Consideration payable: $2,000 + $100 = $2,100

Where:

- * is the number of hours billed during the period the supply is provided to William in Australia and to which the consideration received relates,
- ** is the total number of hours billed in the period to which the consideration relates, and
- *** is the consideration (excluding GST) received in the tax period.

Subcontract arrangements and global supplies

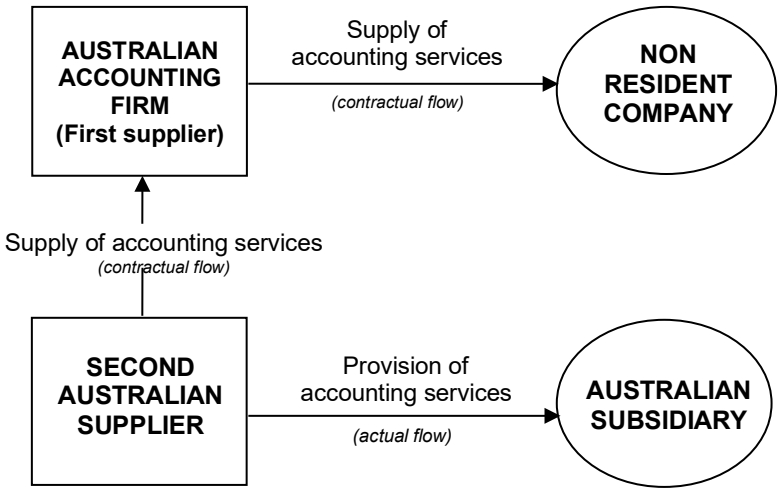
Example 29 – supply of accounting services to a non-resident entity subcontracted to another supplier

441. *A non-resident company contracts with an Australian accounting firm for the supply of accounting services. The contract stipulates that the accounting services are required to be provided to a GST-registered Australian subsidiary of the non-resident company. The non-resident does not carry on business in Australia either through a place of business of its own or through an agent acting on its behalf. The Australian accounting firm subcontracts with another Australian supplier to provide the accounting services to the Australian subsidiary.*

Page status: **legally binding**

442. *The facts are shown in Diagram 2 of this Ruling:*

Diagram 2: Facts for Example 29 of this Ruling



443. *The issue considered in this example is the GST treatment of the accounting services supplied by the Australian accounting firm to the non-resident company.*

Item 2

444. *The supply of accounting services is made by the Australian accounting firm to the non-resident company that is not in Australia when the services are performed. The supply satisfies the requirements of item 2 and is, therefore, a supply covered by item 2.*

Paragraph 38-190(3)(a)

445. *The supply of accounting services by the Australian accounting firm to the non-resident company is a supply under an agreement entered into with a non-resident. Paragraph 38-190(3)(a) is therefore satisfied.*

Paragraph 38-190(3)(b)

(i) Provided to another entity

446. *Under the agreement, the accounting services are required to be provided to another entity, the Australian subsidiary. The fact that the service is provided to the Australian subsidiary by a subcontracted supplier does not, in our view, transform the nature of the supply from a supply of accounting services to the supply of an arranging service. The supply by the Australian accounting firm is made to the non-resident company but is required to be provided to the Australian subsidiary.*

(ii) Provided to that other entity in Australia

447. *The Australian subsidiary is in Australia when the thing supplied is done. As the supply is for the purposes of the Australian subsidiary in Australia, the supply is, therefore,*

required to be provided to another entity (that is, the Australian subsidiary) in Australia. Paragraph 38-190(3)(b) is therefore satisfied.

Paragraph 38-190(3)(c)

448. *The supply of accounting services is not an input taxed supply. The Australian subsidiary is registered for GST, carries on an enterprise in Australia and its acquisition is not of a private or domestic nature. Therefore, the Australian subsidiary would be an Australian-based business recipient of the supply if the supply had been made to it. As subparagraph 38-190(3)(c)(i) applies, paragraph 38-190(3)(c) is not satisfied.*

449. *Subsection 38-190(3) does not negate the GST-free status otherwise applicable to the supply of accounting services covered by item 2.*

450. *Note: the Australian accounting firm must be able to ascertain, based on the information and evidence available to it, that subparagraph 38-190(3)(c)(i) applies. (See paragraph 141 of this Ruling.)*

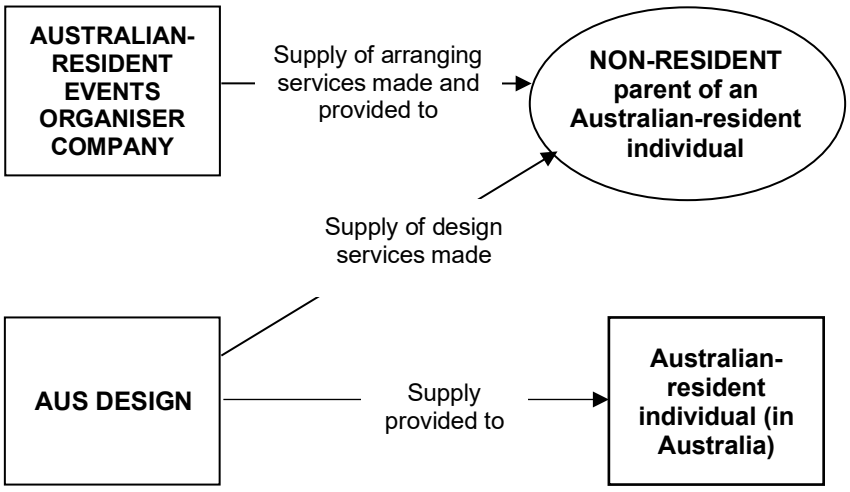
Example 30 – supply of an arranging service to a non-resident entity

451. *An events organiser in Australia enters into a contract with a non-resident parent (an individual) to supply arranging services for the non-resident's son's forthcoming wedding in Australia.*

452. *The events organiser has dealt with Aus Design in the past and arranges for contracts to be made between Aus Design and the non-resident parent for the supply of the design services for the wedding invitations. Under this contract, Aus Design is required to provide design services for the wedding invitations to the non-resident's son in Australia. Aus Design liaises with the non-resident's son in Australia in relation to all aspects of the service.*

453. *The facts are shown in Diagram 3 of this Ruling:*

Diagram 3: Facts for Example 30 of this Ruling



The supply by the Australian events organiser to the non-resident parent

454. *The supply made by the events organiser to the non-resident parent is the supply of an arranging service. The events organiser has been engaged to specifically arrange for a supply of services to be made to the non-resident by an appropriate supplier.*

Item 2

455. *The supply of the arranging service by the Australian events organiser is made to a non-resident parent that is not in Australia when the arranging services are performed. The supply is not 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. The supply satisfies the requirements of item 2 and is, therefore, a supply covered by item 2.*

Paragraph 38-190(3)(a)

456. *The supply of arranging services by the Australian events organiser to the non-resident parent is a supply under an agreement entered into with a non-resident. Paragraph 38-190(3)(a) is therefore satisfied.*

Paragraph 38-190(3)(b)

(i) Not provided to another entity

457. *What is being supplied is the service of arranging for a supply to be made to the non-resident. The Australian events organiser arranges for Aus Design to make a supply of design services to the non-resident parent. The actual flow of the arranging services is to the non-resident parent. The supply of the arranging service is not provided to another entity. Paragraph 38-190(3)(a) is not satisfied.*

458. *Subsection 38-190(3) does not negate the GST-free status of the supply covered by item 2. It is not necessary to consider paragraph 38-190(3)(c).*

The supply by Aus Design to the non-resident

459. *The supply made by Aus Design to the non-resident parent is the supply of a design service.*

Item 2

460. *The supply of services made by Aus Design are to the non-resident parent who is not in Australia when the design services are performed and the supply is not 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. Therefore, the supply is covered by item 2.*

Paragraph 38-190(3)(a)

461. *The supply of design services by Aus Design to the non-resident parent is a supply under an agreement entered into with a non-resident. Paragraph 38-190(3)(a) is therefore satisfied.*

Paragraph 38-190(3)(b)

(i) Provided to another entity

462. *The design services are required to be provided to the non-resident's son. The supply, although made to a non-resident, is provided to another entity, the son.*

(ii) Provided to another entity in Australia

463. *The son is a resident individual who is physically in Australia when the services are performed. The supply is provided to the son in Australia. Paragraph 38-190(3)(b) is satisfied.*

Paragraph 38-190(3)(c)

464. *The supply of design services is not an input taxed supply and none of the subparagraphs 38-190(3)(c)(i) to (iii) apply. Paragraph 38-190(3)(c) is therefore satisfied.*

465. *Subsection 38-190(3) negates the GST-free status of the supply covered by item 2.*

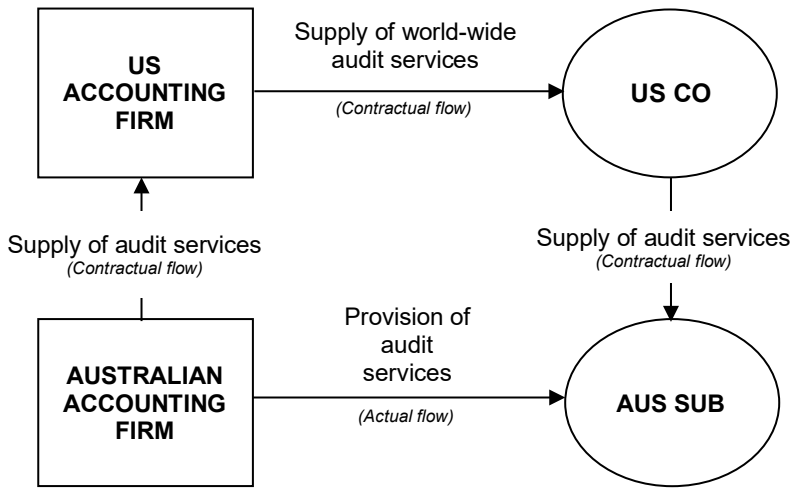
Example 31 – supply of global audit services

466. *A US-resident parent company, US Co, engages a US accounting firm to supply audit services to the world-wide company group. The US accounting firm charges US Co on a monthly basis for services rendered in the immediately preceding month. Neither US Co nor the US accounting firm carries on business in Australia through a place of business of its own or through an agent acting on its behalf.*

467. *Aus Sub, a GST-registered Australian subsidiary of US Co, requires audit services – in particular a due diligence service for a possible business acquisition. The US accounting firm contracts with an Australian-resident accounting firm for the provision of audit services to Aus Sub.*

468. *The facts are illustrated in Diagram 4 of this Ruling:*

Diagram 4: Facts for Example 31 of this Ruling



469. *US Co is billed by the US accounting firm for the audit services provided to the Australian subsidiary. US Co charges Aus Sub for the cost of the audit.*

Supply by US accounting firm to US Co

470. *The US accounting firm is engaged to provide audit services to the worldwide group of US Co. The US accounting firm has affiliates throughout the world with the expertise to carry out country-specific audits. As and when a foreign subsidiary requires audit services, US accounting firm subcontracts the performance of that service to an affiliate in the relevant foreign country.*

471. *The character of the supply by US accounting firm to US Co is a service. The US accounting firm is engaged to supply audit services. The exact nature of the supply depends on the facts and circumstances of the particular audit. In this example, a due diligence service is to be carried out for Aus Sub.*

472. *The fact that the US accounting firm subcontracts this part of the audit service to another supplier, the Australian accounting firm, does not alter the character and nature of the service supplied by the US accounting firm to US Co. The supply remains the supply of audit services.*

473. *The supply by the US accounting firm of audit services to US Co is not connected with Australia, even though it is partly done in Australia, because of table item 2 of subsection 9-26(1). The US accounting firm is a non-resident that does not carry on an enterprise in Australia and the recipient is a non-resident that acquires the thing supplied solely for the purpose of an enterprise that it carries on outside Australia.*

Supply by Australian accounting firm to US accounting firm

Item 2

474. *The supply of audit services is made by the Australian accounting firm to the US accounting firm, a non-resident that is not in Australia when the audit is performed and the supply is not 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. The supply satisfies the requirements of the item and is, therefore, a supply covered by item 2.*

Paragraph 38-190(3)(a)

475. *The supply of audit services by the Australian accounting firm to the US accounting firm is a supply under an agreement entered into with a non-resident. Paragraph 38-190(3)(a) is therefore satisfied.*

Paragraph 38-190(3)(b)

(i) Provided to another entity

476. *The contractual flow of audit services is to the US accounting firm. The actual flow is to another entity, Aus Sub. The audit service is required to be provided to Aus Sub. The supply is therefore provided to another entity, Aus Sub.*

(ii) Provided to that other entity in Australia

477. *The Australian subsidiary, Aus Sub, is in Australia when the service is performed. The supply is for the purposes of the Australian subsidiary in Australia. The supply by the Australian accounting firm to the US accounting firm is made to the US accounting firm but provided to Aus Sub in Australia. Paragraph 38-190(3)(b) is therefore satisfied.*

Paragraph 38-190(3)(c)

478. *The supply of audit services is not an input taxed supply. The supply is provided to Aus Sub, an entity that is registered for GST, carries on an enterprise in Australia and does not acquire the services for a private or domestic purpose. Accordingly, Aus Sub would have been an Australian-based business recipient of the supply if the supply had been made to it and subparagraph 38-190(3)(c)(i) applies. Paragraph 38-190(3)(c) is therefore not satisfied.*

479. *Subsection 38-190(3) does not negate the GST-free status of the supply of audit services by the Australian accounting firm to the US accounting firm and covered by item 2.*

480. *Note: the Australian accounting firm must be able to ascertain, based on the information and evidence available to it, that subparagraph 38-190(3)(c)(i) applies. (See paragraph 141 of this Ruling.)*

Supply by US Co to Aus Sub

481. *US Co charges Aus Sub for the cost of the audit service by making a cost allocation to Aus Sub. The cost allocation covers the audit service and associated administrative and management costs.*

Identifying a supply to Aus Sub

482. *US Co provides audit services (through subcontract arrangements) to Aus Sub to meet an identified need of Aus Sub. The service is the audit of a business that Aus Sub is acquiring pending a satisfactory due diligence report. US Co supplies audit services to Aus Sub.*

Alternative view

483. *If the nature of the audit service is such that only a registered auditor can perform those services, US Co is not a registered auditor and is, therefore, incapable of supplying audit services to Aus Sub. The nature of the supply that US Co makes to its Australian subsidiary is not that of audit services but of management services. US Co performs these services outside of Australia and the supply of the services is, therefore, not connected with Australia.*

484. *We do not agree with this view. This situation is, in our view, no different to that of an overseas supplier that subcontracts provision of a supply to a customer in Australia to a second supplier in Australia because the overseas supplier, while carrying on a business of providing services of the requisite kind, does not have the resources or presence in Australia to provide that service in Australia. In both cases, the nature of the supply by the overseas supplier to the Australian customer remains the same. Subcontracting, for*

whatever reason, does not, in our view, alter the character or nature of the identified supply.

Supply not connected with Australia

485. *The supply of audit services by US Co to Aus Sub is performed in Australia, albeit by subcontractors, but is not connected with Australia because of subsection 9-26(1). The supplier, US Co, is a non-resident that does not carry on an enterprise in Australia and the recipient, Aus Sub, is an Australian-based business recipient of the supply.*

486. *Therefore, it is not necessary to consider whether the supply of audit services by the US Co to Aus Sub is a supply covered by item 2 or whether subsection 38-190(3) applies.*

487. *Aus Sub will need to consider the reverse charge in Division 84 if it does not acquire the audit services solely for a creditable purpose.*

Commissioner of Taxation
23 July 2025

Status: **not legally binding**

References

Related rulings and determinations:

GSTR 2025/2; GSTD 2002/3; GSTD 2006/1; GSTD 2006/2; GSTD 2007/3; GSTR 2000/19; GSTR 2000/31; GSTR 2001/8; GSTR 2002/6; GSTR 2003/D7; GSTR 2003/D9; GSTR 2003/2; GSTR 2003/4; GSTR 2003/7; GSTR 2003/8; GSTR 2003/13; GSTR 2004/6; GSTR 2004/7; GSTR 2005/2; GSTR 2006/4; GSTR 2007/2; TR 98/17; TR 2004/15; TR 2006/10; TR 2023/4

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- ANTS(GST)A 1999 38-190(3)(c)
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- Explanatory Memorandum to the Tax and Superannuation Laws Amendment (2016 Measures No. 1) Bill 2016

ATO references

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