

GOODS AND SERVICES TAX (GST)

Is/should the entity be registered for GST?

	Sections in Acts/Rule	Cases
Carrying on an enterprise? <ul style="list-style-type: none"> If yes, move to next point If no, GST is irrelevant 	9-20 of GST Act (enterprise definition) : <ul style="list-style-type: none"> in the form of a business 9-20(1)(a) in the form of an adventure or concern in the nature of trade 9-20(1)(b) OR in the form of leasing, licensing or other grant of an interest in property on a regular or continuous basis 9-20(1)(c) 	<i>FCT v Whitfords Beach</i> <ul style="list-style-type: none"> isolated commercial transaction that constitutes a business <i>Spriggs v FCT; Riddell v FCT</i> employment activities can form part of a business
Annual turnover exceed the "registration turnover threshold"? <ul style="list-style-type: none"> If yes, registered or required to be registered for GST If no, optional 	23-5 : <ul style="list-style-type: none"> entity must register for GST if exceed registration turnover threshold 23-15 : <ul style="list-style-type: none"> Non-profit TPs ≥ \$150000 All other TPs ≥ \$75000 	

Taxable supply? 9-5

Consequences of making taxable supply :

9-40 : entity that makes a taxable supply is liable to pay GST on the taxable supply

9-70 : amount of GST payable is 10% of the value of the taxable supply

	Sections	Cases
Is there a supply made?	Definition of "supply" : 9-10 <ul style="list-style-type: none"> "any form of supply whatsoever" 9-10(1) Includes 9-10(2) <ul style="list-style-type: none"> Supply of goods & services Provision of advice/information Grant, assignment or surrender of real property Creation, grant, transfer, assignment or surrender of any right Financial supply Entry into, or release from, an obligation "to do anything, or 	<i>FCT v Reliance Carpet</i> <ul style="list-style-type: none"> deposit was consideration for a supply <i>FCT v Qantas Airways</i> formation of a contract and the granting of rights under the contract will constitute a supply

	<p>to refrain from an act, or to tolerate an act or situation”</p> <ul style="list-style-type: none"> • Illegality of supply is irrelevant 9-10(3) • Does not include a supply of money unless consideration for a supply that is the supply of money 9-10(4) 	
Is there consideration?	<p>Definition of “consideration” : 9-15</p> <ul style="list-style-type: none"> • Any payment or act or forbearance in connection with the supply or for the inducement of the supply 9-15(1) • Does not matter whether the payment was voluntary or whether it was by the recipient of the supply 9-15(2) 	
In the course or furtherance of an enterprise?	See above	
In connection with Australia (indirect tax zone)?	<p>9-25</p> <ul style="list-style-type: none"> • Goods are delivered or made available to the recipient in Aus • Supply involves those goods being removed from Aus • Goods are imported in to Aus OR • Supply is of Australian land • Supply is made through an enterprise carried on in Aus 	
Entity registered for GST?	See above	

INCOME FROM PERSONAL SERVICES

Is it a fringe benefit? (refer to FBT notes)

Is it ordinary income?

1. Salary and wages
 - Not a fringe benefit
 - An amount that is a “product or incident of employment or a reward for services rendered” will be ordinary income **Hayes v FCT**
 - Included in AI as ordinary income **6-5**
2. Allowances
 - Predetermined amount made to cover an *estimated expense* which is paid regardless of whether that expense is incurred **Roads and Traffic Authority of NSW; ATO TR 92/15**
 - Cf. reimbursement – compensation for exact amount of expenses incurred
 - Tax treatment :
 - Allowance : assessable income – ordinary income **15-2**
 - Reimbursement : not ordinary income but fringe benefit, subject to FBT
3. Voluntary payments & gifts
 - Unexpected or voluntary payments received as a reward for service are ordinary income if the benefit is an incident of employment (**Laidler v Perry** : Christmas bonus was ordinary income, **FCT v Dixon** : TP relied on receipts for support, thus, it was a replacement for income and assessable as ordinary income)
 - Benefit from a 3rd party may be income where it is a “clearly recognized incident of employment” (**Dixon; Kelly; Holmes**)
 - Tips (example of 3rd party gift)
 - Assessable as ordinary income : **Penn v Spiers & Pond Ltd; Great Western Railway Co v Helps; Calvert v Wainwright**
 - A gift given for personal qualities is not regarded as ordinary income : **Hayes v FCT; Scott v FCT**
 - Gift vs Ordinary Income

Factors	OI	Gift
1. Was TP adequately remunerated for their services? Scott; Brown (Yes)		x
2. Was there personal relationship between TP and provider? Brown; Laidler v Perry; Smith (Yes)		x
3. Was the benefit solicited? (did the TP ask for it?) Scott; Hayes (Yes)	x	
4. Is the provider grateful? Holmes; Brown; Hayes (Yes)	x	
5. Common incidence of employment? Scott (Yes)	x	
6. Is benefit available to other employees? Laidler v Perry; Smith (Yes)	x	
7. Did the benefit arise in the course of employment/services? Holmes (Yes)	x	
8. Motive of the donor Dixon; Hayes (intends to be a reward for services) – not decisive	x	
9. Is it regular? Dixon; Harris; Blake (Yes)	x	

4. Competition prizes

- Not income unless TP carrying on a business or prize directly related to TP's employment or extensive personal exertion and skill
 - **Kelly v FCT** : professional sportsperson's prize – ordinary income
 - If prize indirectly related to employment – look at gift v income factors
5. Common employment amounts
- Superannuation
 - Not a fringe benefit **136(1)(j)**
 - Not assessable income when initially “received”
 - Tax consequences for employee arise when amount withdrawn from superannuation fund
 - Frequent flyer points
 - Not a fringe benefit
 - Not assessable income **Payne v FCT; TR 1999/6**
 - Not ordinary income because not cash convertible
 - Not assessable under s 15-2 because not connected to employment
6. Other examples
- Provision of knowledge : **Brent v FCT** (payment for service of giving up valuable rights - ordinary income)
 - Compensation payments : **Bennett v FCT** (relinquishing employment rights – capital in nature, not ordinary income)
 - Restrictive covenants : **Higgs v Olivier** (not payment for performance as an actor but for giving up right to earn income – capital in nature, not ordinary income)
 - Sign-on fees : **Jarrold v Boustead** (payment for giving up the right to play amateur football rather than a payment for future services – capital in nature, not ordinary income)