

## Basic GST Checklist

- Has there been a “supply” of something? -> consider “Taxable Supplies” (S9-5)
- Has there been an “acquisition”? -> Consider “Creditable Acquisitions” (S11-5)
- Has the “activity” involved “importations” -> Consider S13-5 and S15-5.
- If you answered “yes” or “no” to questions 1 to 3 – what are the consequences for TP?

### Taxable supply (S9-5)

- **Supply (S9-10)**
- **Made for consideration (S9-15)**  
Can be cash or “in kind”
- **Course of enterprise (S9-20)**
- **Supply is connected with Australia (S9-25)**  
Delivered/available to recipient in Australia. Goods imported into Australia.
- **Registered or should be registered for GST (S23-5 and S23-15)**  
Turnover threshold \$75000. (Gross turnover, not net sales)
- **Not input-taxed (Div 40) or GST-free (Div 38)**  
Input-taxed: Residential rent, financial supplies (bank accounts, credit cards)  
GST Free: Food, health, education: s38-85, child care, exports: s38-185
- **Consequences:** Suppliers pay 10% of the value of the taxable supply.

### Creditable Acquisition (S11-5)

- **Acquisition (S11-10) solely or partly for a creditable purpose (s11-15)**  
Acquisition relates to the carrying on of the entity’s enterprise.  
If the acquisition relates to the making of an input taxed supply per Div 40, it is not for a creditable purpose .
- **Supply made was a taxable supply (S9-5)**  
Need to determine from other’s party perspective if not stated. (whether the price includes GST)
- **Provide consideration for the acquisition**
- **Registered or required to be registered for GST**
  - Carrying on an enterprise and turnover more than the \$75,000 threshold : must be registered for GST per s23-5 and 23-15
- **Consequences: Input tax credit** for the amount of GST paid on creditable acquisition for **taxable supply and GST-free supply** but no input tax credit if creditable acquisition relates to the provision of input taxed supplies, TP is not registered for GST and non-deductible expenses.

### Taxable importation (S13-5)

- **Goods imported for home consumption.**
- **And cannot be Goods that are GST-free or input taxed supplies**, goods exported from Australia and returned to Australia unchanged,
- **Importation value greater than \$1000.**
- **Consequences:** Pay 10% of the value of the taxable importation. (s13-15; s13-20)

Creditable importation (S15-5) [If it is taxable importation, it will also be a creditable importation]

- Import goods solely or partly for a creditable purpose.
- Importation is a taxable supply
- Entity is registered or required to be registered for GST purposes.
- Consequences: Entitled to input tax credits for importations. Equal to the GST payable.

TP will be a resident if satisfies any one of the residency tests in S6 (1) ITAA36. Determination of residency is done on a yearly basis and TP may be resident for part of the year.

### 1) Ordinary Resident test (ORT)

- Under the primary test of residency, a TP will be a resident if they 'reside' in Australia s6(1)
  - Reside: dwell permanently or for considerable time in a particular place: Levene(1928).
- This is a question of fact (Lysaght; Joachim) to be determined based on the TP's individual circumstances.

The ATO's guidance in TR 98/17 suggests consideration of the following factors:

- **Physical presence in Australia.**  
In TR 98/17: Commissioner suggests that *6mths* would be a considerable time. However, as seen in Joachim, the lack of physical presence in Aus is not determinative and other factors need to be considered.
- Frequency, regularity and *duration* of visits: Lysaght (1928).
- **Maintenance of a place of abode in Australia during absences:** Joachim(2002).  
Home in Australia - permanent or temporary.
- **Purpose** of visits to Australia and abroad.
- **Family, business and social ties:** Levene (1928).
- Nationality (TP is likely an Aus citizen which may suggest that he 'resides' here but is certainly not determinative)
- Cases
  - **Levene:** Even though only 4-5mths in UK yearly, [medical, family & religious] ties in UK and temporary nature of time abroad -> resident.
  - **Lysaght:** only 1week every month in UK & no home in UK, but frequency & regularity of visits (continuing business ties) -> resident.
  - **Joachim:** Lack of physical presence for 316 days (not determinative), had a permanent place of abode overseas. But, ties to Australia – eg. Family in Australia, maintained family home in Australia -> resident.
- **Need to conclude and also consider other tests!**
  - Ordinary resident test: Only taxed for the period for which they are a resident.