

Goods & Services Tax (Chapter 25)

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1. Goods & Services Tax (Chapter 25)

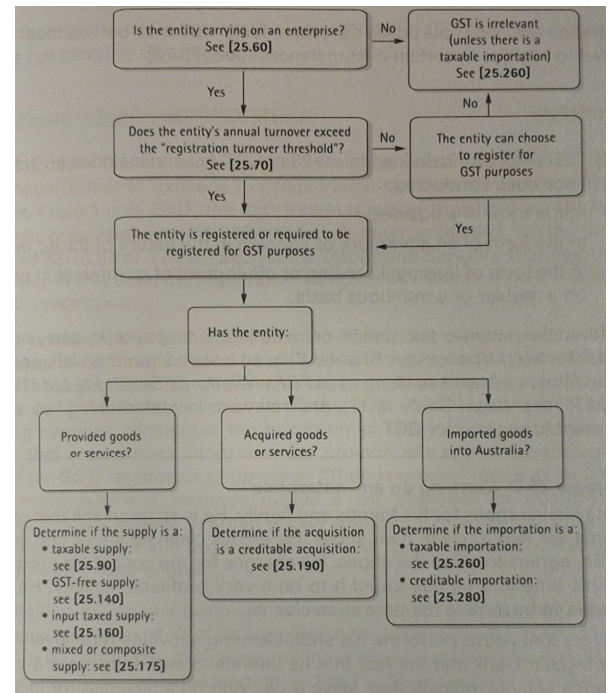
GST Basics:

Broad-based consumption tax imposed on final private consumer

- Charged, credit claimed by registered entities
- Imposed each time good/service supplied/imported

1. Taxable supply (Supply including GST when selling): [s9-5]

- I. A supply
- II. Made for **Consideration**
- III. In the course or furtherance of an **Enterprise**
- IV. Supply connected with **Australia (Indirect Tax Zone)**
- V. By an entity **Registered** or should be registered for GST
- VI. **Not 'GST-free' or 'Input-taxed'**



1. Supply

- "Any form of supply whatsoever": **s9-10(1)**
- Includes: **s9-10(2)**
 - Supply of goods & services
 - Provision of advice or information
 - Grant, assignment or surrender of real property or an interest in real property
 - Creation, grant, transfer, assignment or surrender of any right
 - A financial supply
- Illegality of supply irrelevant: **s9-10(3)**
- Does not include supply of money unless consideration for supply is the supply of money: **s9-10(4)**
 - **FCT v Reliance Carpet (2008)**:
 - Purchaser paid deposit for purchase, deposit forfeited when purchase did not commence
 - High Court – supply should be broadly interpreted. Supply was for rights of contract, hence, NO GST
 - **FCT v Qantas Airways (2012)**:
 - Passenger paid ticket, no show, no refund (Domestic - has GST)
 - High court – paid for Qantas to transport TP from A to B (Interpret supply broadly)

2. Consideration

- Any payment or act in connection with the supply or for the inducement of the supply: **s9-15(1)**
 - Payment = cash or 'in kind' (even barter trade)
- Does not matter if payment was voluntary or whether it was by the recipient of the supply: **s9-15(2)**

3. Enterprise (Must be enterprise/ importation)

- Any activity conducted in the form of a business: **s9-20(1)(a)**
 - **Stone; Ferguson; TR 2005/1**
- Isolated commercial activities in form of adventure or concern in nature of trade: **s9-20(1)(b)**
 - **Whitfords beach; Westfield; Myer**
- Leasing property on a regular/continuous basis: **s9-20(1)(c)**
- Activities carried out by trustees, charities, religious institutions & government bodies: **s9-20(1)(d)-(g)**

But not:

- Provision of labour as an employee; or
- Private, recreational pursuits or hobbies: **s9-20(2)**

4. Indirect Tax Zone: s9-25

- A supply will be "connected with Australia" if:
 - Goods delivered or made available to recipient in Australia;
 - Supply involves goods being removed from Australia (**NB**: exemption for exports)
 - Goods imported into Australia or installation/assembly of goods is in Australia
- If not goods/ real property, the thing is done in Australia or the supply is made through an enterprise carried on in Australia

5. Registered entity

- Any entity can register for GST if carrying on an enterprise: **s23-10**
 - Entities **MUST** register for GST if "annual turnover" exceeds "Registration turnover threshold": **s23-15**; regulation **23-15.01 & 23-12.02**
 - Non-profit TP ≥ \$150,000
 - All other TP ≥ \$75,000
 - Annual turnover – **s188-15; GSTR 2001/17**
 - Annual turnover = Revenue
- * Can only charge GST when GST-registered
- * Only enterprise can register for GST
- Exceptions:
 - Taxi Drivers: **s144-5**
 - Ride Sharing: **Uber BV**

6. Exemptions

GST-free supplies: **Division 38**

An entity that supplies GST-free supplies is not required to pay GST on the making of the supply: **s38-1**

Food <ul style="list-style-type: none"> Supply of food is GST-free: s38-2 A supply is not GST-free under s38-2 if it is a supply of...: s38-3 Lansell House (2011) – Bread/cracker (Court determined it was made up of & sold like a cracker even if the name said 'flatbread') 			
Health: s38-7	Religious services	Transport & Related	Cars for disabled
Education: s38-85	Activities of charities	Precious metals	International mail
Childcare	Raffle/ Bingo of charities	Duty-free shops	Farm land
Exports	Supplies of going concern	Grants of I& by government	Telecommunication under global roaming

Input-taxed supplies: Division 40

An entity making input taxed supplies is not required to pay GST on the making of the supply: **s40-1**

- Input taxed supplies excluded from definition of 'taxable supply': **s9-5**
- Thus, it is also not entitled to GST refund paid on any acquisition related to the making of that supply as the acquisition would not satisfy the requirement of 'creditable acquisition':
 - Financial supplies: **GSTR 2002/2**
 - Residential rent, not for commercial use: **s195-1**
 - Sale of existing residential premises:
 - If renovated enough, can be known as a "new residential premises"
 - Precious metals
 - School tuckshops/canteens
 - Fund-raising events conducted by charitable institutions

7. Tax consequences for non-exempt Tax Supplies

- An entity that makes a taxable supply is liable to pay GST on the taxable supply: **s9-40**
- GST is payable by supplier on 10% of the value of the taxable supply: **s9-70**
 - Value of taxable supply = 10/11 of the price: **s9-75**
 - Price = consideration

Example: Ben pays \$11 for a book

- Consideration (and price) = \$11
- Value of taxable supply = 10/11 of \$11 = \$10
- GST payable = 10% x \$10 = \$1

2. Creditable acquisition (When to get a GST refund on acquisition)

- Acquisition* solely or partly for a creditable purpose (i.e. business purpose)
 - Not creditable if acquisition relates to an input-tax supply
- The supply made was a taxable supply
- Provided or liable to provide consideration for acquisition
- Registered or required to be registered for GST Acquisitions: **GSTR 2001/3**

An acquisition

Acquisition in “any form” including: **s11-10**

- Acquisition of *goods & services*
- Receipt of *advice or information*
- Acceptance of a *grant, assignment or surrender of real property*
- Acceptance of a *grant, transfer, assignment or surrender of any right*
- Acquisition of a *financial supply*
- Acquisition of a *right to require* another person to do something (*refrain* from an act/ *tolerate* an act)

Consequences

- Entity can claim input tax credit for amount of GST paid on creditable acquisitions: **s11-5, 11-20**
- BUT, no entitlement to input tax credits if creditable acquisition relates to provision of input taxed supplies: **ss11-15(2)(a), s15-10**
- ALSO, no entitlement to input tax credits for non-deductible expenses: **Division 69**
 1. Penalties
 2. Relatives' travel expenses (FBT interaction)
 3. Entertainment (FBT interaction)
 4. Recreational club expenses (FBT interaction)

Special Rules

❖ **Importations**

- As long as imported into Australia, subject to GST, regardless of registration or carrying on enterprise (**s13-5**)
- Liability imposed on entities making a Taxable importation: **s13-5**
 - Imported goods; AND
 - Goods ‘entered for *home-consumption*’ (brought into Australia for consumption of use in Australia, i.e. not transit); and
 - NOT GST-free or input-taxed supplies
- Importer liable for GST on importation: **s13-15**
- GST payable calculated based on custom value of the goods plus certain other cost: **s13-20**
- Entitled to input tax credit if creditable importation: **s15-5**
 1. *Importation* solely or partly for a creditable purpose (i.e. business purpose)
 - Not creditable if importation relates to an input-tax supply
 2. The supply made was a taxable supply
 3. Registered or required to be registered for GST Acquisitions: **GSTR 2001/3**

❖ **Adjustments: Divisions 19 & 129** (How much reported initially vs how much after adjustment)

IF **more** after adjustment → Increasing Adjustment = Pay more

IF **less** after adjustment → Decreasing Adjustment = Refund

- Adjustment events (For change in supply & acquisition): **s130-5**
 - Cancelling taxable supply or creditable acquisition
 - Changing consideration for taxable supply or an creditable acquisition
 - Causing a supply or acquisition to become, or stop being, a “taxable supply” or “Creditable acquisition”

GST Administration

- Remitted using Business Activity Statement (BAS)
- Reporting entities must include:
 - Entitlement to input tax credits (i.e. GST paid)
 - GST Payable (i.e. GST Collected)
- Lodged quarterly or monthly