

Calculating GST

GST is payable on 'taxable supplies' and 'taxable importations'; (**s 7-1 GSTA**)

STEP 1: GO THROUGH FOUR ELEMENTS FOR TAXABLE SUPPLY

GST is payable on taxable supplies (s 9-40 GSTA).

FOUR ELEMENTS to being a '**TAXABLE SUPPLY**' under **s 9-5 GSTA**

1. Entity makes the Supply (**s 9-10**) for consideration (**s 9-15**)
2. In the course or furtherance of an enterprise (**s 9-20**)
3. Connected with the Indirect Tax Zone (AUSTRALIA!) (**s 9-25**)
4. Entity registered, or required to be registered (**s 23-5, s 23-10**)

EXCEPTIONS:

- If the supply was **GST-FREE**, or **input taxed**, it **WOULD NOT** be a taxable supply (**s 9-5 GSTA**)
 - o **GST-free:** Div 38 GSTA (p160tb; p1699, p1810(food) legis)
 - o **Input taxed:** Div 40 GSTA (p162tb; p1822 legis)

ELEMENT ONE: Entity makes Supply for Consideration

Entity – s 184(1) GSTA

- Individuals; companies, partnership, trust, super funds, etc.

Supply – s 9-10(1) GSTA

Definition: 'any form of supply whatsoever'; it takes on its ordinary dictionary meaning

Examples per s 9-10(2):

- Supplies of **goods/services**
- Provision of **advice/information**
- A grant, assignment or surrender of real property
- A creation, grant, transfer, assignment or surrender of any right
- A financial supply, **AND**
- Entry into, or release from, an obligation to do anything, or to refrain from an act, or to tolerate an act or situation

Exception per s 9-10(4):

- A supply of **money or digital currency** is **NOT** a supply, **UNLESS** it is provided as **consideration, for a supply that is a supply of money**
- **Money is defined widely** – includes currency, promissory notes, bills of exchange, negotiable instruments, postal notes, money orders, payments by credit/debit card, credit or debit to an account, or the creation or transfer of a debt (**s195-1**); **Bitcoin = digital currency (s 995-1)**
 - o **DOES NOT include:** Collector's piece, an investment article, item of numismatic interest, or currency with a market value above its stated value as legal tender

Note GSTR 2006/9: For every supply, there must be a supplier and recipient – must be different entities (because entity cannot make a supply to itself)

- A **promise** can be a supply (**Qantas Airways Ltd** – promise to carry passengers and baggage, **NOT** actual carriage; **ATS Pacific** – **promise** that tour providers would provide products such as car and accommodation to the tourists, **NOT** supply of actual products)

*For **leases**: there will generally be a **supply which occurs at the time of entering the lease (MBI Properties)**; and at least **one other supply** progressively throughout the lease (observation by lessor of express/implied covenant of quiet enjoyment)*

Consideration – s 9-15(1) GSTA

Defined **broadly**; Includes:

- Any payment, act or forbearance,
 - o in connection with a supply of anything; OR
 - o in response to or for the inducement of a supply of anything
- Does not matter if in compliance with a court order or legal settlement (**s 9-15(2A)**)

NOTE: Gifts, prizes, grants and subsidies

- **GIFT; NO CONSIDERATION:** transferred voluntarily without any material benefit to donor (**McPhail**)
- **PRIZES; MAY CONSTITUTE CONSIDERATION (GSTR 2002/3)**
- **GRANTS and SUBSIDIES:** Dependent on **sufficient nexus** between the grant/subsidy and a supply
 - o **Usually YES!!! (consideration)** where made on the condition grantee **does something specific in return (cf. no strings attached)**
 - **E.g. – company receives a grant, providing that Frank must prepare a report of his research findings, which Government may commercially exploit**
 - o An undertaking to **merely report** on how a grant/subsidy is used **does not attract GST (GSTR 2012/2)**
 - **E.g. – a company receives a subsidy to improve its technological capabilities; is merely required to report on how it spends the funds**

NOTE #2; EXCEPTIONS: (deposits; taxes, fees and charges)

- **Deposit** held as security for performance of an obligation **NOT treated as consideration, unless** forfeited or applied as consideration for a supply (**s 99-5**, see **BELOW – special rules!!**)
- Payment of an Australian **tax, fee or charge NOT consideration; includes**
 - o Parking fee, driving toll, fee of facility (cf. entry fee to national park), fee of waste disposal facility, fee for provision of information if not required under Australian law

ELEMENT TWO: Supply is made in course/furtherance of an enterprise the entity carries on

Enterprise – s 9-20 GSTA

Exhaustively defined, being:

- An **activity**, or series of activities **done in the form of a ‘business’ (s 9-20(1)(a))**
- An **activity**, or series of activities **done in the form of an ‘adventure or concern in the nature of trade’ (s 9-20(1)(b))**
- Activities done ‘on a regular or continuous basis’
 - o **‘IN THE FORM OF A LEASE, LICENCE OR OTHER GRANT OF AN INTEREST IN PROPERTY’ (s 9-20(1)(c))**
- Includes activities by **trustees of super funds, charitable institutions, religious funds, and by the Commonwealth, state or territory (s 9-20(1)(d)-(h))**
- Includes **leasing activities** (maintaining common property for owners of apartments = a form of business **per Body Corporate, Villa Edgewater**)

Note: Activities done ‘in the course of the commencement or termination of the enterprise’ (**s 195-1**) **INCLUDE acquisition and sale of an enterprise; DOES NOT include mere preparatory or exploratory activities – see GOING CONCERNS, below**

Exceptions of certain activities, such as (s 9-20(2)):

- Pursuit of a hobby, or supply by a person (activities) of an **EMPLOYEE**

ELEMENT THREE: Supply is connected with indirect tax zone

ITZ refers to Australia– s 195-1 GSTA

Supply of goods is connected with the ITZ, where (**s 9-25**):

- Goods are delivered/made available to recipient in Australia
- Goods are removed from Australia
- Goods are imported into Australia, or installed/assembled in Australia

An 'offshore supply of low value goods' (goods valued up to \$1,000) is connected with the ITZ if connected under Subdiv 84 (s 9-25(3A))

REAL PROPERTY (land) is connected if it is IN AUSTRALIA

IF NOT goods/property (eg SERVICES), is connected to ITZ if:

- Thing is done in ITZ (s 9-25(5)(a))
- Supply is made by supplier through an enterprise carried on in ITZ (s 9-25(5)(b))
 - o If a **permanent establishment under s 6(1) ITAA 36**
- If recipient of supply is an Australian consumer (s 9-25(5)(d))
 - o i.e. not registered for GST, or registered for GST but does not acquire the thing solely/partly for purpose of an enterprise it carries on (s 9-25(7))

ELEMENT FOUR: Entity is registered OR required to be registered

Registered (s 23-10 GSTA):

- May be registered for GST if carrying on enterprise

Required to be Registered (s 23-5 GSTA):

- If "GST turnover" meets the **registration turnover threshold of \$75,000**
- Taxi drivers (including Uber drivers; per **Uber BV**) (s 144-5)
- Representatives (eg liquidators) of incapacitated entities that are registered or required to be registered (s 58-20)
- Resident agents acting for non-residents that are registered or required to be registered (s 57-20)

EXCEPTIONS - NEGATIVE ELEMENTS; supply is NOT "taxable supply" (s 9-5 GSTA)

GST-free (Div. 38) (p160tb; p1699, p1810(food) legis)

- Entities registered for GST do not charge GST on GST-free supplies, **BUT ARE ENTITLED TO ITCs on acquisitions that relate to make such supplies**
- GST-free if falls within category of **Div. 38 (s 9-30(1))**

Input Taxed (Div. 40) (p162tb; p1822 legis)

- GST not chargeable on input taxed supplies, **AND NOT ENTITLED TO ITCs** on acquisitions relating to those supplies
- Input taxed if falls within **Div. 40 (s 9-30(2))**
 - o **Financial supplies**, supplies of **residential rental premises**
 - Reminder: Reduced ITCs available for **some creditable acquisitions relating to financial supplies**
 - Consider also – threshold exceptions in **s11-15(4)** for financial supplies

NOTE s 9-30(3): As a general rule, if a supply would otherwise fall within **both the GST-free and input taxed categories**, it is **usually treated as a GST-free supply**

Full – see textbook page 158-163

Div. 38: GST-free supplies	Div. 40: the following are input taxed
S 38-A: Food <ul style="list-style-type: none"> Supplies of food (s38-2); fresh fruit, vegetable, meats, seafood etc. and related packaging Exclusions (s38-3): restaurant food; hot-food take-away; specified prepared foods (snacks, confectionary, biscuits etc.) 	S 40-A: Financial supplies <ul style="list-style-type: none"> Generally, includes: making of loans, issues shares etc. See 2.6 below
S 38-B: Health <ul style="list-style-type: none"> Supplies of certain medical/hospital products (e.g. medical services) s38-7 Excludes cosmetic purposes s38-7(2)(b) 	S 40-B: Leases of residential premises <ul style="list-style-type: none"> Supplies by way of lease, hire/licence of residential premises (land for residential accommodation (s195-1) = input taxed s40-35) Doesn't apply to lease of commercial residential premises
S 38-C: Education <ul style="list-style-type: none"> Supplies of education courses (s38-85) excursions etc. 	S40-C: Sale of residential premises <ul style="list-style-type: none"> Only if property is "residential premises to be used predominantly residential accommodation" S 40-65(2): Not input taxed if commercial residential premises (e.g. hotel); or new residential premises
S 38-C: Education	
<ul style="list-style-type: none"> Supplies of education courses (s 38-85) 	
S 38-D: Child care by specified providers	
S 38-E: Exports	
S 38-F: Religious services	
S 38-G: Charities	
S 38-J: Going Concerns	
<ul style="list-style-type: none"> Sale of business ordinarily counts as carrying on enterprise, vendor & purchaser may treat supply as a "going concern" Supplies of GC (e.g. sales of business) = GST free (s38-325) 	
S 38-K: Transport	
<ul style="list-style-type: none"> Supplies of passenger transport 	
S 38-L: Precious metals	

STEP 2: STATE THAT TAXABLE SUPPLY ESTABLISHED

The [supply/sale of item] was a taxable supply as it was made for consideration and in the furtherance of [Supplier/Taxpayer]'s enterprise (s 9-5 GSTA)

STEP 3: CALCULATE AND CONCLUDE GST CHARGED FOR THIS EVENT

GST is 10% of the VALUE (s 9-70 GSTA), where VALUE = 10/11 of \$[Price] (s 9-75 GSTA)

Hence, GST = 1/11 of Price

- Note for Mixed supplies - partly a taxable supply, partly a GST-free or input taxed supply, the value of GST is the proportion of value for the taxable supply (s 9-80)

As such, the amount of GST charged for is \$[GST]. This amount is **NANEI** (s 17-5).

WITHHOLDING TAXES p1029tb

Dividend, interest and royalty withholding tax

Definition of 'withholding tax': Income tax payable under **s 128B ITAA 36 (s 995-1 ITAA97)**

- This section makes **non-residents liable to income tax** (subject to exceptions) on **dividends (s 128B(4))**, **interest (s 128B(5))**, and **royalties (s 128B(5A))** that fall within provisions in **Div 11A of Pt III ITAA 36**
- Imposed at rates prescribed under the **Income Tax (Dividends, Interest and Royalties Withholding Tax) Act 1974 (ITDIRWTA)**
 - o Due and payable at expiration of 21 days after end of the month

Amounts subject to **withholding tax (and certain amounts specifically excluded from withholding tax)** constitute **NANEI (s 128D)**

- **To prevent double taxation**, a non-resident who **has paid withholding tax** is **ENTITLED** to a credit for any amounts withheld by the payer under PAYG provisions (**s 18-30 in Sch 1 TAA**)

Dividend Withholding Tax

Rate: 30% per **s 7(a) ITDIRWTA**;

- **UNLESS** resident of a **tax treaty country** (usually **15%** under most DTAs); see **TEXTBOOK PG 989-990**

Applies to: Dividends paid by **resident company to non-res** (**s 128B(1), (4) ITAA 36, s 12-210 in Sch 1 TAA**)

Does not apply to: Dividends paid by a **resident company to a non-resident**, attributable to a **permanent establishment** carried on by non-resident in Australia (**s 128B(3E)**)

- Does not apply to **franked dividends**
- Dividends franked with exempting credits (**s 128B(3)(ga)**) – these are paid out of profits **already subjected to Australian corporate tax**
- Unfranked dividend that is *conduit foreign income* (**s 802-15 ITAA97**)

Special withholding tax rates apply under certain DTAs

- **Example – Protocol to US DTA imposes a maximum 5% withholding tax rate on dividends paid to a company that holds at least 10% of voting power in the company paying the dividend**
 - o **Also exempts dividends from withholding tax, where paid to a co that has owned shares representing 80% or more of the voting power in the company paying the dividend, for 12 months**

Example – R Co (resident co) pays a \$20,000 dividend, 50% franked, to F (Singapore resident – a tax treaty country).

- **\$10,000 unfranked part is subject to withholding tax at 15% (s 128B(1), (4))**
- **\$10,000 franked part is exempt from withholding tax (s 128B(3)(ga))**
- **R co must withhold tax of \$1,500 (15% of \$10,000) from dividend under PAYG rules (s 12-210 in Sch 1 TAA)**
 - o **F would receive net payment of \$18,500 dividend (\$20,000-\$1500)**
 - **F not liable to pay any further Australian tax**
 - **This net payment dividend is NANEI (s 128D)**

NON-RESIDENTS

Interest Withholding Tax

Rate: 10% per s 7(b) ITDIRWTA

Applies to: Interest paid to non-resident by

- A resident (provided interest **not** wholly incurred by resident in a business carried on in a foreign country at or through a PE in that country), **OR**
- A **non-resident** (provided interest **is** wholly/partly incurred by the non-resident in carrying on a business in Australia at or through a PE in Australia)
- **s 128B(2), (5) ITAA 36, s 12-245 in Sch 1 TAA**

Definition of 'interest':

- Amounts in the nature of interest, in substitution of interest, or in exchange of interest (**s 128A(1AB)**)
- Dividend paid in respect of a non-equity share (**s 128A(1), (1AB)**)
- **NOT:**
 - o 'Gross-up' amounts required to be paid in respect of a withholding tax by a borrower under loan agreement with a non-res bank (**Century Yuasa Batteries**)

Does not apply to:

- Interest paid by a temporary resident (**s 768-980 ITAA97**)
- Interest paid by an OBU on offshore borrowings (**s 128GB**)
- Interest paid by eligible companies and unit trusts on the debentures and debt interests they issue, as long as (**s 128F, 128FA ITAA36**) :
 - o They must satisfy **a public offer test** (**see p1031 tb**)
- Interest on debentures and debt interests issued by Cth, states and territories or their relevant authorities (**s128F(7) ITAA36**)

FOREIGN RESIDENTS WITHHOLDING TAX

Subdivision 12-FB in Sch 1 TAA contains withholding tax regime that applies to **certain payments** made to **foreign residents** by an entity **in the course of carrying on its enterprise**

Payments must be of such kind in TAR:

- Promoting casino junket tours (3% withholding tax)
- Payments for entertainment and sports activities (withholding tax at appropriate non-resident tax rates)
- Payments for construction and related activities (5% withholding tax)

Does not apply:

- Excluded payments (dividends, interest and royalties)
- Payments made to, or received for, entities covered by an exemption under **s 12-319**
 - o Commissioner being satisfied that relevant entity has an established history of complying with tax laws and is likely to continue to comply with obligations

Non-residents are **NOT** entitled to income tax exemptions in respect of payments that fall within withholding tax rules in **Subdiv 12-FB**, but are **nevertheless entitled to credits against the income tax liabilities**, for amounts withheld under the regime (**s 18-15**)