

## Taxation notes

### GST (GSTA 99)

Taxable Supply (s 9-5 GSTA)	
An entity makes a taxable supply if:	
<b>Supply</b> (s 9-10 GSTA)	“ Any form of supply whatsoever”: s9-10(1)
	<b>Includes: s 9-10 (2)</b> <ul style="list-style-type: none"> <li>Supply of goods and services</li> <li>Provision of advice or information</li> <li>Grant, assignment/ surrender of real property/ an interest in real property</li> <li>Creation, grant, transfer, assignment or surrender of any right</li> <li>A financial supply</li> <li>Entry into, or release from, an obligation to do anything, or to refrain from an act, or to tolerate an act or situation</li> </ul>
	<b>Examples:</b>
	<b>1. Supply of contractual right:</b>
	<i>FCT v Reliance Carpet (2008):</i> <ul style="list-style-type: none"> <li>Deposit was consideration for a supply</li> </ul>
	<b>2. Supply of granting rights:</b>
<i>FCT v Qantas Airways Ltd (2012):</i> <ul style="list-style-type: none"> <li>Taxpayer liable for GST</li> <li>Provision of travel = supply of granting rights (from the formation of contract)</li> </ul>	
<b>Illegality of supply</b> is irrelevant: s9-10 (3)	
<b>Exclusion of supply:</b> <ul style="list-style-type: none"> <li><u>Supply of money/ digital currency</u> (unless provided as consideration for a supply, eg, provision of money in foreign exchange transaction): s 9-10(4)</li> </ul>	
<b>Consideration</b> (s 9-15 GSTA)	s 9-15(1) of GST Act: <ul style="list-style-type: none"> <li>any payment, or any act or forbearance, in connection with a supply</li> </ul> s 9-15(2) of GST Act: <ul style="list-style-type: none"> <li><b>Does not matter</b> whether the payment was <b>voluntary</b> or whether it was by the recipient of the supply</li> </ul>

<p><b>Enterprise</b> (s 9-20 GSTA)</p>	<ul style="list-style-type: none"> <li>• Any activity conducted in the <b>form of a business</b>: s9-20 (1)(a) <ul style="list-style-type: none"> <li>○ Eg, <i>Stone(2005)</i>; <i>Ferguson(1979)</i>; TR97/11; TR2005/1</li> </ul> </li> <li>• Isolated commercial activities in the form of an adventure or concern in <b>the nature of trade</b>: s9-20(1)(b) <ul style="list-style-type: none"> <li>○ Eg, <i>Whitfords Beach(1982)</i>; <i>Westfield(1991)</i>; <i>Myer</i></li> </ul> </li> <li>• <b>Leasing property</b> on a regular/ continuous basis: s 9-20(1)(c)</li> <li>• Activities carried out by <b>trustees, charities, religious institutions and govern bodies</b>: s 9-20(1)(d-g)</li> </ul> <p style="text-align: center;"><b>BUT NOT:</b></p> <ul style="list-style-type: none"> <li>• <b>Provision of labour as an employee</b>: s 9-20(2)(a) <ul style="list-style-type: none"> <li>○ <i>Spriggs v FCT</i>; <i>Riddell v FCT (2009) 72 ATR 148</i> <ul style="list-style-type: none"> <li>▪ Exception from the exclusion as the sports-playing activities were business activities</li> <li>▪ Fact: Play full-time, and had managers</li> </ul> </li> </ul> </li> <li>• <b>Private, recreational pursuit/ hobby</b>: s 9-20(2)(b)</li> <li>• By an individual <b>without a reasonable expectation of profit/ gain</b>: s 9-20(2)(c)</li> </ul>
<p><b>Indirect tax zone</b> (s 9-25 GSTA)</p>	<p>Defined in s 195-1 of GSTA = <b>Australia</b></p> <p><b>Supplies connected to Australia:</b></p> <ul style="list-style-type: none"> <li>• Goods are delivered, or made available, in the indirect tax zone (ie, AUSTRALIA) to the recipient of the supply: s9-25(1)</li> <li>• Supply involves goods being removed from Australia: s9-25(2) <ul style="list-style-type: none"> <li>○ Note: Exemption for exports</li> </ul> </li> <li>• Supply is of Australian land</li> <li>• Goods are imported into Australia/ Installation or assembly of goods is in Australia: s9-25(3)</li> </ul> <p>If not goods/ real property is done in Australia/ supply made through an enterprise carried on in Austrlia.</p>
<p><b>Registered/ required to be registered for GST</b></p>	<p style="text-align: center;"><b>Registration (s 23-1 GSTA)</b></p> <p>Are you carrying on an enterprise? NO → You can't be registered</p> <p style="text-align: center;">↓ YES</p> <p>Does your GST turnover meet the <b>registration turnover threshold</b>? NO → You may be registered</p> <p style="text-align: center;">↓ YES</p> <p>You are required to be registered</p> <p style="text-align: center;"><b>Registered</b></p> <ul style="list-style-type: none"> <li>• Any entity can register for GST if carrying on <b>an enterprise</b>: s 23-10</li> </ul>

	<ul style="list-style-type: none"> <li>• Entities <b>MUST register</b> for GST if “GST turnover” exceeds “<b>registration turnover threshold</b>”: s 23-5 <ul style="list-style-type: none"> <li>○ Non-profit ≥ \$150,000 → s 23-15</li> <li>○ All other entities ≥ \$75,000 → s 23-15</li> </ul> </li> </ul> <p><b>*Exception</b> (Must register even threshold not meet):</p> <ul style="list-style-type: none"> <li>○ Taxi drivers (s 144-5), Ride-sharing (<i>Uber BV (2017)</i>)</li> </ul>
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<b>Exemptions (under taxable supply)</b>	
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<b>GST-free supplies (Div 38)</b>	<ul style="list-style-type: none"> <li>• <b>Food</b> (defined under s 38-4): <ul style="list-style-type: none"> <li>○ Supply of food is <b>GST-free</b>: s 38-2 <ul style="list-style-type: none"> <li>▪ Only fresh, unprocessed food will be GST-free</li> </ul> </li> <li>○ Supply of food <b>NOT GST free</b>: s 38-3; <i>Schedule 1</i> <ul style="list-style-type: none"> <li>▪ <i>Lansell House (2011)</i> <ul style="list-style-type: none"> <li>• Fact: ‘Mini ciabatte’ is cracker not bread -&gt; not GST free supply</li> </ul> </li> <li>▪ <u>Food for consumption on premise</u> it is supplied: s 38-3(1)(a)</li> <li>▪ <u>Hot food</u> for consumption away from those premises: s 38-3(1)(b)</li> </ul> </li> </ul> </li> </ul>
	<ul style="list-style-type: none"> <li>• <b>Health</b> <ul style="list-style-type: none"> <li>○ Medical service (define in s 195-1) is GST-free: s 38-7</li> </ul> </li> </ul>
	<ul style="list-style-type: none"> <li>• <b>Education</b> <ul style="list-style-type: none"> <li>○ s 38-85 of GSTA</li> </ul> </li> </ul>
	<ul style="list-style-type: none"> <li>• <b>Childcare</b> <ul style="list-style-type: none"> <li>○ Supply provided by registered carer: <i>subdiv 38-D</i></li> </ul> </li> </ul>
	<ul style="list-style-type: none"> <li>• <b>Exports &amp; other supplies for consumption outside Australia</b> <ul style="list-style-type: none"> <li>○ Subdiv 38-E</li> <li>○ Exported within 60 days after the earlier day the consideration is received/ tax invoice is provided by the supplier: s 38-185 (1)</li> <li>○ GST-free status lost if goods reimported into Aus: s 38-185(2)</li> <li>○ Goods/ real property outside or used or enjoyed outside Aus will be GST-free: s38-190(1)</li> </ul> </li> </ul>
	<ul style="list-style-type: none"> <li>• Religious services</li> </ul>
	<ul style="list-style-type: none"> <li>• Activities of charities, etc</li> </ul>
	<ul style="list-style-type: none"> <li>• Water and sewerage</li> </ul>
	<ul style="list-style-type: none"> <li>• <b>Supplies of going concerns:</b> <ul style="list-style-type: none"> <li>○ Supply of going concern definition (necessary for continued operation): s38-325(2)</li> <li>○ GST-free under <i>subdiv 38-J</i></li> <li>○ <b>MUST</b> satisfy requirements in s 38-325(1): <ul style="list-style-type: none"> <li>▪ Must be consideration</li> <li>▪ Recipient of the supply must be registered/ required to be registered for GST</li> <li>▪ Agreement in writing that the supply is going concern between supplier and recipient</li> </ul> </li> </ul> </li> </ul>
	<ul style="list-style-type: none"> <li>• <b>Transport and related matters:</b> <ul style="list-style-type: none"> <li>○ International Flight (from or to AUS): s 38-355</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ Domestic flight/ supply: Taxable Supply</li> <li>● Precious metals</li> <li>● Supplies through inward duty free shops</li> <li>● Grants of land by governments</li> <li>● Farm land</li> <li>● Cars for use by disabled people</li> <li>● Telecommunication supplies made under global roaming arrangements</li> <li>● Eligible emission units</li> <li>● <b>International mail</b> <ul style="list-style-type: none"> <li>○ GST-free under s 38-540</li> </ul> </li> </ul>
<b>Input-taxed supplies</b> (Div 40)	<ul style="list-style-type: none"> <li>● <b>Financial supplies: subdiv 40-A</b> <ul style="list-style-type: none"> <li>○ Definition (s40-5): Provision, disposal, acquisition of an interest in...</li> <li>○ Acquisition of an interest in a debt: 40.5.09(3) GST Regulations</li> <li>○ Disposal of an interest in a security: 40.5.09(3) GST Regulations</li> </ul> </li> <li>● <b>Residential rent: subdiv 40-B</b> <ul style="list-style-type: none"> <li>○ Input-taxed supplies: Not commercial residential premises; or</li> <li>○ Not input-taxed supplies: Commercial resident (Definition: s 195-1)</li> <li>○ Residential premises (s195-1): <ul style="list-style-type: none"> <li>▪ Land/ building that is occupied or intended to be occupy as residential acc</li> </ul> </li> </ul> </li> <li>● <b>Sale of existing residential premises: s40-65</b> To be input raxed: <ul style="list-style-type: none"> <li>○ Sale of real property must not be commercial residential premises: ss40-65(2); or</li> <li>○ New residential premises: ss40-70(2) <ul style="list-style-type: none"> <li>▪ Will not be new residential premises if: <ul style="list-style-type: none"> <li>● Used before 2 Dec 1998 regardless of term of occupation: s40-65(2); or</li> <li>● Used for a period of at least 5 yrs: s40-75(2)</li> </ul> </li> </ul> </li> </ul> </li> <li>● Precious metals</li> <li>● School tuckshops/ canteens</li> <li>● Fund-raising events conducted by charitable institutions</li> </ul>
<b>Consequences</b>	
<b>Taxable supply</b> (Not 'exempt')	<ul style="list-style-type: none"> <li>● Registered entity is <b>required to pay</b> the applicable <b>GST payable</b> on any Taxable Supply that it makes: s9-40 <ul style="list-style-type: none"> <li>○ GST payable by the supplier on 10% of the value of the taxable supply: s 9-70</li> <li>○ Value of taxable supply = 10/11 of the price: s 9-75 <ul style="list-style-type: none"> <li>▪ Price = consideration: s 9-75</li> </ul> </li> <li>○ GST payable = 10% x Value of taxable supply</li> </ul> </li> </ul>
<b>GST-free supply</b>	<ul style="list-style-type: none"> <li>● No GST is payable on the supply: s 38-1 of GST Act</li> <li>● Excluded from the definition of "Taxable supply" in s 9-5</li> </ul>
<b>Input-taxed supply</b>	<ul style="list-style-type: none"> <li>● No GST is payable on the supply: s 40-1 of GST Act</li> <li>● Excluded from the definition of "Taxable supply" in s 9-5</li> </ul>

Creditable Acquisition (s 11-5 GSTA)	
Entity's entitlement to 'input tax credits' (refund of GST paid)	
<b>Acquisition</b> (s 11-10 GSTA)	<ul style="list-style-type: none"> <li>• <b>Any form</b> of acquisition whatsoever: s 11-10(1)</li> <li>• <b>Includes:</b> s 11-10(2) <ul style="list-style-type: none"> <li>○ Acquisition of goods and services</li> <li>○ Receipt of advice or information</li> <li>○ Acceptance of a grant, assignment or surrender of real property</li> <li>○ Acceptance of a grant, transfer, assignment or surrender of any right</li> <li>○ Acquisition of a financial supply</li> <li>○ Acquisition of a right to require another person to do something, to refrain from an act, or to tolerate an act</li> </ul> </li> <li>• <b>Does not</b> include acquisition of money/digital currency unless provided as consideration for supply of money/digital currency: s 11-10(3)</li> </ul>
<b>Creditable purpose (Solely/ party)</b> (s 11-15 GSTA)	<ul style="list-style-type: none"> <li>• Acquire it in carrying on your enterprise: s 11-15(1)</li> <li>• Includes provision of fringe benefits (eg, a gift to employee): Ruling GSTR 2001/3</li> <li>• <b>BUT NOT</b> <ul style="list-style-type: none"> <li>○ if relates to making of input-taxed supplies: s 11-15(2)(a)</li> <li>○ if it is private or domestic in nature: s 11-15(2)(b)</li> </ul> </li> </ul> <p><b>Financial Supplies:</b></p> <ul style="list-style-type: none"> <li>• Creditable purpose if not exceed financial acquisitions threshold (s 11-15(4)): <ul style="list-style-type: none"> <li>○ Not exceed \$150,000 financial acquisitions threshold;</li> <li style="text-align: center;"><b>AND</b></li> <li>○ Less than 10% of its input tax credits on all acquisitions</li> </ul> </li> </ul> <div style="border: 1px solid black; padding: 2px; width: fit-content; margin-left: auto; margin-right: 0;">       ss 189-5 &amp; 189-10 </div>
Supply was a <b>Taxable supply</b>	Are the good acquired taxable supply?
<b>Consideration</b>	<p><i>s 9-15(1) of GSTA:</i></p> <ul style="list-style-type: none"> <li>• any payment, or any act or forbearance, in connection with a supply</li> </ul> <p><i>s 9-15(2) of GSTA:</i></p> <ul style="list-style-type: none"> <li>• Does not matter whether the payment was voluntary or whether it was by the recipient of the supply</li> </ul>
<b>"Registered" or "required to be registered"</b>	<p style="text-align: center;"><b>Registration (s 23-1 GSTA)</b></p> <p>Are you carrying on an enterprise?    NO → You can't be registered</p> <p style="text-align: center;">↓ YES</p> <p>Does your GST turnover meet the <u>registration turnover threshold</u>?    NO → You may be registered</p> <p style="text-align: center;">↓ YES</p> <p>You are required to be registered</p>