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## GOODS AND SERVICES TAX

- A New Tax System (Goods and Services Tax) Act 1999 & A New Tax System (GST Imposition General) Act 1999
- The rate of GST is 10% (s 4) GSTA
- **Net amounts:** Amount of GST and ITCs are set off against each other to produce a net amount for a tax period (s 7-5) - TP either has to pay GST or is entitled to a refund (s 7-15)
- The general tax period is quarterly (s 27-5), but entities with GST turnovers that meet the tax period turnover threshold of \$20m must use monthly tax periods (s 27-15)
  - NOTE: entities with GST turnover under \$20m can elect to use monthly tax periods (s 27-10)
- Money goes out = ITC
- Receiving money = GST

### GST - TP HAS MADE A TAXABLE SUPPLY

- GST is payable on **taxable supplies** (s 7-1(1)) as defined in s 9-5
- As [X] has received [\$\$\$] as consideration for ITEM, [X] must charge GST and remit it to the Tax Office if it is a taxable supply (s 9-40)

Kind of supply	Is GST charged on the supply?
Taxable supply	Yes
GST-free supply	No
Input taxed supply	No

### POSITIVE ELEMENTS

s 9-5 You make a taxable supply if:

- you make the supply for consideration; and
- the supply is made in the course or furtherance of an enterprise that you carry on; and
- the supply is connected with the indirect tax zone; and
- you are registered, or required to be registered.

#### Supply

- A supply is any form of supply whatsoever (s 9-10(1)) and takes on its ordinary meaning
- Supply specifically **includes** (s 9-10(2)):
  - Supplies of (a) goods and (b) services
  - (c) The provision of advice or information
  - (d) A grant, assignment or surrender of real property
  - (e) A creation, grant, transfer, assignment or surrender of any right
  - (f) A financial supply; and
  - (g) An entry into or release from an obligation (i) to do anything, (ii) or to refrain from an act, or (iii) to tolerate an act or situation
  - (h) Any combination of any two or more of the matters referred to in paras (a) to (g)
- **Exception:** A supply does not include a supply of money (s 9-10(4)(a)) - includes digital currency (b)
  - NB: money is defined widely for any exchange (s 195-1), but not collectors/investment items
  - Eg dividend
- **Exception to the exception:** Unless the money is provided as consideration for a supply that is a supply of money (s 9-10(4)) - e.g. a loan/foreign exchange
- NB: it does not matter whether it is lawful to do, to refrain from doing or to tolerate the act or situation constituting the supply (s 9-10(3))
- In **GSTR 2006/9**, the ATO sets out a number of propositions concerning supplies
  - For every supply there must be a supplier and also generally a recipient to whom the supply is made
  - These entities must be different entities because an entity cannot make a supply to itself
  - The supplier must actually do something to make a supply (i.e. must be some positive act by supplier)
- 'The concept of 'supply' in its ordinary meaning in s 9-10(1) of the GSTA does seem to require some act of provision, furnishment, conferral or giving of something' (*Westley Nominees Pty Ltd v Coles Supermarkets*)
- A **promise** can constitute a supply (*Qantas Airways* - promise to carry passengers and baggage, NOT actual carriage; *ATS Pacific* - promise that tour providers would provide products such as car and accommodation to tourists, NOT supply of actual products)

- Does not include **court orders** for fines or damages (*Interchase*)
  - A court in giving a judgement does not make a supply, and extinguishment of a judgement debt does not constitute a supply (**GSTR 2001/4**)
  - BUT a supply exists where due to a court order or out-of-court settlement there is an earlier supply or a current supply

### Consideration

- Any payment, or any act or forbearance, in connection with a supply of anything (**s 9-15(1)(a)**), and
- Any payment or any act or forbearance in response or for inducement of a supply of anything (**s 9-15(1)(b)**)
- It does not matter whether the payment, act or forbearance was voluntary, or whether it was made by the recipient of the supply (**s 9-15(2)**)
- It does not matter whether the payment, act or forbearance was in compliance with a court order or legal settlement (**s 9-15(2A)**)
- Mere **gifts** do NOT attract GST as they are not made for consideration (*McPhail*)
  - However, a prize may constitute a supply (**FSTR 2002/3**)
- A **grant or subsidy** made 'without any strings attached' is not subject to GST even if there are mere reporting requirements (**GSTR 2012/2**)
- An undertaking to merely report on how a grant/subsidy is used does not attract GST (**GSTR 2012/2**)
- No consideration is provided for a **dividend**, therefore not a taxable supply
- A **deposit** held as security for the performance of an obligation is not treated as consideration for a supply unless it is forfeited or applied as consideration for a supply (**s 99-5**)
- Taxes, fees or charges → **Div 81**

### Enterprise

- An activity or series of activities done in the form of **(a) a business, (b) adventure or concern in the nature of trade, or, (c) on a continuous basis in the form of a lease, licence or other interest in property** (**s 9-20(1)**)
- **Does not include** the activities **(a) of an employee, (b) as a private pursuit or hobby, (c) without a reasonable expectation of profit or gain** (**s 9-20(2)**)
- "Carry on" an enterprise includes doing anything in the course of the commencement or termination of the enterprise (**s 195-1**)

### Connected with the indirect tax zone

- It is connected with the ITZ if the goods are delivered or made available in the ITZ to the recipient (**s 9-25(1)**)
- Where the goods are removed from the ITZ (**s 9-25(2)**)
- Where the goods are brought to the ITZ (**s 9-25(3)**)
- Where the real property or the land is in the ITZ (**s 9-25(4)**)
- **Basically means Australia** (**s 195-1**)
- A supply of anything other than goods (i.e. services) is connected with the ITZ if **(a) the thing is done in the ITZ or (b) the supplier makes the supply through an enterprise that the supplier carries on in the ITZ or (d) the recipient of the supply is an Australian consumer** (**s 9-25(5)**)
- **Exception:** a supply is not connected with the ITZ if **(a) the supplier is a non-resident and (b) the supplier does not make the supply through an enterprise carried on in the ITZ and (c) in the table** (**s 9-26(1)**)
  - Exception to the exception if the non-resident makes the supply through a resident agent and agrees in writing it will be connected to the ITZ (**s 57-7**)

### Registered or required to be registered

- **Must** be registered if carrying on an enterprise and turnover is over \$75,000 (**s 23-5; Reg 23-15.01**)
  - NB: turnover for non-profit is \$150,000 (**Reg 23-15.02**)
- **May** be registered if carrying on an enterprise (irrespective of turnover) (**s 23-10(1)**).

### Amount

- Therefore, [X] must pay GST at 10% of the value of a taxable supply (**s 9-70 GSTA**)
  - Value = Price x (10/11) (**s 9-75**)
    - \$100 (if cost \$110)
  - Thus GST = Price x (1/11)
    - Ex: GST under **s 9-70 and 9-75** 10% of the value so 10/11<sup>th</sup> of the price which is \$1,100,000
    - The value of the supply is \$1,000,000

- So \$100,000 GST
- NB: a supply that is partly a taxable supply and partly GST-free or an input taxed supply, the amount of GST will be apportioned (s 9-80)

## NEGATIVE ELEMENTS

### Entities do not charge GST on supplies that are:

#### GST-Free Supply - Division 38 GSTA

- If a supply is GST-free then no GST is payable on the supply (s 38-1)
- A supply is 'GST-free' if it falls (a) within the categories of supplies listed in Div 38 or (b) it is a right to receive such a supply (s 9-30(1))
- s 38-2(2) Food & related packaging (s 38-6)
  - Does **not** include restaurant food or take-away food s 38-3(1)
  - Does **not** include food in the table in **schedule 1** such as prepared foods, confectionary, savoury snacks, bakery products, ice cream, biscuit goods
  - Does **include** beverages in **schedule 2** such as milk products, tea, coffee, fruit juices, water (carbonated water is taxable) - except water is GST-free (s 38-4(2))
- s 38-7 Medical Services
- s 38-20 Hospital Treatment
- s 38-55 Private health insurance
- s 38-85 Education Courses (defined in s 195-1 exhaustively - not professional conference/training seminar)
- s 38-185 Exports (includes overseas flights)
- s 38-325(1) **Going Concerns** (eg goodwill of business)
  - GST-Free if (a) the supply is for consideration and (b) the recipient is registered or required to be registered & (c) the supplier and the recipient have agreed in writing the supply is of a going concern
  - (2) A supply of a going concern is a supply under an arrangement which (a) the supplier supplies to the recipient all of the things that are necessary for the continued operation of an enterprise and (b) the supplier carries on the enterprise until the day of the supply
  - Supplier does not charge GST, and recipient is not entitled to any ITC

#### Input Taxed Supply - Division 40 GSTA

- If a supply is input taxed then no GST is payable and no ITCs will arise (s 40-1)
- A supply is 'input taxed' if it falls (a) within the categories of supplies listed in Div 40 or (b) it is a right to receive such a supply (s 9-30(2))
- **Financial Supplies** (s 40-5(1)) is input taxed
  - Financial supply has the meaning given by regulations (s 40-5(2))
  - **Reg 40-5.09** defines financial supplies as the "provision, acquisition or disposal or an interest mentioned in (3) is a financial supply if it is (a)(i) for consideration and (ii) in the course or furtherance of an enterprise and (iii) connected with the ITZ and (iv) the supplier is registered/required to be and is a financial supply provider in relation to the interest
    - **Item 1:** bank accounts
    - **Item 2:** loan
    - **Item 10:** shares
  - 'Incidental financial supply' (reg 40-5.10) arises if something is supplied by an entity to a recipient directly in connection with a financial supply where: (a) incidental to financial supply (b) provided around the same time but not for separate consideration (c) usual practice to supply together
    - treated as financial supply (reg 40-5.12)
  - *Financial supply providers* is an entity in relation to a supply of an interest that was (a) immediately before the supply, the property of the entity or (b) created by the entity in making the supply (reg 40-5.06(1))
- **Residential Rent** (not commercial rent/commercial residential premises eg hotels) (s 40-35)
  - Supply by way of lease, hire or licence
  - However, a supply is not input taxed if it relates to a long-term lease
    - Long-term lease is 50+ years if at the time of lease, it is expected to go for 50+ years (s 195-1)
- **Sales of Residential Premises/long-term lease** (s 40-65)