Tax Law Sample

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NB: example starts form lecture 2 because Lecture 1 is insignificant

Lecture 2

Taxable Supply – s 9-5

a) 9-15: You make the supply for consideration (2); and
b) 9-20: The supply is made in the course or furtherance of an enterprise(3) that you carry on; and
   - Stone; Ferguson; TR 97/11; TR 2005/1
c) 9-25: The supply is connected with the indirect tax zone(4); and
d) 9-23: You are registered or required to be registered(5)

(5) However, the supply is not a taxable supply to the extent that it is GST Free or Input taxed

Supply – S 9-10:

1) Any form of supply whatsoever
2) Supply includes:

- Supply of G or S
- 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
- Entry into, or release from an obligation "to do anything" or to refrain from an act or to tolerate an act or situation

3) Illegality of supply is irrelevant
4) Does not include a supply of money unless consideration for a supply that is the supply of money or digital currency
    - Interpretation: When you pay to buy something, you providing money is not a supply

- Case law:
  - Reliance Carpet (2008) (HCA) [CS 25.1]
    - Lead purchase did not go forward which resulted in supplier keeping deposit
    - Tax office argued that the deposit included GST
    - Taxpayer said there was no supply, so no taxable supply, so no GST consequences
    - High court said that the deposit was paid for the bundle of rights in the contract which allowed the purchaser to by the lead on a particular date at a price – which formed the "supply"
  - Qantas Airways (2012) (HCA) [CS 25.2]
    - GST payable on a domestic airfare, where the passenger has not turned up.
    - High court said that when the passenger is paying for the ticket, and that Qantas is agreeing to transport them from A to B – the supply is the contractual right here to provide the service

Consideration – S 9-15

1) Any payment or act forbearance in connection with the supply or for the inducement of the supply
    - Payment: Cash or in kind
    - Exchange of G&S can be captured as consideration
2) Does not matter whether the payment was voluntary or whether it was by the recipient of the supply

Enterprise – 9-20

- 1A):
  - If carrying out/running a business = enterprise for GST purposes
  - Defined as any activity in the form of a business
    - If you have a business for income tax purposes, then you have an enterprise for GST purposes
    - E.g. Stone; Ferguson; TR 97/11; TR 2005/1
- 1B): Isolated commercial activities in the form of an adventure or concern in the nature of trade:
  - E.g., Whitfords Beach; Westfield; Myer [see Topic 6]
- 1C): Leasing property on a regular/continuous basis:
- 1D-G) Activities carried out by trustees, charities, religious institutions and government bodies:
- Not an enterprise:
  - 2a) The provision of labour as an employee
  - 2B) Private, recreational pursuits or hobbies

- 2C) Activities by an individual without a reasonable expectation of profit or gain

Indirect Tax Zone – s 9-25

- Section 9-25: A supply will be "connected with Australia" if:
  - Goods are delivered or made available to the recipient in Australia
  - The supply involves those goods being removed from Australia (Note: exemption for exports)
  - Goods are imported into Australia or installation/assembly of goods in Australia
  - The supply is of Australian land
- If the supply is not goods/real property, the thing is done in Australia or the supply is made through an enterprise carried on in Australia

Registration – S23-1

- 23-10): Any entity (trust, company etc) can register for GST assuming they are carrying on an enterprise.
- 23-5): Entities MUST register for GST, if "GST turnover" exceeds "registration turnover threshold"
  - GST turnover → ss 188-10; 188-15; 188-20; GSTR 2001/7
    - Non-profit Taxpayers ≥ $150,000: s 23-15; Regulation 23-15.02
    - All other Taxpayers ≥ $75,000: s 23-15; Regulation 23-15.01
  - If GST turnover does not meet threshold, they have the choice if they want to register or not
  - Turnover calculated in last 12 months.
  - Exception for threshold: Taxi drivers: s 144-5; Ridesharing: Uber BV (2017)
- Flowchart summary:
  - If not carrying on enterprise: Cant be registered
  - If carrying on enterprise:
    - If GST turnover threshold not met → may be registered
    - If GST turnover met → required to be registered

GST exemptions

38-2, 38-3:

- 38A: Food
  - "A supply of food is GST free"
  - "Food in restaurants are not GST free"
  - Heated food is not GST free
  - Food specified in schedule 1 are NOT GST free
  - Lansell House (2011): Was an item sold by Lansell house a bread or a cracker
- 38-3: Beverages are NOT GST free unless specified in schedule 2
  - Milk, tea, coffee
  - Unless these items are marketed as a ready to drink item (Takeaway coffee → NOT GST free)
- 38B: Health
- 38C: Education
- 38D Childcare
  - These 3 were part of the compromises made when the GST was introduced as it is a regressive tax, so these essential items are GST Free

- 38E: Exports & other supplies for consumption outside Australia
    - To maintain competitiveness of Australian business
- 38F: Religious services
- 38G Activities of charities
- 38I: Water and sewerage
- 38J: Supplies of going concern
    - When you sell a business, the sale will only be GST free is you sell it as a going concern
    - Meaning if you sell everything necessary for that business to continue
    - Selling the business + customer list so that they can continue to function with new ownership = NO GST
- 38K: Transport and related matters
- 38L: Precious metals
  - 38M: Supplies through inward duty-free shops
  - 38N: Grants of land by governments
  - 38O: Farmland
  - 38P: Cars for use by disabled people
  - 38Q: International mail
  - 38R: Telecommunication supplies made under global roaming arrangements
  - 39S: Eligible emission units
  - 38T: Inbound intangible consumer supplies
  - International stamps → posting overseas is GST free

Exemption for Input Taxed Supplies (Division 40)

- Financial Supplies (GSTR 2002/2)
    - Shares, credit card etc
- 40-35: Residential rent
- 40-65: Sale of existing residential premises
- 40-100: Precious metals
- 40-130: School tuckshops/canteens
- 40-160: Fund raising events conducted by charitable institutions

Summary of non-exempt

- 9-70: GST is payable by the supplier on 10% of the value of taxable supply
- 9-75: Value of taxable supply = 10/11 of price
- Price = consideration
- Example: As a result, Audrey is liable for GST on the supply and the amount is 10% of the value of the supply; 9-70 and the value is 10/11 of the price; s 9-75. Audrey must include GST payable in her Business Activity Statement.

Creditable Acquisition – S 11-5:

- Definition: An entity that makes a creditable acquisition, is entitled to input tax credits (GST refunds) on those purchases.
- Requirements: You make a creditable acquisition(1) if:
    a) You acquire anything solely or partly for a creditable purpose(2); and s 11-15
    b) The supply of the thing to you is a taxable supply(3); and s 9-5
        - Taxable supply from seller's perspective

c) You provide or are liable to provide, consideration(4) for the supply; and s 9-15
d) You are registered or required to be registered(5) s 23-5

Acquisition – S11-10:

1) Is any form of acquisition whatsoever
2) Includes:
   - Acquisition of goods and 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, to refrain from an act, or to tolerate an act
3) Does not include acquisition of money/digital currency, unless provided as consideration for the supply of money/digital currency

Creditable Purpose – s 11-15

1) If you acquire it in carrying on your enterprise
2) But not if it relates to making of input-taxed supplies
   - E.g. if a bank that supplies financial supplies, then things that they acquire to make those financial supplies will NOT be acquired for a creditable purpose because of this section

Consequences of Creditable Acquisition:

- 11-5 & 11-20: An entity can claim an input tax credit in respect to the amount of GST paid on creditable acquisitions.
- 11-15: BUT no entitlement to input tax credits if acquisition related to the making of input taxed supplies.
  - If what you supply is input tax supplies (refundable supplies), then you do not have a creditable purpose and your acquisitions will not be tax refundable
- Div 69: ALSO → no entitlement to input tax credits (tax refund) for non-deductible expenses (Div 69)
  - Penalties
  - Relatives travel expense
  - Entertainment
  - Recreational club expenses
- 29-10: Must have tax invoice to claim input tax credits – auditing and assurance

Importation

- 13-5:
  - If you have a taxable importation, then the importer is liable for GST on importation, irrespective if they are registered or carried on an enterprise.
  - Must be a taxable importation:
    - The importation must be for home consumption
    - Must NOT be GST free supplies or input tax supplies
    - They must not be low value goods (<1000).

- 13-20: GST payable is calculated based on the customs value of the goods plus certain other costs (such as delivery cost)
- 15-5 & 15-10: Entitled to input tax credits if creditable importation (tax refund for GST)
    - For an Importation there is always 2 issues:
        1. 13-5;Is it a taxable importation?
        2. 15-5 Is it a creditable importation?
            - A) You import goods solely or partly for a creditable purpose; and
            - B) Importation is a taxable importation; and
            - C) You are registered or required to be registered
- Consequences example:
    - Taxable importation Therefore, BP is liable to pay GST on the importation 13-1, 13-15. Amount of GST payable is 10% of the value 13-20. The customs value is 45k and delivery is 2k. Therefore, GST payable is 10% of 47k which is 4700 dollars.
    - Creditable importation: Therefore, BP is entitled to input tax credits; 15-1, 15-15 and the amount of the input tax credits is equal to the GST payable on the importation, which is 4700 per tractor.
- Amended (div 84): Intangible supplies ("Netflix tax) and low value goods <1k)
    - Digital supplies and consulting services coming into the country are now captured
    - Low value (<1000) goods are also captured for tax purposes
    - The importer here doesn't pay the GST:
        - It is the supplier who pays the GST (assuming above GST threshold - >75k), they must register for GST and charge it on the making of these supplies to Australian customers, collect it and pay to ATO.