



# **A New Tax System (Goods and Services Tax) Act 1999**

**No. 55, 1999**

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This compilation is in 2 volumes

**Volume 1:** sections 1-1 to 113-5  
**Volume 2:** sections 114-1 to 195-1  
Schedules  
Endnotes

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *A New Tax System (Goods and Services Tax) Act 1999* that shows the text of the law as amended and in force on 15 February 2025 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# **An Act about a goods and services tax to implement A New Tax System, and for related purposes**

## **Chapter 1—Introduction**

### **Part 1-1—Preliminary**

#### **Division 1—Preliminary**

##### **1-1 Short title**

This Act may be cited as the *A New Tax System (Goods and Services Tax) Act 1999*.

##### **1-2 Commencement**

- (1) This Act commences on 1 July 2000.

##### **1-3 Commonwealth-State financial relations**

The Parliament acknowledges that the Commonwealth:

- (a) will introduce legislation to provide that the revenue from the GST will be granted to the States, the Australian Capital Territory and the Northern Territory; and
- (b) will maintain the rate and base of the GST in accordance with the Agreement on Principles for the Reform of Commonwealth-State Financial Relations endorsed at the Special Premiers' Conference in Canberra on 13 November 1998.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

---

**Chapter 1** Introduction

**Part 1-1** Preliminary

**Division 1** Preliminary

**Section 1-4**

---

**1-4 States and Territories are bound by the GST law**

The \*GST law binds the Crown in right of each of the States, of the Australian Capital Territory and of the Northern Territory. However, it does not make the Crown liable to be prosecuted for an offence.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## **Part 1-2—Using this Act**

### **Division 2—Overview of the GST legislation**

#### **2-1 What this Act is about**

This Act is about the GST.

It begins (in Chapter 2) with the basic rules about the GST, and then sets out in Chapter 3 the exemptions from the GST and in Chapter 4 the special rules that can apply in particular cases.

It concludes with definitions and other interpretative material.

Note: The GST is imposed by 6 Acts, the most important of which are:

- (a) the *A New Tax System (Goods and Services Tax Imposition—General) Act 1999*; and
- (b) the *A New Tax System (Goods and Services Tax Imposition—Customs) Act 1999*; and
- (c) the *A New Tax System (Goods and Services Tax Imposition—Excise) Act 1999*.

#### **2-5 The basic rules (Chapter 2)**

Chapter 2 has the basic rules for the GST, including:

- when and how the GST arises, and who is liable to pay it;
- when and how input tax credits arise, and who is entitled to them;
- how to work out payments and refunds of GST;
- when and how the payments and refunds are to be made.

#### **2-10 The exemptions (Chapter 3)**

Chapter 3 sets out the supplies and importations that are GST-free or input taxed.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

## **2-15 The special rules (Chapter 4)**

Chapter 4 has special rules which, in particular cases, have the effect of modifying the basic rules in Chapter 2.

Note: There is a checklist of special rules at the end of Chapter 2 (in Part 2-8).

## **2-20 Miscellaneous (Chapter 5)**

Chapter 5 deals with miscellaneous matters.

## **2-25 Interpretative provisions (Chapter 6)**

Chapter 6 contains the Dictionary, which sets out a list of all the terms that are defined in this Act. It also sets out the meanings of some important concepts and rules on how to interpret this Act.

## **2-30 Administration, collection and recovery provisions in the *Taxation Administration Act 1953***

Schedule 1 to the *Taxation Administration Act 1953* contains provisions relating to the administration of the GST, and to collection and recovery of amounts of GST.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## Division 3—Defined terms

### 3-1 When defined terms are identified

- (1) Many of the terms used in the law relating to the GST are defined.
- (2) Most defined terms in this Act are identified by an asterisk appearing at the start of the term: as in “\*enterprise”. The footnote that goes with the asterisk contains a signpost to the Dictionary definitions starting at section 195-1.

### 3-5 When terms are *not* identified

- (1) Once a defined term has been identified by an asterisk, later occurrences of the term in the same subsection are *not* usually asterisked.
- (2) Terms are *not* asterisked in the non-operative material contained in this Act.

Note: The non-operative material is described in Division 4.

- (3) The following basic terms used throughout the Act are *not* identified with an asterisk.

<b>Common definitions that are not asterisked</b>	
<b>Item</b>	<b>This term:</b>
1	acquisition
2	amount
3	Commissioner
4	entity
5	goods
6	GST
7	import

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Section 3-10

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<b>Common definitions that are not asterisked</b>	
<b>Item</b>	<b>This term:</b>
8	indirect tax zone
9	individual
10	input tax credit
11	supply
12	tax period
13	thing
14	you

**3-10 Identifying the defined term in a definition**

Within a definition, the defined term is identified by *bold italics*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## **Division 4—Status of Guides and other non-operative material**

### **4-1 Non-operative material**

In addition to the operative provisions themselves, this Act contains other material to help you identify accurately and quickly the provisions that are relevant to you and to help you understand them.

This other material falls into 2 main categories.

### **4-5 Explanatory sections**

One category is the explanatory section in many Divisions. Under the section heading “What this Division is about”, a short explanation of the Division appears in boxed text.

Explanatory sections form part of this Act but are not operative provisions. In interpreting an operative provision, explanatory sections may only be considered for limited purposes. They are set out in section 182-10.

### **4-10 Other material**

The other category consists of material such as notes and examples. These also form part of the Act. They are distinguished by type size from the operative provisions (except for formulas), but are not kept separate from them.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

## Chapter 2—The basic rules

### Division 5—Introduction

#### 5-1 What this Chapter is about

This Chapter sets out the basic rules for the GST. In particular, these rules will tell you:

- where liability for GST arises;
- where entitlements to input tax credits arise;
- how the amounts of GST and input tax credits are combined to work out the amount payable by you or to you;
- when and how that amount is to be paid.

#### 5-5 The structure of this Chapter

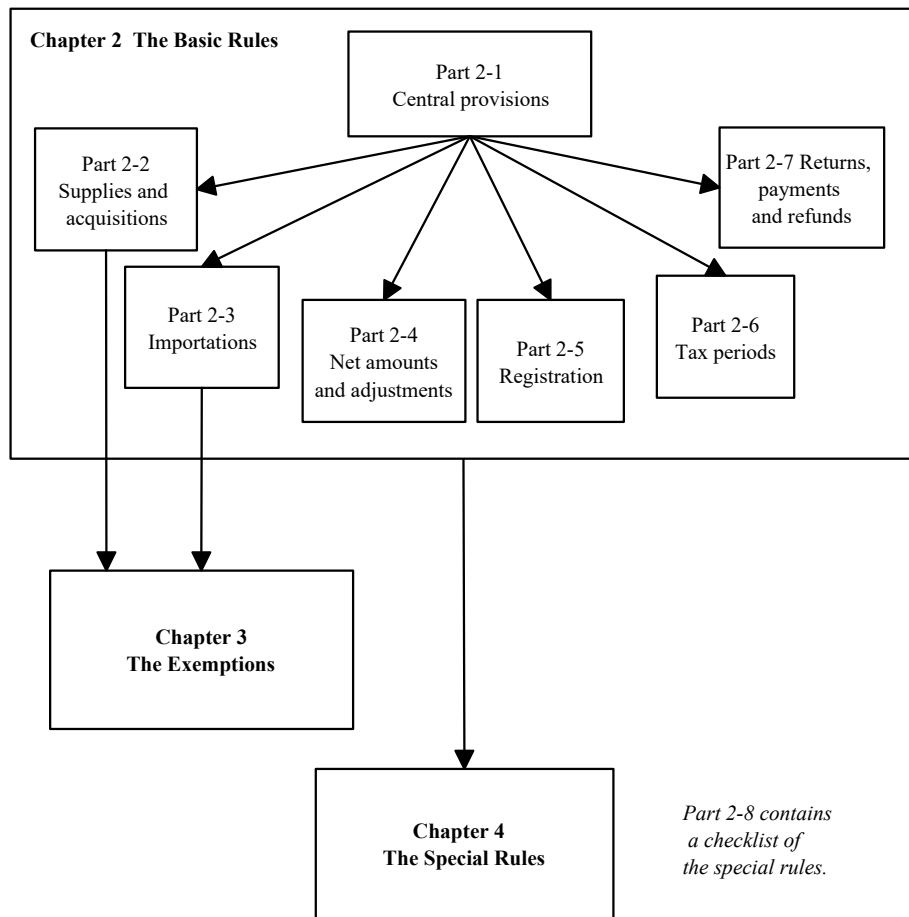
The diagram on the next page shows how the basic rules in this Chapter relate to each other. It also shows their relationship with:

- the exemptions (Chapter 3)—these provisions exempt from the GST what would otherwise be taxable; and
- the special rules (Chapter 4)—these provisions modify the basic rules in particular situations, often in quite limited ways.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

## Part 2-1—The central provisions

### Division 7—The central provisions

#### 7-1 GST and input tax credits

- (1) GST is payable on \*taxable supplies and \*taxable importations.
- (2) Entitlements to input tax credits arise on \*creditable acquisitions and \*creditable importations.

For taxable supplies and creditable acquisitions, see Part 2-2.

For taxable importations and creditable importations, see Part 2-3.

#### 7-5 Net amounts

Amounts of GST and amounts of input tax credits are set off against each other to produce a \*net amount for a tax period (which may be altered to take account of \*adjustments).

For net amounts (including adjustments to net amounts), see Part 2-4.

#### 7-10 Tax periods

Every entity that is \*registered, or \*required to be registered, has tax periods applying to it.

For registration, see Part 2-5.

For tax periods, see Part 2-6.

#### 7-15 Payments and refunds

The amount \*assessed as being the \*net amount for a tax period is the amount that the entity must pay to the Commonwealth, or the Commonwealth must refund to the entity, in respect of the period.

For payments and refunds (and GST returns), see Part 2-7.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Section 7-15**

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Note 1: For assessment of net amounts, see Division 155 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 2: Refunds may be set off against your other liabilities (if any) under laws administered by the Commissioner.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## Part 2-2—Supplies and acquisitions

### Division 9—Taxable supplies

#### Table of Subdivisions

- 9-A What are taxable supplies?
- 9-B Who is liable for GST on taxable supplies?
- 9-C How much GST is payable on taxable supplies?

#### 9-1 What this Division is about

GST is payable on taxable supplies. This Division defines taxable supplies, states who is liable for the GST, and describes how to work out the GST on supplies.

#### Subdivision 9-A—What are taxable supplies?

#### 9-5 Taxable supplies

You make a *taxable supply* if:

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

However, the supply is not a \*taxable supply to the extent that it is \*GST-free or \*input taxed.

#### 9-10 Meaning of *supply*

- (1) A *supply* is any form of supply whatsoever.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (2) Without limiting subsection (1), **supply** includes any of these:
- (a) a supply of goods;
  - (b) a supply of services;
  - (c) a 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;
  - (g) an entry into, or release from, an obligation:
    - (i) to do anything; or
    - (ii) to refrain from an act; or
    - (iii) to tolerate an act or situation;
  - (h) any combination of any 2 or more of the matters referred to in paragraphs (a) to (g).
- (3) It does not matter whether it is lawful to do, to refrain from doing or to tolerate the act or situation constituting the supply.
- (3A) For the avoidance of doubt, the delivery of:
- (a) livestock for slaughtering or processing into \*food; or
  - (b) game for processing into \*food;
- under an arrangement under which the entity making the delivery only relinquishes title after food has been produced, is the supply of the livestock or game (regardless of when the entity relinquishes title). The supply does not take place on or after the subsequent relinquishment of title.
- (4) However, **supply** does not include:
- (a) a supply of \*money unless the money is provided as \*consideration for a supply that is a supply of money or \*digital currency; or
  - (b) a supply of digital currency unless the digital currency is provided as consideration for a supply that is a supply of digital currency or money.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Section 9-15

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**9-15 Consideration**

- (1) **Consideration** includes:
- (a) any payment, or any act or forbearance, in connection with a supply of anything; and
  - (b) any payment, or any act or forbearance, in response to or for the inducement of a supply of anything.
- (2) It does not matter whether the payment, act or forbearance was voluntary, or whether it was by the \*recipient of the supply.
- (2A) It does not matter:
- (a) whether the payment, act or forbearance was in compliance with an order of a court, or of a tribunal or other body that has the power to make orders; or
  - (b) whether the payment, act or forbearance was in compliance with a settlement relating to proceedings before a court, or before a tribunal or other body that has the power to make orders.
- (2B) For the avoidance of doubt, the fact that the supplier is an entity of which the \*recipient of the supply is a member, or that the supplier is an entity that only makes supplies to its members, does not prevent the payment, act or forbearance from being consideration.

**9-17 Certain payments and other things not consideration**

- (1) If a right or option to acquire a thing is granted, then:
- (a) the **consideration** for the supply of the thing on the exercise of the right or option is limited to any additional consideration provided either for the supply or in connection with the exercise of the right or option; or
  - (b) if there is no such additional consideration—there is no consideration for the supply.
- (2) Making a gift to a non-profit body is not the provision of **consideration**.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (3) A payment is not the provision of *consideration* if:
- (a) the payment is made by a \*government related entity to another government related entity for making a supply; and
  - (b) the payment is:
    - (i) covered by an appropriation under an \*Australian law; or
    - (ii) made under the National Health Reform Agreement agreed to by the Council of Australian Governments on 2 August 2011, as amended from time to time; or
    - (iii) made under another agreement entered into to implement the National Health Reform Agreement; and
  - (c) the payment is calculated on the basis that the sum of:
    - (i) the payment (including the amounts of any other such payments) relating to the supply; and
    - (ii) anything (including any payment for any act or forbearance) that the other government related entity receives from another entity in connection with, or in response to, or for the inducement of, the supply, or for any other related supply;does not exceed the supplier's anticipated or actual costs of making those supplies.
- (4) A payment is not the provision of *consideration* if the payment is made by a \*government related entity to another government related entity and the payment is of a kind specified in regulations made for the purposes of this subsection.
- (5) This section applies despite section 9-15.

## 9-20 Enterprises

- (1) An *enterprise* is an activity, or series of activities, done:
- (a) in the form of a \*business; or
  - (b) in the form of an adventure or concern in the nature of trade; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Section 9-20

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- (c) on a regular or continuous basis, in the form of a lease, licence or other grant of an interest in property; or
  - (d) by the trustee of a fund that is covered by, or by an authority or institution that is covered by, Subdivision 30-B of the \*ITAA 1997 and to which deductible gifts can be made; or
  - (da) by a trustee of a \*complying superannuation fund or, if there is no trustee of the fund, by a person who manages the fund; or
  - (e) by a charity; or
  - (g) by the Commonwealth, a State or a Territory, or by a body corporate, or corporation sole, established for a public purpose by or under a law of the Commonwealth, a State or a Territory; or
  - (h) by a trustee of a fund covered by item 2 of the table in section 30-15 of the ITAA 1997 or of a fund that would be covered by that item if it had an ABN.
- (2) However, *enterprise* does not include an activity, or series of activities, done:
- (a) by a person as an employee or in connection with earning \*withholding payments covered by subsection (4) (unless the activity or series is done in supplying services as the holder of an office that the person has accepted in the course of or in connection with an activity or series of activities of a kind mentioned in subsection (1)); or
- Note: Acts done as mentioned in paragraph (a) will still form part of the activities of the enterprise to which the person provides work or services.
- (b) as a private recreational pursuit or hobby; or
  - (c) by an individual (other than a trustee of a charitable fund, or of a fund covered by item 2 of the table in section 30-15 of the ITAA 1997 or of a fund that would be covered by that item if it had an ABN), or a \*partnership (all or most of the members of which are individuals), without a reasonable expectation of profit or gain; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Section 9-25

- (d) as a member of a local governing body established by or under a \*State law or \*Territory law (except a local governing body to which paragraph 12-45(1)(e) in Schedule 1 to the *Taxation Administration Act 1953* applies).
- (3) For the avoidance of doubt, the fact that activities of an entity are limited to making supplies to members of the entity does not prevent those activities:
- (a) being in the form of a \*business within the meaning of paragraph (1)(a); or
  - (b) being in the form of an adventure or concern in the nature of trade within the meaning of paragraph (1)(b).
- (4) This subsection covers a \*withholding payment covered by any of the provisions in Schedule 1 to the *Taxation Administration Act 1953* listed in the table.

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**Withholding payments covered**

<b>Item</b>	<b>Provision</b>	<b>Subject matter</b>
1	Section 12-35	Payment to employee
2	Section 12-40	Payment to company director
3	Section 12-45	Payment to office holder
4	Section 12-60	Payment under labour hire arrangement, or specified by regulations

## 9-25 Supplies connected with the indirect tax zone

*Supplies of goods wholly within the indirect tax zone*

- (1) A supply of goods is **connected with the indirect tax zone** if the goods are delivered, or made available, in the indirect tax zone to the \*recipient of the supply.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

Section 9-25

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*Supplies of goods from the indirect tax zone*

- (2) A supply of goods that involves the goods being removed from the indirect tax zone is **connected with the indirect tax zone**.

*Supplies of goods to the indirect tax zone*

- (3) A supply of goods that involves the goods being brought to the indirect tax zone is **connected with the indirect tax zone** if the supplier imports the goods into the indirect tax zone.
- (3A) A supply of goods that is an \*offshore supply of low value goods is **connected with the indirect tax zone** if it is connected with the indirect tax zone under Subdivision 84-C.

*Supplies of real property*

- (4) A supply of \*real property is **connected with the indirect tax zone** if the real property, or the land to which the real property relates, is in the indirect tax zone.

*Supplies of anything else*

- (5) A supply of anything other than goods or \*real property is **connected with the indirect tax zone** if:
- (a) the thing is done in the indirect tax zone; or
  - (b) the supplier makes the supply through an \*enterprise that the supplier \*carries on in the indirect tax zone; or
  - (c) all of the following apply:
    - (i) neither paragraph (a) nor (b) applies in respect of the thing;
    - (ii) the thing is a right or option to acquire another thing;
    - (iii) the supply of the other thing would be connected with the indirect tax zone; or
  - (d) the \*recipient of the supply is an \*Australian consumer.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

**Example:** A holiday package for a trip to Queensland that is supplied by a travel operator in Japan will be connected with the indirect tax zone under paragraph (5)(c).

**Note:** A supply that is connected with the indirect tax zone under this subsection might be GST-free if it is consumed outside the indirect tax zone: see section 38-190. For more rules about supplies that are GST-free, see Division 38.

*Supplies of goods involving installation or assembly services*

- (6) If a supply of goods (other than a \*luxury car) (the **actual supply**) involves the goods being brought to the indirect tax zone and the installation or assembly of the goods in the indirect tax zone, then the actual supply is to be treated as if it were 2 separate supplies in the following way:
- (a) the part of the actual supply that involves the installation or assembly of the goods in the indirect tax zone is to be treated as if it were a separate supply of a thing done in the indirect tax zone;
  - (b) the remainder of the actual supply is to be treated as if it were a separate supply of goods involving the goods being brought to the indirect tax zone but not involving the installation or assembly of the goods.

**Note 1:** The paragraph (a) supply is connected with the indirect tax zone (see paragraph (5)(a)), unless item 1 or 2 of the table in section 9-26 applies.

**Note 2:** The paragraph (b) supply may be a taxable supply (see subsection (3)), or there may be a taxable importation of the goods: see Division 13.

**Note 3:** For the *price* of the separate supplies, see subsection 9-75(4).

*Meaning of Australian consumer*

- (7) An entity is an **Australian consumer** of a supply made to the entity if:
- (a) the entity is an \*Australian resident (other than an entity that is an Australian resident solely because the definition of

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

Section 9-26

*Australia* in the \*ITAA 1997 includes the external Territories); and

- (b) the entity:
- (i) is not \*registered; or
  - (ii) if the entity is registered—the entity does not acquire the thing supplied solely or partly for the purpose of an \*enterprise that the entity \*carries on.

Note: Suppliers must take reasonable steps to ascertain whether recipients are Australian consumers: see section 84-100.

**9-26 Supplies by non-residents that are not connected with the indirect tax zone**

- (1) A supply is *not connected with the indirect tax zone* if:
- (a) the supplier is a \*non-resident; and
  - (b) the supplier does not make the supply through an \*enterprise that the supplier \*carries on in the indirect tax zone; and
  - (c) the supply is covered by an item in this table:

**Offshore supplies that are not connected with the indirect tax zone**

Item	Topic	These supplies are <i>not</i> connected with the indirect tax zone ...
1	Inbound intangible supply	a supply of anything other than goods or *real property if: (a) the thing is done in the indirect tax zone; and (b) the *recipient is an *Australian-based business recipient of the supply.
2	Intangible supply between non-residents	a supply of anything other than goods or *real property if: (a) the thing is done in the indirect tax zone; and (b) the *recipient is a *non-resident that acquires the thing supplied solely for the purpose of an *enterprise that the recipient *carries on outside the indirect tax zone.
3	Supply between	a supply by way of transfer of ownership of leased goods if:

\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Offshore supplies that are not connected with the indirect tax zone**

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Item	Topic	These supplies are <i>not</i> connected with the indirect tax zone ...
	non-residents of leased goods	(a) the *recipient is a *non-resident that does not acquire the thing supplied solely or partly for the purpose of an *enterprise that the recipient *carries on in the indirect tax zone; and (b) the lessee: (i) made a *taxable importation of the goods before the supply was made; and (ii) continues to lease the goods on substantially similar terms and conditions after the supply is made.
4	Supply by way of continued lease of goods from item 3	a supply made by way of lease if: (a) the *recipient is the lessee referred to in paragraph (b) of item 3 of this table; and (b) the lease is the lease referred to in subparagraph (ii) of that paragraph.

Note: This subsection does not apply to supplies made by a non-resident through a resident agent if they have agreed it is not to apply: see section 57-7.

- (2) An entity is an ***Australian-based business recipient*** of a supply made to the entity if:
- (a) the entity is \*registered; and
  - (b) an \*enterprise of the entity is \*carried on in the indirect tax zone; and
  - (c) the entity's acquisition of the thing supplied is not solely of a private or domestic nature.

Note: If a supply is not connected with the indirect tax zone, the Australian-based business recipient may be subject to a reverse charge: see Subdivision 84-A.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Section 9-27**

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- (3) This section applies despite sections 9-25 (which is about when supplies are connected with the indirect tax zone) and 85-5 (which is about telecommunication supplies).

**9-27 When enterprises are *carried on in the indirect tax zone***

- (1) An \*enterprise of an entity is *carried on in the indirect tax zone* if:
- (a) the enterprise is \*carried on by one or more individuals covered by subsection (3) who are in the indirect tax zone; and
  - (b) any of the following applies:
    - (i) the enterprise is carried on through a fixed place in the indirect tax zone;
    - (ii) the enterprise has been carried on through one or more places in the indirect tax zone for more than 183 days in a 12 month period;
    - (iii) the entity intends to carry on the enterprise through one or more places in the indirect tax zone for more than 183 days in a 12 month period.
- (2) It does not matter whether:
- (a) the entity has exclusive use of a place; or
  - (b) the entity owns, leases or has any other claim or interest in relation to a place.
- (3) This subsection covers the following individuals:
- (a) if the entity is an individual—that individual;
  - (b) an employee or \*officer of the entity;
  - (c) an individual who is, or is employed by, an agent of the entity that:
    - (i) has, and habitually exercises, authority to conclude contracts on behalf of the entity; and
    - (ii) is not a broker, general commission agent or other agent of independent status that is acting in the ordinary course of the agent’s business as such an agent.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

## 9-30 Supplies that are GST-free or input taxed

### *GST-free*

- (1) A supply is ***GST-free*** if:
- (a) it is GST-free under Division 38 or under a provision of another Act; or
  - (b) it is a supply of a right to receive a supply that would be GST-free under paragraph (a).

### *Input taxed*

- (2) A supply is ***input taxed*** if:
- (a) it is input taxed under Division 40 or under a provision of another Act; or
  - (b) it is a supply of a right to receive a supply that would be input taxed under paragraph (a).

Note: If a supply is input taxed, there is no entitlement to an input tax credit for the things that are acquired or imported to make the supply (see sections 11-15 and 15-10).

### *Supplies that would be both GST-free and input taxed*

- (3) To the extent that a supply would, apart from this subsection, be both \*GST-free and \*input taxed:
- (a) the supply is GST-free and not input taxed, unless the provision under which it is input taxed requires the supplier to have chosen for its supplies of that kind to be input taxed; or
  - (b) the supply is input taxed and not GST-free, if that provision requires the supplier to have so chosen.

Note: Subdivisions 40-E (School tuckshops and canteens) and 40-F (Fund-raising events conducted by charities etc.) require such a choice.)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Section 9-39**

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*Supply of things used solely in connection with making supplies that are input taxed but not financial supplies*

- (4) A supply is taken to be a supply that is \*input taxed if it is a supply of anything (other than \*new residential premises) that you have used *solely* in connection with your supplies that are input taxed but are not \*financial supplies.

**9-39 Special rules relating to taxable supplies**

Chapter 4 contains special rules relating to taxable supplies, as follows:

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<b>Checklist of special rules</b>		
<b>Item</b>	<b>For this case ...</b>	<b>See:</b>
1A	Agents and insurance brokers	Division 153
1	Associates	Division 72
2	Cancelled lay-by sales	Division 102
3	Company amalgamations	Division 90
3A	Compulsory third party schemes	Division 79
4	Deposits as security	Division 99
5	Gambling	Division 126
5A	GST religious groups	Division 49
6	Insurance	Division 78
7	Offshore supplies	Division 84
8	Payments of taxes, fees and charges	Division 81
8AA	Resident agents acting for non-residents	Division 57
8A	Second-hand goods	Division 66
8B	Settlement sharing arrangements	Division 80
9	Supplies and acquisitions made on a progressive or periodic basis	Division 156

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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<b>Checklist of special rules</b>		
<b>Item</b>	<b>For this case ...</b>	<b>See:</b>
9A	Supplies in return for rights to develop land	Division 82
10	Supplies in satisfaction of debts	Division 105
11	Supplies partly connected with the indirect tax zone	Division 96
12	Supply under arrangement covered by PAYG voluntary agreement	Division 113
12A	Tax-related transactions	Division 110
13	Telecommunication supplies	Division 85
14	Vouchers	Division 100

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### **Subdivision 9-B—Who is liable for GST on taxable supplies?**

#### **9-40 Liability for GST on taxable supplies**

You must pay the GST payable on any \*taxable supply that you make.

#### **9-69 Special rules relating to liability for GST on taxable supplies**

Chapter 4 contains special rules relating to liability for GST on taxable supplies, as follows:

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<b>Checklist of special rules</b>		
<b>Item</b>	<b>For this case ...</b>	<b>See:</b>
1	Company amalgamations	Division 90
2	GST groups	Division 48
3	GST joint ventures	Division 51
4	Offshore supplies	Division 84
4A	Non-residents making supplies connected	Division 83

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Section 9-70

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Checklist of special rules		
Item	For this case ...	See:
	with the indirect tax zone	
4B	Representatives of incapacitated entities	Division 58
5	Resident agents acting for non-residents	Division 57
6	Valuable metals	Division 86

### Subdivision 9-C—How much GST is payable on taxable supplies?

#### 9-70 The amount of GST on taxable supplies

The amount of GST on a \*taxable supply is 10% of the \*value of the taxable supply.

#### 9-75 The value of taxable supplies

- (1) The *value* of a \*taxable supply is as follows:

$$\text{Price} \times \frac{10}{11}$$

where:

*price* is the sum of:

- (a) so far as the \*consideration for the supply is consideration expressed as an amount of \*money—the amount (without any discount for the amount of GST (if any) payable on the supply); and
- (b) so far as the consideration is not consideration expressed as an amount of money—the \*GST inclusive market value of that consideration.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

Example: You make a taxable supply by selling a car for \$22,000 in the course of carrying on an enterprise.

The value of the supply is:

$$\$22,000 \times \frac{10}{11} = \$20,000$$

The GST on the supply is therefore \$2,000 (i.e. 10% of \$20,000).

- (2) However, if the taxable supply is of a \*luxury car, the **value** of the taxable supply is as follows:

$$\text{Luxury car tax value} \times \frac{10}{11}$$

where:

**luxury car tax value** has the meaning given by section 5-20 of the *A New Tax System (Luxury Car Tax) Act 1999*.

- (3) In working out under subsection (1) the value of a \*taxable supply made in a \*tax period, being a supply that is a \*fringe benefit, the price is taken to be the sum of:
- (a) to the extent that, apart from this subsection, paragraph(a) of the definition of **price** in subsection (1) would be applicable:
    - (i) if the fringe benefit is a car fringe benefit—so much of the amount that would be worked out under that paragraph as represented the \*recipient's payment made in that period; or
    - (ii) if the fringe benefit is a benefit other than a car fringe benefit—so much of the amount that would be worked out under that paragraph as represented the \*recipients contribution made in that period; and
  - (b) to the extent that, apart from this subsection, paragraph(b) of the definition of **price** in subsection (1) would be applicable:
    - (i) if the fringe benefit is a car fringe benefit—so much of the amount that would be worked out under that

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

Section 9-80

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paragraph as represented the recipient's payment made in that period; or

- (ii) if the fringe benefit is a benefit other than a car fringe benefit—so much of the amount that would be worked out under that paragraph as represented the recipients contribution made in that period.
- (4) Despite subsection (1), if a supply of goods (the *actual supply*) is to be treated as separate supplies because of subsection 9-25(6) or 84-79(2), then the *price* of each such separate supply is so much of the price of the actual supply, worked out under subsection (1), as reasonably represents the price of the separate supply.

**9-80 The value of taxable supplies that are partly GST-free or input taxed**

- (1) If a supply (the *actual supply*) is:
- (a) partly a \*taxable supply; and
  - (b) partly a supply that is \*GST-free or \*input taxed;
- the *value* of the part of the actual supply that is a taxable supply is the proportion of the value of the actual supply that the taxable supply represents.
- (2) The value of the actual supply, for the purposes of subsection (1), is as follows:

$$\frac{\text{*Price of the actual supply} \times 10}{10 + \text{Taxable proportion}}$$

where:

*taxable proportion* is the proportion of the value of the actual supply that represents the value of the \*taxable supply (expressed as a number between 0 and 1).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

### **9-85 Value of taxable supplies to be expressed in Australian currency**

- (1) For the purposes of this Act, the \*value of a \*taxable supply is to be expressed in Australian currency.
- (2) In working out the \*value of a \*taxable supply, any amount of the \*consideration for the supply that is expressed in:
  - (a) a currency other than Australian currency; or
  - (b) \*digital currency;is to be treated as if it were an amount of Australian currency worked out in the manner determined by the Commissioner.

### **9-90 Rounding of amounts of GST**

#### *One taxable supply recorded on an invoice*

- (1) If the amount of GST on a \*taxable supply that is the only taxable supply recorded on a particular \*invoice would, apart from this section, be an amount that includes a fraction of a cent, the amount of GST is rounded to the nearest cent (rounding 0.5 cents upwards).

#### *Several taxable supplies recorded on an invoice*

- (2) If 2 or more \*taxable supplies are recorded on the same \*invoice, the total amount of GST on the supplies is:
  - (a) what would be the amount of GST if it were worked out by:
    - (i) working out the GST on each of the supplies (without rounding the amounts to the nearest cent); and
    - (ii) adding the amounts together and, if the total is an amount that includes a fraction of a cent, rounding it to the nearest cent (rounding 0.5 cents upwards); or
  - (b) the amount worked out using the following method statement:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Section 9-90**

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*Method statement*

- Step 1. Work out, for each \*taxable supply, what would, apart from this section, be the amount of GST on the supply.
- Step 2. If the amount for the supply has more decimal places than the number of decimal places allowed by the accounting system used to work out the amount, round the amount (up or down as appropriate) to that number of decimal places.
- Note: Subsection (4) gives further details of this rounding.
- Step 3. Work out the sum of the amounts worked out under step 1 and (if applicable) step 2 for each supply.
- Step 4. If the sum under step 3 includes a fraction of a cent, round the sum to the nearest cent (rounding 0.5 cents upwards).

- (3) Whether to use paragraph (2)(a) or paragraph (2)(b) to work out the total amount of GST on the supplies is a matter of choice for:
- (a) the supplier if the amount is being worked out to ascertain the supplier's liability for GST; or
  - (b) the \*recipient of the supplies if the amount is being worked out to ascertain the recipient's entitlement to input tax credits.
- (4) In applying step 2 of the method statement in subsection (2), if:
- (a) the number of decimal places in the amount for the supply exceeds by one decimal place the number of decimal places allowed by the accounting system used to work out the amount; and
  - (b) the last digit of the amount (before rounding) is 5;
- the amount is rounded upwards to that number of decimal places.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

*Taxable supplies divided into items*

- (5) If one or more \*taxable supplies recorded on the same \*invoice are divided into 2 or more items:
- (a) subsection (1) does not apply; and
  - (b) subsection (2) applies as if each such item represented a separate taxable supply.

*Taxable supplies recorded on documents other than invoices*

- (6) If one or more \*taxable supplies, none of which are recorded on an \*invoice, are recorded on a document that is not an invoice, this section applies as if the document were an invoice.

## 9-99 Special rules relating to the amount of GST on taxable supplies

Chapter 4 contains special rules relating to the amount of GST on taxable supplies, as follows:

<b>Checklist of special rules</b>		
<b>Item</b>	<b>For this case ...</b>	<b>See:</b>
1A	Agents and insurance brokers	Division 153
1	Associates	Division 72
2	Company amalgamations	Division 90
2A	Compulsory third party schemes	Division 79
3	Gambling	Division 126
4	Long-term accommodation in commercial residential premises	Division 87
4AA	Non-residents making supplies connected with the indirect tax zone	Division 83
4A	Offshore supplies	Division 84
5	Sale of freehold interests etc.	Division 75
7	Supplies partly connected with the indirect tax zone	Division 96

\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

**Chapter 2** The basic rules  
**Part 2-2** Supplies and acquisitions  
**Division 9** Taxable supplies

Section 9-99

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**Checklist of special rules**

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<b>Item</b>	<b>For this case ...</b>	<b>See:</b>
8	Transactions relating to insurance policies	Division 78
8A	Valuable metals	Division 86
9	Valuation of taxable supplies of goods in bond	Division 108
10	Excess GST	Division 142

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Note: There are other laws that may affect the amount of GST on taxable supplies. For example, see subsection 357-60(3) in Schedule 1 to the *Taxation Administration Act 1953* (about the effect of rulings made under Part 5-5 in that Schedule).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## Division 11—Creditable acquisitions

### 11-1 What this Division is about

You are entitled to input tax credits for your creditable acquisitions. This Division defines creditable acquisitions, states who is entitled to the input tax credits and describes how to work out the input tax credits on acquisitions.

### 11-5 What is a creditable acquisition?

You make a *creditable acquisition* if:

- (a) you acquire anything solely or partly for a \*creditable purpose; and
- (b) the supply of the thing to you is a \*taxable supply; and
- (c) you provide, or are liable to provide, \*consideration for the supply; and
- (d) you are \*registered, or \*required to be registered.

### 11-10 Meaning of *acquisition*

- (1) An *acquisition* is any form of acquisition whatsoever.
- (2) Without limiting subsection (1), *acquisition* includes any of these:
  - (a) an acquisition of goods;
  - (b) an acquisition of services;
  - (c) a receipt of advice or information;
  - (d) an acceptance of a grant, assignment or surrender of \*real property;
  - (e) an acceptance of a grant, transfer, assignment or surrender of any right;
  - (f) an acquisition of something the supply of which is a \*financial supply;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Section 11-15

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- (g) an acquisition of a right to require another person:
    - (i) to do anything; or
    - (ii) to refrain from an act; or
    - (iii) to tolerate an act or situation;
  - (h) any combination of any 2 or more of the matters referred to in paragraphs (a) to (g).
- (3) However, **acquisition** does not include:
- (a) an acquisition of \*money unless the money is provided as \*consideration for a supply that is a supply of money or \*digital currency; or
  - (b) an acquisition of digital currency unless the digital currency is provided as consideration for a supply that is a supply of digital currency or money.

**11-15 Meaning of *creditable purpose***

- (1) You acquire a thing for a **creditable purpose** to the extent that you acquire it in \*carrying on your \*enterprise.
- (2) However, you do not acquire the thing for a creditable purpose to the extent that:
  - (a) the acquisition relates to making supplies that would be \*input taxed; or
  - (b) the acquisition is of a private or domestic nature.
- (3) An acquisition is not treated, for the purposes of paragraph (2)(a), as relating to making supplies that would be \*input taxed to the extent that the supply is made through an \*enterprise, or a part of an enterprise, that you \*carry on outside the indirect tax zone.
- (4) An acquisition is not treated, for the purposes of paragraph (2)(a), as relating to making supplies that would be \*input taxed if:
  - (a) the only reason it would (apart from this subsection) be so treated is because it relates to making \*financial supplies; and
  - (b) you do not \*exceed the financial acquisitions threshold.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (5) An acquisition is not treated, for the purposes of paragraph (2)(a), as relating to making supplies that would be \*input taxed to the extent that:
- (a) the acquisition relates to making a \*financial supply consisting of a borrowing (other than through a \*deposit account you make available); and
  - (b) the borrowing relates to you making supplies that are not input taxed.

### **11-20 Who is entitled to input tax credits for creditable acquisitions?**

You are entitled to the input tax credit for any \*creditable acquisition that you make.

### **11-25 How much are the input tax credits for creditable acquisitions?**

The amount of the input tax credit for a \*creditable acquisition is an amount equal to the GST payable on the supply of the thing acquired. However, the amount of the input tax credit is reduced if the acquisition is only \*partly creditable.

Note: The basic rule for working out the GST payable on the supply is in Subdivision 9-C. However, the GST payable may be affected by other provisions in:

- (a) this Act (for a list of provisions, see section 9-99); and
- (b) other GST laws (for example, see subsection 357-60(3) in Schedule 1 to the *Taxation Administration Act 1953* (about the effect of rulings made under Part 5-5 in that Schedule)).

### **11-30 Acquisitions that are partly creditable**

- (1) An acquisition that you make is *partly creditable* if it is a \*creditable acquisition to which one or both of the following apply:
- (a) you make the acquisition only partly for a \*creditable purpose;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Section 11-99

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- (b) you provide, or are liable to provide, only part of the \*consideration for the acquisition.
- (3) The amount of the input tax credit on an acquisition that you make that is \*partly creditable is as follows:

$$\text{Full input tax credit} \times \frac{\text{Extent of creditable purpose}}{\text{Extent of consideration}}$$

where:

**extent of consideration** is the extent to which you provide, or are liable to provide, the \*consideration for the acquisition, expressed as a percentage of the total consideration for the acquisition.

**extent of creditable purpose** is the extent to which the \*creditable acquisition is for a \*creditable purpose, expressed as a percentage of the total purpose of the acquisition.

**full input tax credit** is what would have been the amount of the input tax credit for the acquisition if it had been made solely for a creditable purpose and you had provided, or had been liable to provide, all of the consideration for the acquisition.

- (4) For the purpose of working out the extent of the \*consideration, so far as the consideration is not expressed as an amount of \*money, take into account the \*GST inclusive market value of the consideration.
- (5) The Commissioner may determine, in writing, one or more ways in which to work out, for the purpose of subsection (3), the extent to which a \*creditable acquisition is for a \*creditable purpose.

### 11-99 Special rules relating to acquisitions

Chapter 4 contains special rules relating to acquisitions, as follows:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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<b>Checklist of special rules</b>		
<b>Item</b>	<b>For this case ...</b>	<b>See:</b>
1A	Agents and insurance brokers	Division 153
1B	Annual apportionment of creditable purpose	Division 131
1	Associates	Division 72
2	Company amalgamations	Division 90
2A	Compulsory third party schemes	Division 79
3	Financial supplies (reduced credit acquisitions)	Division 70
3A	Fringe benefits provided by input taxed suppliers	Division 71
4	Gambling	Division 126
5	GST groups	Division 48
6	GST joint ventures	Division 51
6A	GST religious groups	Division 49
7	Insurance	Division 78
7A	Limited registration entities	Division 146
8	Non-deductible expenses	Division 69
8A	Offshore supplies	Division 84
9	Pre-establishment costs	Division 60
10	Reimbursement of employees etc.	Division 111
10A	Representatives of incapacitated entities	Division 58
11	Resident agents acting for non-residents	Division 57
13	Sale of freehold interests etc.	Division 75
14	Second-hand goods	Division 66
15	Settlement sharing arrangements	Division 80
16	Time limit on entitlements to input tax credits	Division 93

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## Part 2-3—Importations

### Division 13—Taxable importations

#### 13-1 What this Division is about

GST is payable on taxable importations. This Division defines taxable importations, states who is liable for the GST and describes how to work out the GST on importations.

Note 1: This Division applies whether or not you are registered.

Note 2: Things other than goods that are supplied overseas for use in the indirect tax zone (and are therefore in that sense “imported”) are not taxable importations, but they can attract GST under Subdivision 84-A.

#### 13-5 What are taxable importations?

- (1) You make a *taxable importation* if:
- (a) goods are imported; and
  - (b) you enter the goods for home consumption (within the meaning of the *Customs Act 1901*).

However, the importation is not a taxable importation to the extent that it is a \*non-taxable importation.

Note: There is no registration requirement for taxable importations, and the importer need not be carrying on an enterprise.

- (3) However, an importation of \*money is not an importation of goods into the indirect tax zone.

#### 13-10 Meaning of *non-taxable importation*

An importation is a *non-taxable importation* if:

- (a) it is a non-taxable importation under Part 3-2; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (b) it would have been a supply that was \*GST-free or \*input taxed if it had been a supply.

### **13-15 Who is liable for GST on taxable importations?**

You must pay the GST payable on any \*taxable importation that you make.

### **13-20 How much GST is payable on taxable importations?**

- (1) The amount of GST on the \*taxable importation is 10% of the \*value of the taxable importation.
- (2) The *value* of a \*taxable importation is the sum of:
- (a) the \*customs value of the goods imported; and
  - (b) the amount paid or payable:
    - (i) for the \*international transport of the goods to their \*place of consignment in the indirect tax zone; and
    - (ii) to insure the goods for that transport; to the extent that the amount is not already included under paragraph (a); and
  - (ba) the amount paid or payable for a supply to which item 5A in the table in subsection 38-355(1) applies, to the extent that the amount:
    - (i) is not an amount, the payment of which (or the discharging of a liability to make a payment of which), because of Division 81 or regulations made under that Division, is not the provision of \*consideration; and
- Note: Division 81 excludes certain taxes, fees and charges from the provision of consideration.
- (ii) is not already included under paragraph (a) or (b); and
  - (c) any \*customs duty payable in respect of the importation of the goods; and
  - (d) any \*wine tax payable in respect of the \*local entry of the goods.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Section 13-20**

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- (2A) If an amount to be taken into account under paragraph (2)(b) or (ba) is not an amount in Australian currency, the amount so taken into account is the equivalent in Australian currency of that amount, ascertained in the way provided in section 161J of the *Customs Act 1901*.
- (3) The Commissioner may, in writing:
- (a) determine the way in which the amount paid or payable for a specified kind of transport or insurance is to be worked out for the purposes of paragraph (2)(b); and
  - (b) determine the way in which the amount paid or payable for a specified kind of supply referred to in paragraph (2)(ba) is to be worked out for the purposes of that paragraph; and
  - (c) in relation to importations of a specified kind or importations to which specified circumstances apply—determine that:
    - (i) the amount paid or payable for a specified kind of transport or insurance is taken, for the purposes of paragraph (2)(b), to be zero; or
    - (ii) the amount paid or payable for a specified kind of supply referred to in paragraph (2)(ba) is taken, for the purposes of that paragraph, to be zero.
- (4) For a \*taxable importation that you make, you may choose to treat the amount under paragraph (2)(b), (or, if paragraph (2)(ba) applies, the sum of the amounts under paragraphs (2)(b) and (ba)), as an amount equal to:
- (a) the percentage prescribed by the regulations of the \*customs value of the goods imported; or
  - (b) if no percentage is prescribed—10% of their customs value.
- (5) However, subsection (4) does not apply if:
- (a) you are not \*registered; or
  - (b) the \*local entry of the goods is a \*taxable dealing in relation to \*wine; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (c) the importation of the goods is a \*taxable importation of a luxury car.

### 13-25 The value of taxable importations that are partly non-taxable importations

If an importation (the *actual importation*) is:

- (a) partly a \*taxable importation; and  
(b) partly a \*non-taxable importation;

the *value* of the part of the actual importation that is a taxable importation is the proportion of the value of the actual importation (worked out as if it were solely a taxable importation) that the taxable importation represents.

### 13-99 Special rules relating to taxable importations

Chapter 4 contains special rules relating to taxable importations, as follows:

Checklist of special rules		
Item	For this case ...	See:
1	GST groups	Division 48
2	GST joint ventures	Division 51
3	Importations without entry for home consumption	Division 114
4	Representatives of incapacitated entities	Division 58
5	Resident agents acting for non-residents	Division 57
6	Valuation of re-imported goods	Division 117

Note: There are other laws that may affect the amount of GST on taxable importations. For example, see subsection 357-60(3) in Schedule 1 to the *Taxation Administration Act 1953* (about the effect of rulings made under Part 5-5 in that Schedule).

\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

## Division 15—Creditable importations

### 15-1 What this Division is about

You are entitled to input tax credits for your creditable importations. This Division defines creditable importations, states who is entitled to the input tax credits and describes how to work out the input tax credits on importations.

### 15-5 What are creditable importations?

You make a *creditable importation* if:

- (a) you import goods solely or partly for a \*creditable purpose; and
- (b) the importation is a \*taxable importation; and
- (c) you are \*registered, or \*required to be registered.

### 15-10 Meaning of *creditable purpose*

- (1) You import goods for a *creditable purpose* to the extent that you import the goods in \*carrying on your \*enterprise.
- (2) However, you do not import the goods for a creditable purpose to the extent that:
  - (a) the importation relates to making supplies that would be \*input taxed; or
  - (b) the importation is of a private or domestic nature.
- (3) An importation is not treated, for the purposes of paragraph (2)(a), as relating to making supplies that would be \*input taxed to the extent that the supply is made through an \*enterprise, or a part of an enterprise, that you \*carry on outside the indirect tax zone.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (4) An importation is not treated, for the purposes of paragraph (2)(a), as relating to making supplies that would be \*input taxed if:
- (a) the only reason it would (apart from this subsection) be so treated is because it relates to making \*financial supplies; and
  - (b) you do not \*exceed the financial acquisitions threshold.
- (5) An importation is not treated, for the purposes of paragraph (2)(a), as relating to making supplies that would be \*input taxed to the extent that:
- (a) the importation relates to making a \*financial supply consisting of a borrowing; and
  - (b) the borrowing relates to you making supplies that are not input taxed.

### **15-15 Who is entitled to input tax credits for creditable importations?**

You are entitled to the input tax credit for any \*creditable importation that you make.

### **15-20 How much are the input tax credits for creditable importations?**

The amount of input tax credit for a \*creditable importation is an amount equal to the GST payable on the importation. However, the amount of the input tax credit is reduced if the importation is only \*partly creditable.

Note: The basic rule for working out the GST payable on the importation is in section 13-20. However, the GST payable may be affected by other provisions in:

- (a) this Act (for a list of provisions, see section 13-99); and
- (b) other GST laws (for example, see subsection 357-60(3) in Schedule 1 to the *Taxation Administration Act 1953* (about the effect of rulings made under Part 5-5 in that Schedule)).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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### 15-25 Importations that are partly creditable

- (1) An importation that you make is *partly creditable* if it is a \*creditable importation that you make only partly for a \*creditable purpose.
- (3) The amount of the input tax credit on an importation that you make that is \*partly creditable is as follows:

Full input tax credit × Extent of creditable purpose

where:

*extent of creditable purpose* is the extent to which the importation is for a \*creditable purpose, expressed as a percentage of the total purpose of the importation.

*full input tax credit* is what would have been the amount of the input tax credit for the importation if it had been made solely for a creditable purpose.

- (4) The Commissioner may determine, in writing, one or more ways in which to work out, for the purpose of subsection (3), the extent to which an importation is for a \*creditable purpose.

### 15-99 Special rules relating to creditable importations

Chapter 4 contains special rules relating to creditable importations, as follows:

Checklist of special rules		
Item	For this case ...	See:
1AA	Annual apportionment of creditable purpose	Division 131
1A	Fringe benefits provided by input taxed suppliers	Division 71

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Checklist of special rules**

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<b>Item</b>	<b>For this case ...</b>	<b>See:</b>
1	GST groups	Division 48
2	GST joint ventures	Division 51
2AA	Importations without entry for home consumption	Division 114
2A	Non-deductible expenses	Division 69
3	Pre-establishment costs	Division 60
3A	Representatives of incapacitated entities	Division 58
4	Resident agents acting for non-residents	Division 57

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## Part 2-4—Net amounts and adjustments

### Division 17—Net amounts and adjustments

#### 17-1 What this Division is about

A net amount is worked out for each tax period that applies to you.

Adjustments can be made to the net amount. Increasing adjustments increase your net amount, and decreasing adjustments decrease your net amount.

Note: GST on taxable importations is not included in the net amount. It is dealt with separately under section 33-15.

#### 17-5 Net amounts

- (1) The *net amount* for a tax period applying to you is worked out using the following formula:

GST – Input tax credits

where:

**GST** is the sum of all of the GST for which you are liable on the \*taxable supplies that are attributable to the tax period.

**input tax credits** is the sum of all of the input tax credits to which you are entitled for the \*creditable acquisitions and \*creditable importations that are attributable to the tax period.

Note 1: For the basic rules on what is attributable to a particular period, see Division 29.

Note 2: For further rules if you have excess GST for the period, see Division 142.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (2) However, the \*net amount for the tax period:
- (a) may be increased or decreased if you have any \*adjustments for the tax period; and
  - (b) may be increased or decreased under Subdivision 21-A of the \*Wine Tax Act; and
  - (c) may be increased or decreased under Subdivision 13-A of the *A New Tax System (Luxury Car Tax) Act 1999*.

Note 1: Under Subdivision 21-A of the Wine Tax Act, amounts of wine tax increase the net amount, and amounts of wine tax credits reduce the net amount.

Note 2: Under Subdivision 13-A of the *A New Tax System (Luxury Car Tax) Act 1999*, amounts of luxury car tax increase the net amount, and luxury car tax adjustments alter the net amount.

### 17-10 Adjustments

If you have any \*adjustments that are attributable to a tax period applying to you, alter your \*net amount for the period as follows:

- (a) add to the amount worked out under subsection 17-5(1) for the period the sum of all the \*increasing adjustments (if any) that are attributable to the period;
- (b) subtract from that amount the sum of all the \*decreasing adjustments (if any) that are attributable to the period.

For the basic rules on what adjustments are attributable to a particular period, see Division 29.

### 17-20 Determinations relating to how to work out net amounts

- (1) The Commissioner may make a determination that, in the circumstances specified in the determination, a \*net amount for a tax period may be worked out to take account of other matters in the way specified in the determination.
- (2) The matters must relate to correction of errors that were made in working out \*net amounts for tax periods to which subsection (2A) applies.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (2A) This subsection applies to a \*net amount for a tax period (the *earlier tax period*) if:
- (a) the earlier tax period precedes the tax period mentioned in subsection (1); and
  - (b) the tax period mentioned in subsection (1) starts during the \*period of review for the \*assessment of the \*net amount.
- (3) If those circumstances apply in relation to a tax period applying to you, you may work out your \*net amount for the tax period in that way.

**17-99 Special rules relating to net amounts or adjustments**

Chapter 4 contains special rules relating to net amounts or adjustments, as follows:

<b>Checklist of special rules</b>		
<b>Item</b>	<b>For this case ...</b>	<b>See:</b>
1A	Annual apportionment of creditable purpose	Division 131
1	Anti-avoidance	Division 165
2	Cessation of registration	Division 138
3	Changes in the extent of creditable purpose	Division 129
4	Company amalgamations	Division 90
4AA	Compulsory third party schemes	Division 79
4A	Distributions from deceased estates	Division 139
5	Gambling	Division 126
5A	Goods applied solely to private or domestic use	Division 130
6	GST branches	Division 54
7	GST groups	Division 48
8	GST joint ventures	Division 51
8A	GST religious groups	Division 49

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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<b>Checklist of special rules</b>		
<b>Item</b>	<b>For this case ...</b>	<b>See:</b>
9	Insurance	Division 78
9AA	Non-deductible expenses	Division 69
9A	Non-profit sub-entities	Division 63
9B	Payment of GST by instalments	Division 162
9C	Providing additional consideration under gross-up clauses	Division 133
10	Representatives of incapacitated entities	Division 58
11	Resident agents acting for non-residents	Division 57
11A	Sale of freehold interests etc.	Division 75
12	Second-hand goods	Division 66
12AA	Settlement sharing arrangements	Division 80
12A	Simplified accounting methods for retailers and small enterprise entities	Division 123
12B	Stock on hand on becoming registered etc.	Division 137
13	Supplies in satisfaction of debts	Division 105
14	Supplies of going concerns	Division 135
15	Supplies of things acquired etc. without full input tax credits	Division 132
15A	Third party payments	Division 134
16	Tradex scheme goods	Division 141
17	Vouchers	Division 100

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## **Division 19—Adjustment events**

### **Table of Subdivisions**

- 19-A Adjustment events
- 19-B Adjustments for supplies
- 19-C Adjustments for acquisitions

### **19-1 What this Division is about**

Adjustments can arise because of adjustment events. They are events such as a cancellation of a supply or acquisition, or a change in the consideration for a supply or acquisition (for example, because of a volume discount).

Note: Importations do not give rise to adjustment events.

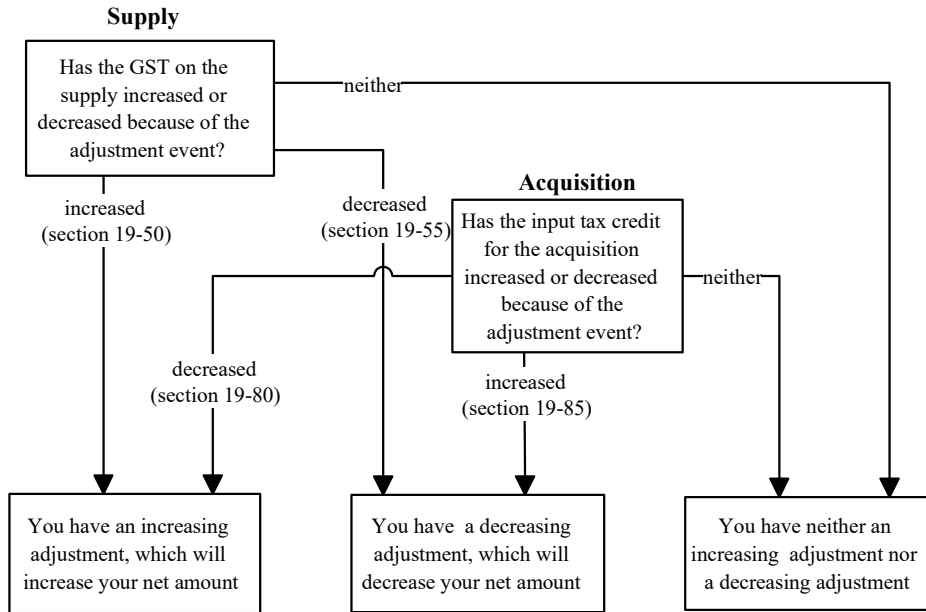
### **19-5 Explanation of the effect of adjustment events**

The following diagram shows how an \*adjustment event for a supply or acquisition can give rise to an \*increasing adjustment or a \*decreasing adjustment.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Note: This section is an explanatory section.

## Subdivision 19-A—Adjustment events

### 19-10 Adjustment events

- (1) An **adjustment event** is any event which has the effect of:
- cancelling a supply or acquisition; or
  - changing the \*consideration for a supply or acquisition; or
  - causing a supply or acquisition to become, or stop being, a \*taxable supply or \*creditable acquisition.

Example: If goods that are supplied for export are not exported within the time provided in section 38-185, the supply is likely to become a taxable supply after originally being a supply that was GST-free.

- (2) Without limiting subsection (1), these are \*adjustment events:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Section 19-40**

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- (a) the return to a supplier of a thing, or part of a thing, supplied (whether or not the return involves a change of ownership of the thing);
  - (b) a change to the previously agreed \*consideration for a supply or acquisition, whether due to the offer of a discount or otherwise;
  - (c) a change in the extent to which an entity that makes an acquisition provides, or is liable to provide, consideration for the acquisition (unless the entity \*accounts on a cash basis).
- (3) An \*adjustment event:
- (a) can arise in relation to a supply even if it is not a \*taxable supply; and
  - (b) can arise in relation to an acquisition even if it is not a \*creditable acquisition.
- (4) However, the return of a thing supplied, or part of a thing supplied, to its supplier is not an \*adjustment event if the return is for the purpose of repair or maintenance.

**Subdivision 19-B—Adjustments for supplies**

**19-40 Where adjustments for supplies arise**

You have an *adjustment* for a supply for which you are liable to pay GST (or would be liable to pay GST if it were a \*taxable supply) if:

- (a) in relation to the supply, one or more \*adjustment events occur during a tax period; and
- (b) GST on the supply was attributable to an earlier tax period (or, if the supply was not a taxable supply, would have been attributable to an earlier tax period had the supply been a taxable supply); and
- (c) as a result of those adjustment events, the \*previously attributed GST amount for the supply (if any) no longer

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

correctly reflects the amount of GST (if any) on the supply (the **corrected GST amount**), taking into account any change of circumstances that has given rise to an adjustment for the supply under this Subdivision or Division 21 or 134.

### 19-45 Previously attributed GST amounts

The **previously attributed GST amount** for a supply is:

- (a) the amount of any GST that was attributable to a tax period in respect of the supply; plus
- (b) the sum of any \*increasing adjustments, under this Subdivision or Division 21, that were previously attributable to a tax period in respect of the supply; minus
- (c) the sum of any \*decreasing adjustments, under this Subdivision or Division 21 or 134, that were previously attributable to a tax period in respect of the supply.

### 19-50 Increasing adjustments for supplies

If the \*corrected GST amount is *greater* than the \*previously attributed GST amount, you have an **increasing adjustment** equal to the difference between the corrected GST amount and the previously attributed GST amount.

### 19-55 Decreasing adjustments for supplies

If the \*corrected GST amount is *less* than the \*previously attributed GST amount, you have a **decreasing adjustment** equal to the difference between the previously attributed GST amount and the corrected GST amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## Subdivision 19-C—Adjustments for acquisitions

### 19-70 Where adjustments for acquisitions arise

- (1) You have an *adjustment* for an acquisition for which you are entitled to an input tax credit (or would be entitled to an input tax credit if the acquisition were a \*creditable acquisition) if:
  - (a) in relation to the acquisition, one or more \*adjustment events occur during a tax period; and
  - (b) an input tax credit on the acquisition was attributable to an earlier tax period (or, if the acquisition was not a creditable acquisition, would have been attributable to an earlier tax period had the acquisition been a creditable acquisition); and
  - (c) as a result of those adjustment events, the \*previously attributed input tax credit amount for the acquisition (if any) no longer correctly reflects the amount of the input tax credit (if any) on the acquisition (the *corrected input tax credit amount*).
- (2) In working out the \*corrected input tax credit amount for the acquisition:
  - (a) take into account any change of circumstances that has given rise to an adjustment for the acquisition under this Subdivision or Division 21, 129, 133 or 134; and
  - (b) if an adjustment relating to the acquisition under Division 131 was attributable to an earlier tax period:
    - (i) do not take into account that adjustment; and
    - (ii) treat the acquisition as one in relation to which Division 131 had not applied.

### 19-75 Previously attributed input tax credit amounts

The *previously attributed input tax credit amount* for an acquisition is:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (a) the amount of any input tax credit that was attributable to a tax period in respect of the acquisition; minus
- (b) the sum of any \*increasing adjustments, under this Subdivision or Division 21, 129, 131 or 134, that were previously attributable to a tax period in respect of the acquisition; plus
- (c) the sum of any \*decreasing adjustments, under this Subdivision or Division 21, 129 or 133, that were previously attributable to a tax period in respect of the acquisition.

### 19-80 Increasing adjustments for acquisitions

If the \*previously attributed input tax credit amount is *greater* than the \*corrected input tax credit amount, you have an **increasing adjustment** equal to the difference between the previously attributed input tax credit amount and the corrected input tax credit amount.

### 19-85 Decreasing adjustments for acquisitions

If the \*previously attributed input tax credit amount is *less* than the \*corrected input tax credit amount, you have a **decreasing adjustment** equal to the difference between the corrected input tax credit amount and the previously attributed input tax credit amount.

### 19-99 Special rules relating to adjustment events

Chapter 4 contains special rules relating to \*adjustment events in particular cases, as follows:

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Checklist of special rules		
Item	For this case ...	See:
1AA	Compulsory third party schemes	Division 79
1AB	Excess GST and cancelled supplies	Division 142

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Chapter 2** The basic rules  
**Part 2-4** Net amounts and adjustments  
**Division 19** Adjustment events

Section 19-99

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<b>Checklist of special rules</b>		
<b>Item</b>	<b>For this case ...</b>	<b>See:</b>
1A	GST religious groups	Division 49
1	Insurance	Division 78
2	Non-deductible expenses	Division 69
2A	Providing additional consideration under gross-up clauses	Division 133
3	Settlement sharing arrangements	Division 80
4	Third party payments	Division 134

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## Division 21—Bad debts

### 21-1 What this Division is about

If debts are written off as bad or are outstanding after 12 months, adjustments (for the purpose of working out net amounts) are made. They can arise both for amounts written off or outstanding and for recovery of amounts previously written off or outstanding.

Note: This Division does not apply to supplies and acquisitions that you account for on a cash basis (except in the limited circumstances referred to in Division 159).

### 21-5 Writing off bad debts (taxable supplies)

- (1) You have a *decreasing adjustment* if:
  - (a) you made a \*taxable supply; and
  - (b) the whole or part of the \*consideration for the supply has not been received; and
  - (c) you write off as bad the whole or a part of the debt, or the whole or a part of the debt has been \*overdue for 12 months or more.

The amount of the decreasing adjustment is  $\frac{1}{11}$  of the amount written off, or  $\frac{1}{11}$  of the amount that has been overdue for 12 months or more, as the case requires.

- (2) However, you cannot have an \*adjustment under this section if you \*account on a cash basis.

### 21-10 Recovering amounts previously written off (taxable supplies)

You have an *increasing adjustment* if:

- (a) you made a \*taxable supply in relation to which you had a \*decreasing adjustment under section 21-5 for a debt; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Section 21-15**

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- (b) you recover the whole or a part of the amount written off, or the whole or a part of the amount that has been \*overdue for 12 months or more, as the case requires.

The amount of the increasing adjustment is  $\frac{1}{11}$  of the amount recovered.

**21-15 Bad debts written off (creditable acquisitions)**

- (1) You have an *increasing adjustment* if:
  - (a) you made a \*creditable acquisition for \*consideration; and
  - (b) the whole or part of the consideration is \*overdue, but you have not provided the consideration overdue; and
  - (c) the supplier of the thing you acquired writes off as bad the whole or a part of the debt, or the whole or a part of the debt has been overdue for 12 months or more.

The amount of the increasing adjustment is  $\frac{1}{11}$  of the amount written off, or  $\frac{1}{11}$  of the amount that has been overdue for 12 months or more, as the case requires.

- (2) However, you cannot have an \*adjustment under this section if you \*account on a cash basis.

**21-20 Recovering amounts previously written off (creditable acquisitions)**

You have a *decreasing adjustment* if:

- (a) you made a \*creditable acquisition in relation to which you had an \*increasing adjustment under section 21-15 for a debt; and
- (b) you pay to the supplier of the thing you acquired the whole or a part of the amount written off, or the whole or a part of the amount that has been \*overdue for 12 months or more, as the case requires.

The amount of the decreasing adjustment is  $\frac{1}{11}$  of the amount recovered.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

## 21-99 Special rules relating to adjustments for bad debts

Chapter 4 contains special rules relating to adjustments for bad debts, as follows:

<b>Checklist of special rules</b>		
<b>Item</b>	<b>For this case ...</b>	<b>See:</b>
1A	Bad debts relating to transactions that are not taxable or creditable to the fullest extent	Division 136
1	Changing your accounting basis	Division 159
2	Gambling	Division 126
2A	Representatives of incapacitated entities	Division 58
3	Sale of freehold interests etc.	Division 75

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

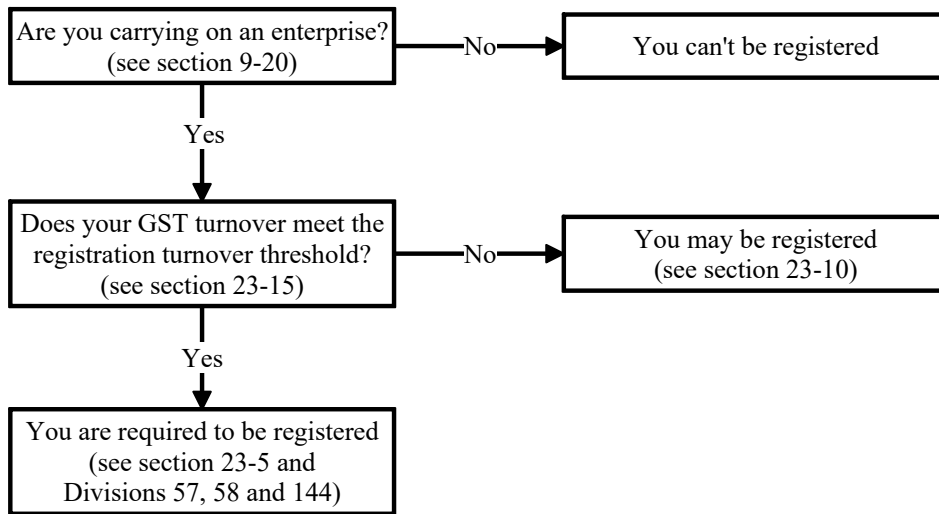
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## Part 2-5—Registration

### Division 23—Who is required to be registered and who may be registered

#### 23-1 Explanation of Division

This diagram shows when you are required to be, and when you may, be registered.



Note: This section is an explanatory section.

#### 23-5 Who is required to be registered

You are ***required to be registered*** under this Act if:

- (a) you are \*carrying on an \*enterprise; and
- (b) your \*GST turnover meets the \*registration turnover threshold.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

Note: It is the entity that carries on the enterprise that is required to be registered (and not the enterprise).

### 23-10 Who may be registered

- (1) You may be \*registered under this Act if you are carrying on an \*enterprise (whether or not your \*GST turnover is at, above or below the \*registration turnover threshold).
- (2) You may be \*registered under this Act if you intend to carry on an \*enterprise from a particular date.

### 23-15 The registration turnover threshold

- (1) Your *registration turnover threshold* (unless you are a non-profit body) is:
  - (a) \$50,000; or
  - (b) such higher amount as the regulations specify.
- (2) Your *registration turnover threshold* if you are a non-profit body is:
  - (a) \$100,000; or
  - (b) such higher amount as the regulations specify.

### 23-20 Not registered for 4 years

Despite section 23-5, you are treated as not having been \*required to be registered under this Act on a day if your \*registration could not take effect from that day because of subsection 25-10(1A).

Note: Subsection 25-10(1A) provides that the date of effect of your registration must not be a day that occurred more than 4 years before the day of the Commissioner's decision to register you, unless the Commissioner is of the opinion there has been fraud or evasion.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Chapter 2** The basic rules

**Part 2-5** Registration

**Division 23** Who is required to be registered and who may be registered

Section 23-99

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**23-99 Special rules relating to who is required to be registered or who may be registered**

Chapter 4 contains special rules relating to who is \*required to be registered, or who may be \*registered, as follows:

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<b>Checklist of special rules</b>		
<b>Item</b>	<b>For this case ...</b>	<b>See:</b>
1A	Government entities	Division 149
1B	Non-profit sub-entities	Division 63
1	Representatives of incapacitated entities	Division 58
2	Resident agents acting for non-residents	Division 57
3	Taxis	Division 144

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## **Division 25—How you become registered, and how your registration can be cancelled**

### **Table of Subdivisions**

- 25-A How you become registered
- 25-B How your registration can be cancelled

### **Subdivision 25-A—How you become registered**

#### **25-1 When you must apply for registration**

You must apply, in the \*approved form, to be \*registered under this Act if:

- (a) you are not registered under this Act; and
- (b) you are \*required to be registered.

You must make your application within 21 days after becoming required to be registered.

#### **25-5 When the Commissioner must register you**

- (1) The Commissioner must \*register you if:
  - (a) you have applied for registration in an \*approved form; and
  - (b) the Commissioner is satisfied that you are \*carrying on an \*enterprise, or you intend to carry on an enterprise from a particular date specified in your application.

Note: Refusing to register you under this subsection is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

- (2) The Commissioner must \*register you (even if you have not applied for registration) if the Commissioner is satisfied that you are \*required to be registered.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Chapter 2** The basic rules

**Part 2-5** Registration

**Division 25** How you become registered, and how your registration can be cancelled

**Section 25-10**

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Note: Registering you under this subsection is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

- (3) The Commissioner must notify you in writing of any decision he or she makes in relation to you under this section. If the Commissioner decides to \*register you, the notice must specify the following:
- (a) the date of effect of your registration;
  - (b) your registration number;
  - (c) the tax periods that apply to you.

**25-10 The date of effect of your registration**

- (1) The Commissioner must decide the date from which your \*registration takes effect, or took effect. However:
- (a) if you did not apply for registration and the Commissioner is satisfied that you are \*required to be registered—the date of effect must not be a day before the day on which you became required to be registered; or
  - (b) if you applied for registration—the date of effect must not be a day before:
    - (i) the day specified in your application; or
    - (ii) if the Commissioner is satisfied that you became required to be registered on an earlier day—the day that the Commissioner is satisfied is that earlier day; or
  - (c) if you are being registered only because you intend to \*carry on an \*enterprise—the date of effect must not be a day before the day specified, in your application for registration, as the day from which you intend to carry on the enterprise.

Note: Deciding the date of effect of your registration is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Section 25-15**

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- (1A) The date of effect must not be a day that occurred more than 4 years before the day of the decision, unless the Commissioner is of the opinion there has been fraud or evasion.
- (2) The \*Australian Business Registrar must enter in the \*Australian Business Register the date on which your \*registration takes or took effect.

**25-15 Effect of backdating your registration**

If the Commissioner decides under section 25-10, as the date of effect of your \*registration (*your registration day*), a day before the day of the decision, then you are taken:

- (a) for the purpose of determining whether a supply you made on or after your registration day was a \*taxable supply; and
  - (b) for the purpose of determining whether an acquisition you made on or after that day was a \*creditable acquisition; and
  - (c) for the purpose of determining whether an importation you made on or after that day was a \*creditable importation;
- to have been registered from and including your registration day.

Note: This section ensures that backdating your registration enables your supplies and acquisitions made on or after the date of effect to be picked up by the GST system. Section 25-10 limits the extent to which your registration can be backdated.

**25-49 Special rules relating to registration**

Chapter 4 contains special rules relating to \*registration in particular cases, as follows:

<b>Checklist of special rules</b>		
<b>Item</b>	<b>For this case ...</b>	<b>See:</b>
1A	Government entities	Division 149
1	GST branches	Division 54
1AA	Limited registration entities	Division 146

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Section 25-50

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Checklist of special rules		
Item	For this case ...	See:
2	Non-profit sub-entities	Division 63
3	Non-residents making supplies connected with the indirect tax zone	Division 83

**Subdivision 25-B—How your registration can be cancelled**

**25-50 When you must apply for cancellation of registration**

If you are \*registered and you are not \*carrying on any \*enterprise, you must apply to the Commissioner in the \*approved form for cancellation of your \*registration. You must lodge your application within 21 days after the day on which you ceased to be carrying on any \*enterprise.

**25-55 When the Commissioner must cancel registration**

- (1) The Commissioner must cancel your \*registration if:
- (a) you have applied for cancellation of registration in the \*approved form; and
  - (b) at the time you applied for cancellation of registration, you had been registered for at least 12 months; and
  - (c) the Commissioner is satisfied that you are not \*required to be registered.

Note: Refusing to cancel your registration under this subsection is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

- (2) The Commissioner must cancel your \*registration (even if you have not applied for cancellation of your registration) if:
- (a) the Commissioner is satisfied that you are not \*carrying on an \*enterprise; and
  - (b) the Commissioner believes on reasonable grounds that you are not likely to carry on an enterprise for at least 12 months.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

Note: Cancelling your registration under this subsection is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

- (3) The Commissioner must notify you of any decision he or she makes in relation to you under this section. If the Commissioner decides to cancel your \*registration, the notice must specify the date of effect of the cancellation.

### **25-57 When the Commissioner may cancel your registration**

- (1) The Commissioner may cancel your \*registration if:
  - (a) less than 12 months after being registered, you apply for cancellation of registration in the \*approved form; and
  - (b) the Commissioner is satisfied that you are not \*required to be registered.

Note: Refusing to cancel your registration under this subsection is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

- (2) In considering your application, the Commissioner may have regard to:
  - (a) how long you have been \*registered; and
  - (b) whether you have previously been registered; and
  - (c) any other relevant matters.
- (3) The Commissioner must notify you of any decision he or she makes in relation to you under this section. If the Commissioner decides to cancel your \*registration, the notice must specify the date of effect of the cancellation.

### **25-60 The date of effect of your cancellation**

- (1) The Commissioner must decide the date on which the cancellation of your \*registration under subsection 25-55(1) or (2) or section 25-57 takes effect. That date may be any day occurring

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

**Chapter 2** The basic rules

**Part 2-5** Registration

**Division 25** How you become registered, and how your registration can be cancelled

**Section 25-65**

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before, on or after the day on which the Commissioner makes the decision.

Note: Deciding the date of effect of the cancellation of your registration is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

- (2) The \*Australian Business Registrar must enter in the \*Australian Business Register the date on which the cancellation of your \*registration takes effect.

**25-65 Effect of backdating your cancellation of registration**

If the Commissioner decides under section 25-60, as the date of effect of the cancellation of your \*registration (***your cancellation day***), a day before the day of the decision, your registration is taken:

- (a) for the purpose of determining whether a supply you made on or after your cancellation day was a \*taxable supply; and
  - (b) for the purpose of determining whether an acquisition you made on or after that day was a \*creditable acquisition; and
  - (c) for the purpose of determining whether an importation you made on or after that date was a \*creditable importation;
- to have been cancelled from and including your cancellation day.

**25-99 Special rules relating to cancellation of registration**

Chapter 4 contains special rules relating to cancellation of \*registration in particular cases, as follows:

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<b>Checklist of special rules</b>		
<b>Item</b>	<b>For this case ...</b>	<b>See:</b>
1A	Government entities	Division 149
1	GST branches	Division 54
1AA	Limited registration entities	Division 146

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Checklist of special rules**

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<b>Item</b>	<b>For this case ...</b>	<b>See:</b>
1B	Non-profit sub-entities	Division 63
2	Representatives of incapacitated entities	Division 58
3	Resident agents acting for non-residents	Division 57

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## Part 2-6—Tax periods

### Division 27—How to work out the tax periods that apply to you

#### 27-1 What this Division is about

This Division tells you the tax periods that apply to you. You need to know this because your net amounts are worked out in respect of these tax periods.

#### 27-5 General rule—3 month tax periods

The *tax periods* that apply to you are each period of 3 months ending on 31 March, 30 June, 30 September or 31 December in any year, except to the extent that:

- (a) an election is in force under section 27-10; or
- (b) the Commissioner determines otherwise under this Division.

Note: Several provisions in Chapter 4 provide for different tax periods. In particular, Division 151 provides for annual tax periods.

#### 27-10 Election of one month tax periods

- (1) The *tax periods* that apply to you are each individual month if, by notifying the Commissioner in the \*approved form, you elect to have as the tax periods that apply to you each individual month.
- (2) The election takes effect on the day specified in the notice. However, the day specified must be 1 January, 1 April, 1 July or 1 October.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

### 27-15 Determination of one month tax periods

- (1) The Commissioner must determine that the *tax periods* that apply to you are each individual month if:
  - (a) the Commissioner is satisfied that your \*GST turnover meets the \*tax period turnover threshold; or
  - (b) the Commissioner is satisfied that the period for which you will be \*carrying on an \*enterprise in the indirect tax zone is less than 3 months; or
  - (c) the Commissioner is satisfied that you have a history of failing to comply with your obligations under a \*taxation law.

Note: Determining under this section the tax periods applying to you is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

- (2) The determination takes effect on the day specified in the determination. However, the day specified must be 1 January, 1 April, 1 July or 1 October.

Note: Deciding the date of effect of the determination is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

- (3) The *tax period turnover threshold* is:

- (a) \$20 million; or
- (b) such other amount as the regulations specify.

However, if the regulations change the tax period turnover threshold, the change does not apply to you until the start of the next tax period that starts after the regulation in question comes into operation.

### 27-20 Withdrawing elections of one month tax periods

- (1) You may, by notifying the Commissioner in the \*approved form, withdraw an election under section 27-10, unless your \*GST turnover meets the \*tax period turnover threshold.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

Section 27-22

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- (2) The withdrawal takes effect on the day specified in the notice.  
However, the day specified:
- (a) must be 1 January, 1 April, 1 July or 1 October, or any day occurring before the election takes effect; and
  - (b) must not be a day occurring earlier than 12 months after the election took effect.

**27-22 Revoking elections of one month tax periods**

- (1) The Commissioner may, if you so request in the \*approved form, revoke your election under section 27-10, with effect from a day occurring earlier than 12 months after the election took effect, unless the Commissioner is satisfied that your \*GST turnover meets the \*tax period turnover threshold.

Note: Refusing to revoke your election under this subsection is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

- (2) In considering your request, the Commissioner may have regard to:
- (a) for how long the tax periods applying to you have been each individual month; and
  - (b) whether you have previously been \*registered, and whether such tax periods had applied to you; and
  - (c) any other relevant matters.
- (3) The revocation:
- (a) takes effect on the day specified in the instrument of revocation; or
  - (b) is taken to have had effect from a past day specified in the instrument of revocation.

However, the day specified must be 1 January, 1 April, 1 July or 1 October.

Note: Deciding the date of effect of the revocation is a reviewable decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

### **27-25 Revoking determinations of one month tax periods**

- (1) The Commissioner must revoke a determination under section 27-15 relating to you if you so request, unless the Commissioner is satisfied that any of the grounds for making a determination under that section apply to you.

Note: Refusing to revoke a determination under this section is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

- (2) The revocation takes effect on the day specified in the instrument of revocation. However, the day specified:
  - (a) must be 1 January, 1 April, 1 July or 1 October; and
  - (b) must not be a day occurring earlier than 12 months after the determination took effect.

Note: Deciding the date of effect of the revocation is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

### **27-30 Tax periods determined by the Commissioner to take account of changes in tax periods**

- (1) For the purpose of ensuring the effective operation of this Division where:
  - (a) you become \*registered or \*required to be registered; or
  - (b) the tax periods applying to you have changed;the Commissioner may, by written notice given to you, determine that a period specified in the notice is a **tax period** that applies to you.

Note: Determining under this section a tax period applying to you is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

- (2) The period specified in the notice may start earlier than the day on which the notice is given to you.
- (3) However, the period specified in the notice:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

**Chapter 2** The basic rules

**Part 2-6** Tax periods

**Division 27** How to work out the tax periods that apply to you

**Section 27-35**

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- (a) must be less than 3 months; and
- (b) must not overlap with any part of any other tax period for which you have already given a \*GST return to the Commissioner.

For the giving of GST returns to the Commissioner, see Division 31.

**27-35 Changing the days on which your tax periods end**

- (1) You may change the day in each year on which a tax period would otherwise end. However:
  - (a) the day must be no more than 7 days earlier or 7 days later than a day on which one of the tax periods that applies to you would otherwise end if the days were not changed; and
  - (b) the change must be consistent with the commercial accounting periods that apply to you.
- (2) If the day on which a tax period ends is changed, the next tax period starts on the day after that day.

**27-37 Special determination of tax periods on request**

- (1) The Commissioner may, in accordance with a request you make in the \*approved form, determine the tax periods applying to you to be the tax periods specified in the request if the Commissioner is satisfied that:
  - (a) your \*GST turnover meets the \*tax period turnover threshold; and
  - (b) the tax periods specified in the request are consistent with the commercial accounting periods that apply to you; and
  - (c) the tax periods specified in the request would, if determined under this section, result in 12 complete tax periods in each year; and
  - (d) any other requirements specified in the regulations are complied with.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Note: Refusing a request for a determination under this section is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

- (2) A determination under this section overrides any determination under section 27-15 or 27-30 relating to tax periods applying to you.

### **27-38 Revoking special determination of tax periods**

- (1) The Commissioner must revoke a determination under section 27-37 if the Commissioner is satisfied that any of the requirements of paragraphs 27-37(1)(a), (b), (c) and (d) are not complied with.

Note: Revoking a determination under this section is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

- (2) The revocation takes effect on the day specified in the instrument of revocation. However, the day specified must be 1 January, 1 April, 1 July or 1 October.

Note: Deciding the date of effect of the revocation is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

- (3) A revocation under this section revives any election under section 27-10, or any determination under section 27-15 or 27-30, relating to tax periods applying to you.

### **27-39 Tax periods of incapacitated entities**

- (1) If an entity becomes an \*incapacitated entity, the entity's tax period at the time is taken to have ended at the end of the day before the entity became incapacitated.
- (2) If a tax period (the *first tax period*) ends on a particular day because of subsection (1), the next tax period starts on the day after

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Chapter 2** The basic rules

**Part 2-6** Tax periods

**Division 27** How to work out the tax periods that apply to you

**Section 27-40**

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that day and ends when the first tax period would have ended but for that subsection.

**27-40 An entity's concluding tax period**

- (1) If:
- (a) an individual dies; or
  - (b) another entity for any reason ceases to exist;
- the individual's or entity's tax period at the time is taken to have ceased at the end of the day before the death or cessation.
- (1A) If an entity ceases to \*carry on any \*enterprise, the entity's tax period at the time is taken to have ceased at the end of the day on which the cessation occurred.
- (2) If an entity's \*registration is cancelled, the entity's tax period at the date of effect of the cancellation (the *cancellation day*) ceases at the end of the cancellation day.

**27-99 Special rules relating to tax periods**

Chapter 4 contains special rules relating to tax periods, as follows:

<b>Checklist of special rules</b>		
<b>Item</b>	<b>For this case ...</b>	<b>See:</b>
1AAA	Annual tax periods	Division 151
1	Changes in the extent of creditable purpose	Division 129
1AA	GST groups	Division 48
1AB	Limited registration entities	Division 146
1AC	Payment of GST by instalments	Division 162
1A	Representatives of incapacitated entities	Division 58
2	Resident agents acting for non-residents	Division 57

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## **Division 29—What is attributable to tax periods**

### **Table of Subdivisions**

29-A	The attribution rules
29-B	Accounting on a cash basis
29-C	Tax invoices and adjustment notes

### **29-1 What this Division is about**

This Division tells you the tax periods to which your taxable supplies, creditable acquisitions, creditable importations and adjustments are attributable. You need to know this to work out your net amounts under Part 2-4.

Note: This Division does not deal with your taxable importations, because they are not attributed to tax periods. See section 33-15 for payment of assessed GST on taxable importations.

### **Subdivision 29-A—The attribution rules**

#### **29-5 Attributing the GST on your taxable supplies**

- (1) The GST payable by you on a \*taxable supply is attributable to:
  - (a) the tax period in which any of the \*consideration is received for the supply; or
  - (b) if, before any of the consideration is received, an \*invoice is issued relating to the supply—the tax period in which the invoice is issued.
- (2) However, if you \*account on a cash basis, then:
  - (a) if, in a tax period, *all* of the \*consideration is received for a \*taxable supply—GST on the supply is attributable to that tax period; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Section 29-10

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- (b) if, in a tax period, *part* of the consideration is received—GST on the supply is attributable to that tax period, but only to the extent that the consideration is received in that tax period; or
- (c) if, in a tax period, *none* of the consideration is received—none of the GST on the supply is attributable to that tax period.

**29-10 Attributing the input tax credits for your creditable acquisitions**

- (1) The input tax credit to which you are entitled for a \*creditable acquisition is attributable to:
  - (a) the tax period in which you provide any of the \*consideration for the acquisition; or
  - (b) if, before you provide any of the consideration, an \*invoice is issued relating to the acquisition—the tax period in which the invoice is issued.
- (2) However, if you \*account on a cash basis, then:
  - (a) if, in a tax period, you provide *all* of the \*consideration for a \*creditable acquisition—the input tax credit for the acquisition is attributable to that tax period; or
  - (b) if, in a tax period, you provide *part* of the consideration—the input tax credit for the acquisition is attributable to that tax period, but only to the extent that you provided the consideration in that tax period; or
  - (c) if, in a tax period, *none* of the consideration is provided—none of the input tax credit for the acquisition is attributable to that tax period.
- (3) If you do not hold a \*tax invoice for a \*creditable acquisition when you give to the Commissioner a \*GST return for the tax period to which the input tax credit (or any part of the input tax credit) on the acquisition would otherwise be attributable:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

**Section 29-15**

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- (a) the input tax credit (including any part of the input tax credit) is not attributable to that tax period; and
- (b) the input tax credit (or part) is attributable to the first tax period for which you give to the Commissioner a GST return at a time when you hold that tax invoice.

However, this subsection does not apply in circumstances of a kind determined in writing by the Commissioner to be circumstances in which the requirement for a tax invoice does not apply.

For the giving of GST returns to the Commissioner, see Division 31.

- (4) If the \*GST return for a tax period does not take into account an input tax credit attributable to that tax period:
  - (a) the input tax credit is not attributable to that tax period; and
  - (b) the input tax credit is attributable to the first tax period for which you give the Commissioner a GST return that does take it into account.

Note: Section 93-5 or 93-15 may provide a time limit on your entitlement to an input tax credit.

**29-15 Attributing the input tax credits for your creditable importations**

- (1) The input tax credit to which you are entitled for a \*creditable importation is attributable to the tax period in which you pay the \*assessed GST on the importation.
- (2) However, if paragraph 33-15(1)(b) applies to payment of the \*assessed GST on the importation, the input tax credit is attributable to the tax period in which the liability for the GST arose.

**29-20 Attributing your adjustments**

- (1) An \*adjustment that you have is attributable to the tax period in which you become aware of the adjustment.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (2) However, if you \*account on a cash basis, and the \*adjustment arises from an \*adjustment event as a result of which you are liable to provide \*consideration, then:
- (a) if, in a tax period, *all* of the consideration is provided—the \*adjustment is attributable to that tax period; or
  - (b) if, in a tax period, *part* of the consideration is provided—the adjustment is attributable to that tax period, but only to the extent that the consideration is provided in that tax period; or
  - (c) if, in a tax period, *none* of the consideration is provided—none of the adjustment is attributable to that tax period.
- (3) If:
- (a) you have a \*decreasing adjustment arising from an \*adjustment event; and
  - (b) you do not hold an \*adjustment note for the adjustment when you give to the Commissioner a \*GST return for the tax period to which the adjustment (or any part of the adjustment) would otherwise be attributable;
- then:
- (c) the adjustment (including any part of the adjustment) is not attributable to that tax period; and
  - (d) the adjustment (or part) is attributable to the first tax period for which you give to the Commissioner a GST return at a time when you hold that adjustment note.

However, this subsection does not apply in circumstances of a kind determined in writing by the Commissioner to be circumstances in which the requirement for an adjustment note does not apply.

For the giving of GST returns to the Commissioner, see Division 31.

**29-25 Commissioner may determine particular attribution rules**

- (1) The Commissioner may, in writing, determine the tax periods to which:
- (a) GST on \*taxable supplies of a specified kind; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (b) input tax credits for \*creditable acquisitions of a specified kind; or
  - (c) input tax credits for \*creditable importations of a specified kind; or
  - (d) \*adjustments of a specified kind;
- are attributable.
- (2) However, the Commissioner must not make a determination under this section unless satisfied that it is necessary to prevent the provisions of this Division and Chapter 4 applying in a way that is inappropriate in circumstances involving:
- (a) a supply or acquisition in which possession of goods passes, but title in the goods will, or may, pass at some time in the future; or
  - (b) a supply or acquisition for which payment is made or an \*invoice is issued, but use, enjoyment or passing of title will, or may, occur at some time in the future; or
  - (c) a supply or acquisition occurring, but still being subject to a statutory cooling off period under an \*Australian law; or
  - (d) a supply or acquisition occurring before the supplier or \*recipient knows it has occurred; or
  - (e) a supply or acquisition occurring before the supplier or recipient knows the total \*consideration; or
  - (f) a supply or acquisition made under a contract that is subject to preconditions; or
  - (g) a supply or acquisition made under a contract that provides for retention of some or all of the consideration until certain conditions are met; or
  - (h) a supply or acquisition for which the GST treatment will be unknown until a later supply is made.
- (3) Determinations under subsection (1) override the provisions of this Division (except this section) and Chapter 4, but only to the extent of any inconsistency.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**29-39 Special rules relating to attribution rules**

Chapter 4 contains special rules relating to attribution rules, as follows:

<b>Checklist of special rules</b>		
<b>Item</b>	<b>For this case ...</b>	<b>See:</b>
1	Agents and insurance brokers	Division 153
2	Associates	Division 72
3	Cancelled lay-by sales	Division 102
4	Cessation of registration	Division 138
5	Changes in the extent of creditable purpose	Division 129
6	Changing your accounting basis	Division 159
7	Company amalgamations	Division 90
8	Deposits as security	Division 99
8A	Distributions from deceased estates	Division 139
8AA	Hire purchase agreements	Division 158
8B	Non-deductible expenses	Division 69
9	Pre-establishment costs	Division 60
10	Reimbursement of employees etc.	Division 111
11	Representatives of incapacitated entities	Division 58
11A	Second-hand goods	Division 66
12	Supplies and acquisitions made on a progressive or periodic basis	Division 156
13	Supplies of things acquired etc. without full input tax credits	Division 132
13A	Third party payments	Division 134
14	Tradex scheme goods	Division 141

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## Subdivision 29-B—Accounting on a cash basis

### 29-40 Choosing to account on a cash basis

- (1) You may choose to \*account on a cash basis, with effect from the first day of the tax period that you choose, if:
  - (a) you are a \*small business entity (other than because of subsection 328-110(4) of the \*ITAA 1997) for the \*income year in which you make your choice; or
  - (ab) you do not carry on a \*business and your \*GST turnover does not exceed the \*cash accounting turnover threshold; or
  - (b) for income tax purposes, you account for your income using the receipts method; or
  - (c) each of the \*enterprises that you \*carry on is an enterprise of a kind that the Commissioner determines, in writing, to be a kind of enterprise in respect of which a choice to \*account on a cash basis may be made under this section.
- (3) The *cash accounting turnover threshold* is:
  - (a) \$2 million; or
  - (b) such higher amount as the regulations specify.

### 29-45 Permission to account on a cash basis

- (1) The Commissioner may permit you to \*account on a cash basis if:
  - (a) you apply to the Commissioner in the \*approved form for permission to account on a cash basis; and
  - (b) the Commissioner is satisfied that, having regard to:
    - (i) the nature and size of the \*enterprise that you \*carry on; and
    - (ii) the nature of the accounting system that you use;it is appropriate to permit you to account on a cash basis.

Note: Refusing to permit you to account on a cash basis is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (2) The Commissioner must notify you in writing of any decision he or she makes in relation to you under this section. If the Commissioner decides to permit you to \*account on a cash basis, the notice must specify the date of effect of your permission.

Note: Deciding the date of effect of your permission to account on a cash basis is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

**29-50 Ceasing to account on a cash basis**

- (1) You cease to \*account on a cash basis if:
- (a) in a case to which paragraph 29-40(1)(a) applied—you are not a \*small business entity of the kind referred to in that paragraph for an \*income year and you do not have permission to \*account on a cash basis; or
  - (ab) in a case to which paragraph 29-40(1)(ab) applied—you do not satisfy the requirements of that paragraph and you do not have permission to account on a cash basis; or
  - (b) you notify the Commissioner, in the \*approved form, that you are ceasing to \*account on a cash basis.
- (2) The date of effect of your cessation is the first day of the next tax period to commence after:
- (a) if paragraph (1)(a) applies—the start of the \*income year referred to in that paragraph; or
  - (b) if paragraph (1)(ab) applies—you do not satisfy the requirements of paragraph 29-40(1)(ab); or
  - (c) if paragraph (1)(b) applies—you notify the Commissioner.
- (3) The Commissioner must revoke any permission for you to \*account on a cash basis if the Commissioner is satisfied that:
- (a) either:
    - (i) you carry on a \*business but you are not a \*small business entity (other than because of

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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subsection 328-110(4) of the \*ITAA 1997) for an  
\*income year; or

- (ii) you do not carry on a business and your \*GST turnover meets the \*cash accounting turnover threshold; and
- (b) it is not appropriate to permit you to account on a cash basis.

Note: Revoking your permission to account on a cash basis is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

- (4) The Commissioner must notify you in writing of his or her decision under subsection (3). The notice must specify the date of effect of the revocation, which can be the first day of any tax period starting before, on or after the day on which the Commissioner makes the decision.

Note: Deciding the date of effect of the revocation of your permission to account on a cash basis is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

## 29-69 Special rules relating to accounting on a cash basis

Chapter 4 contains special rules relating to accounting on a cash basis, as follows:

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Checklist of special rules		
Item	For this case ...	See:
1	Accounting basis of charities etc.	Division 157
2	Hire purchase agreements	Division 158

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## Subdivision 29-C—Tax invoices and adjustment notes

### 29-70 Tax invoices

- (1) A **tax invoice** is a document that complies with the following requirements:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (a) it is issued by the supplier of the supply or supplies to which the document relates, unless it is a \*recipient created tax invoice (in which case it is issued by the \*recipient);
- (b) it is in the \*approved form;
- (c) it contains enough information to enable the following to be clearly ascertained:
  - (i) the supplier's identity and the supplier's \*ABN;
  - (ii) if the total \*price of the supply or supplies is at least \$1,000 or such higher amount as the regulations specify, or if the document was issued by the recipient—the recipient's identity or the recipient's ABN;
  - (iii) what is supplied, including the quantity (if applicable) and the price of what is supplied;
  - (iv) the extent to which each supply to which the document relates is a \*taxable supply;
  - (v) the date the document is issued;
  - (vi) the amount of GST (if any) payable in relation to each supply to which the document relates;
  - (vii) if the document was issued by the recipient and GST is payable in relation to any supply—that the GST is payable by the supplier;
  - (viii) such other matters as the regulations specify;
- (d) it can be clearly ascertained from the document that the document was intended to be a tax invoice or, if it was issued by the recipient, a recipient created tax invoice.

Note: If the recipient is a member of a GST group, section 48-57 may relax the requirements relating to the recipient's identity or the recipient's ABN.

- (1A) A document issued by an entity to another entity may be treated by the other entity as a \*tax invoice for the purposes of this Act if:
  - (a) it would comply with the requirements for a tax invoice but for the fact that it does not contain certain information; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (b) all of that information can be clearly ascertained from other documents given by the entity to the other entity.

Note: The requirements for a tax invoices are primarily contained in subsection (1), but can be affected by sections 48-57 and 54-50.

- (1B) However, the Commissioner may treat as a \*tax invoice a particular document that would not, apart from this subsection, be a tax invoice.
- (2) The supplier of a \*taxable supply must, within 28 days after the \*recipient of the supply requests it, give to the recipient a \*tax invoice for the supply, unless it is a \*recipient created tax invoice.
- (3) A *recipient created tax invoice* is a \*tax invoice belonging to a class of tax invoices that the Commissioner has determined in writing may be issued by the \*recipient of a \*taxable supply.

**29-75 Adjustment notes**

- (1) An *adjustment note* for an \*adjustment that arises from an \*adjustment event relating to a \*taxable supply:
- (a) must be issued by the supplier of the \*taxable supply in the circumstances set out in subsection (2); and
  - (b) must set out the \*ABN of the entity that issues it; and
  - (c) must contain such other information as the Commissioner determines in writing; and
  - (d) must be in the \*approved form.

However, the Commissioner may treat as an adjustment note a particular document that is not an adjustment note.

- (2) The supplier of the \*taxable supply must:
- (a) within 28 days after the \*recipient of the supply requests the supplier to give an \*adjustment note for the \*adjustment relating to the supply; or
  - (b) if the supplier has issued a \*tax invoice in relation to the supply (or the recipient has requested one) and the supplier

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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becomes aware of the adjustment before an adjustment note is requested—within 28 days after becoming aware of that fact;

give to the recipient an \*adjustment note for the \*adjustment, unless any \*tax invoice relating to the supply would have been a \*recipient created tax invoice (in which case it must be issued by the recipient).

- (3) However, in circumstances that the Commissioner determines in writing, paragraph (2)(b) has effect as if the number of days referred to in that paragraph is the number of days specified in the determination in relation to those circumstances.
- (4) Those circumstances may, for example, include the kind of the \*taxable supply.

**29-80 Tax invoices and adjustment notes not required for low value transactions**

- (1) Subsections 29-10(3) and 29-70(2) do not apply to a \*creditable acquisition that relates to a \*taxable supply the \*value of which does not exceed \$50, or such higher amount as the regulations specify.
- (2) Subsections 29-20(3) and 29-75(2) do not apply to a \*decreasing adjustment of an amount that does not exceed \$50, or such higher amount as the regulations specify.

**29-99 Special rules relating to tax invoices and adjustment notes**

Chapter 4 contains special rules relating to tax invoices and adjustment notes, as follows:

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Checklist of special rules		
Item	For this case ...	See:
1	Agents and insurance brokers	Division 153

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Checklist of special rules**

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<b>Item</b>	<b>For this case ...</b>	<b>See:</b>
1A	Annual apportionment of creditable purpose	Division 131
2	Gambling	Division 126
3	GST branches	Division 54
3A	GST groups	Division 48
4	Non-residents making supplies connected with the indirect tax zone	Division 83
4A	Offshore supplies	Division 84
5	Sale of freehold interests etc.	Division 75

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## Part 2-7—Returns, payments and refunds

### Division 31—GST returns

#### 31-1 What this Division is about

This Division is about your obligation (if you are registered or required to be registered) to give to the Commissioner GST returns for each tax period.

For the penalties for failing to comply with these obligations, see the *Taxation Administration Act 1953*.

#### 31-5 Who must give GST returns

- (1) If you are \*registered or \*required to be registered, you must give to the Commissioner a \*GST return for each tax period.
- (2) You must give the return whether or not:
  - (a) your \*net amount for the tax period is zero; or
  - (b) you are liable for the GST on any \*taxable supplies that are attributable to the tax period.

#### 31-8 When GST returns must be given—quarterly tax periods

- (1) If a tax period applying to you is a \*quarterly tax period, you must give your \*GST return for the tax period to the Commissioner:
  - (a) as provided in the following table; or
  - (b) within such further period as the Commissioner allows.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**When quarterly GST returns must be given**

<b>Item</b>	<b>If this day falls within the quarterly tax period ...</b>	<b>Give the GST return to the Commissioner on or before this day:</b>
1	1 September	the following 28 October
2	1 December	the following 28 February
3	1 March	the following 28 April
4	1 June	the following 28 July

- (2) A tax period is a *quarterly tax period* if:
- (a) it is a period of 3 months; or
  - (b) it would be a period of 3 months but for the application of section 27-30 or 27-35.

Note: Under section 27-30, a tax period can be determined to take account of changes in tax periods. Under section 27-35, the start or finish of a 3 month tax period can vary by up to 7 days from the start or finish of a normal quarter.

**31-10 When GST returns must be given—other tax periods**

- (1) You must give your \*GST return for a tax period (other than a \*quarterly tax period) to the Commissioner:
- (a) on or before the 21st day of the month following the end of that tax period; or
  - (b) within such further period as the Commissioner allows.
- (2) However, if the tax period ends during the first 7 days of a month, you must give the \*GST return to the Commissioner:
- (a) on or before the 21st day of that month; or
  - (b) within such further period as the Commissioner allows.

**31-15 The form and contents of GST returns**

- (1) Your \*GST return for a tax period must be in the \*approved form.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

**Section 31-20**

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- (2) However, if during the tax period:
- (a) you are not liable for the GST on any \*taxable supplies, and you did not make any supplies that would have been taxable supplies had they not been \*GST-free or \*input taxed; and
  - (b) you are not liable for the GST on any \*taxable importations the GST on which is payable at the time when GST on taxable supplies is normally payable; and
  - (c) you are not entitled to the input tax credits on any \*creditable acquisitions or \*creditable importations;
- you may give your \*GST return for the period to the Commissioner in the manner the Commissioner requires.

**31-20 Additional GST returns**

- (1) You must, if required by the Commissioner, whether before or after the end of a tax period, give to the Commissioner, within the time required, a \*GST return or a further or fuller GST return for the tax period or a specified period, whether or not you have given the Commissioner a GST return for the tax period under section 31-5.
- (2) The \*approved form for a further or fuller \*GST return may require information to be provided relating to:
  - (a) the tax period to which the return relates; or
  - (b) one or more preceding tax periods; or
  - (c) both the tax period to which the return relates, and one or more preceding tax periods.

**31-25 Electronic lodgment of GST returns**

- (1) You may give your \*GST returns to the Commissioner by \*lodging them electronically.

Note: Section 388-75 in Schedule 1 to the *Taxation Administration Act 1953* deals with signing returns.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (2) However, if your \*GST turnover meets the \*electronic lodgment turnover threshold, you *must* give your \*GST returns to the Commissioner by \*lodging them electronically, unless the Commissioner otherwise approves.

Note 1: A penalty applies if you fail to lodge your GST return electronically as required—see section 288-10 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 2: If you lodge your GST return electronically, you must also electronically notify the Commissioner of other BAS amounts—see section 388-80 in that Schedule.

- (3) A \*GST return is ***lodged electronically*** if it is transmitted to the Commissioner in an electronic format approved by the Commissioner.
- (4) The ***electronic lodgment turnover threshold*** is:
- (a) \$20 million; or
  - (b) such higher amount as the regulations specify.

### 31-99 Special rules relating to GST returns

Chapter 4 contains special rules relating to \*GST returns, as follows:

Checklist of special rules		
Item	For this case ...	See:
1A	Annual tax periods	Division 151
1	GST branches	Division 54
2	GST groups	Division 48
3	GST joint ventures	Division 51
4	Insurance	Division 78
4A	Payment of GST by instalments	Division 162
4B	Representatives of incapacitated entities	Division 58
5	Resident agents acting for non-residents	Division 57

\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

**Chapter 2** The basic rules  
**Part 2-7** Returns, payments and refunds  
**Division 31** GST returns

Section 31-99

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**Checklist of special rules**

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<b>Item</b>	<b>For this case ...</b>	<b>See:</b>
6	Supplies in satisfaction of debts	Division 105

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## Division 33—Payments of GST

### 33-1 What this Division is about

This Division is about your obligation to pay to the Commonwealth amounts of GST that remain after off-setting your entitlements to input tax credits. The obligation to pay arises for any of your assessed net amounts that are *greater* than zero.

Note 1A: For provisions about assessment (including self-assessment), see Division 155 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 1: For the penalties for failing to comply with these obligations, see the *Taxation Administration Act 1953*.

Note 2: For provisions about collection and recovery of GST, see Subdivision 105-C, and Part 4-15, in Schedule 1 to the *Taxation Administration Act 1953*.

Note 3: Payments of GST on importations of goods are dealt with separately in section 33-15 of this Act.

Note 4: For taxable supplies of new residential premises or potential residential land, section 14-250 in Schedule 1 to the *Taxation Administration Act 1953* may require the recipient to pay to the Commissioner an amount representing the GST on the supply, and the entity liable for the GST on the supply is then entitled to a credit for that payment under section 18-60 in that Schedule.

### 33-3 When payments of assessed net amounts must be made— quarterly tax periods

If:

- (a) the \*assessed net amount for a tax period applying to you is greater than zero; and
- (b) the tax period is a \*quarterly tax period;

you must pay the assessed net amount to the Commissioner as follows:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

Section 33-5

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<b>When quarterly GST payments must be made</b>		
<b>Item</b>	<b>If this day falls within the quarterly tax period ...</b>	<b>Pay the assessed net amount to the Commissioner on or before this day:</b>
1	1 September	the following 28 October
2	1 December	the following 28 February
3	1 March	the following 28 April
4	1 June	the following 28 July

**33-5 When payments of assessed net amounts must be made—other tax periods**

- (1) If the \*assessed net amount for a tax period (other than a \*quarterly tax period) applying to you is greater than zero, you must pay the assessed net amount to the Commissioner on or before the 21st day of the month following the end of that tax period.
- (2) However, if the tax period ends during the first 7 days of a month, you must pay the \*assessed net amount to the Commissioner on or before the 21st day of that month.

**33-10 How payment of assessed net amounts are made**

- (1) You may pay by \*electronic payment any \*assessed net amounts payable by you. Any amounts of an assessed net amount that you do not pay by electronic payment must be paid in the manner determined in writing by the Commissioner.
- (2) However, if your \*GST turnover meets the \*electronic lodgment turnover threshold, you *must* pay by \*electronic payment any \*assessed net amounts payable by you.

Note 1: A penalty applies if you fail to pay electronically as required—see section 288-20 in Schedule 1 to the *Taxation Administration Act 1953*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Note 2: You must also pay other tax debts electronically—see section 8AAZMA in that Act.

### 33-15 Payments of assessed GST on importations

- (1) Amounts of \*assessed GST on \*taxable importations are to be paid by the importer to the Commonwealth:
- (a) at the same time, at the same place, and in the same manner, as \*customs duty is payable on the goods in question (or would be payable if the goods were subject to customs duty); or
  - (b) in the circumstances specified in the regulations, within such further time specified in the regulations, and at the place and in the manner specified in the regulations.
- Note: The regulations could (for example) allow for deferral of payments to coincide with payments of assessed net amounts.
- (2) An officer of Customs (within the meaning of subsection 4(1) of the *Customs Act 1901*) may refuse to deliver the goods concerned unless the \*assessed GST has been paid.

### 33-99 Special rules relating to payments of GST

Chapter 4 contains special rules relating to payments of GST, as follows:

Checklist of special rules		
Item	For this case ...	See:
1A	Annual tax periods	Division 151
1	Anti-avoidance	Division 165
2	Customs security etc. given on taxable importations	Division 171
3	GST branches	Division 54
4	GST joint ventures	Division 51

\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

**Chapter 2** The basic rules  
**Part 2-7** Returns, payments and refunds  
**Division 33** Payments of GST

Section 33-99

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**Checklist of special rules**

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<b>Item</b>	<b>For this case ...</b>	<b>See:</b>
4A	Importations without entry for home consumption	Division 114
5	Insurance	Division 78
5A	Payment of GST by instalments	Division 162
6	Supplies in satisfaction of debts	Division 105

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## Division 35—Refunds

### 35-1 What this Division is about

This Division is about the Commissioner's obligation to pay to you your entitlements to input tax credits that remain after off-setting amounts of GST. The obligation to pay arises for any of your assessed net amounts that are less than zero.

### 35-5 Entitlement to refund

- (1) If the \*assessed net amount for a tax period is less than zero, the Commissioner must, on behalf of the Commonwealth, pay that amount (expressed as a positive amount) to you.

Note 1: See Division 3A of Part IIB of the *Taxation Administration Act 1953* for the rules about how the Commissioner must pay you. Division 3 of Part IIB allows the Commissioner to apply the amount owing as a credit against tax debts that you owe to the Commonwealth.

Note 2: Interest is payable under the *Taxation (Interest on Overpayments and Early Payments) Act 1983* if the Commissioner is late in refunding the amount.

- (2) However, if:
- (a) the Commissioner amends the \*assessment of your \*net amount; and
  - (b) your \*assessed net amount before the amendment was less than zero; and
  - (c) the amount that, because of the assessment, was:
    - (i) paid; or
    - (ii) applied under the *Taxation Administration Act 1953*; exceeded the amount (including a nil amount) that would have been payable or applicable had your assessed net amount always been the later assessed net amount;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Section 35-10**

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the amount of the excess is to be treated as if:

- (d) the excess were an assessed net amount for the tax period; and
- (e) that assessed net amount were an amount greater than zero and equal to the amount of the excess; and
- (f) despite Division 33, that assessed net amount became payable, and due for payment, by you at the time when the amount was paid or applied.

Note: Treating the excess as if it were an assessed net amount has the effect of applying the collection and recovery rules in Part 3-10 and Divisions 268 and 269 in Schedule 1 to the *Taxation Administration Act 1953*, such as a liability to pay the general interest charge under section 105-80 in that Schedule.

**35-10 When entitlement arises**

Your entitlement to be paid an amount under section 35-5 arises when the Commissioner gives you notice of the \*assessment of your \*net amount for the tax period.

Note: In certain circumstances, the Commissioner is treated as having given you notice of the assessment when you give to the Commissioner your GST return (see section 155-15 in Schedule 1 to the *Taxation Administration Act 1953*).

**35-99 Special rules relating to refunds**

Chapter 4 contains special rules relating to refunds, as follows:

<b>Checklist of special rules</b>		
<b>Item</b>	<b>For this case ...</b>	<b>See:</b>
1	Anti-avoidance	Division 165
1A	Excess GST	Division 142
2	GST branches	Division 54
3	GST joint ventures	Division 51

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Checklist of special rules**

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<b>Item</b>	<b>For this case ...</b>	<b>See:</b>
4	Tourist refund scheme	Division 168

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## **Part 2-8—Checklist of special rules**

### **Division 37—Checklist of special rules**

#### **37-1 Checklist of special rules**

The provisions set out in the table contain special rules relating to the matters indicated.

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<b>Checklist of special rules</b>		
<b>Item</b>	<b>For this case...</b>	<b>See:</b>
1AA	Accounting basis of charities etc.	Division 157
1	Agents and insurance brokers	Division 153
1A	Annual apportionment of creditable purpose	Division 131
1B	Annual tax periods	Division 151
2	Anti-avoidance	Division 165
3	Associates	Division 72
3A	Bad debts relating to transactions that are not taxable or creditable to the fullest extent	Division 136
4	Cancelled lay-by sales	Division 102
5	Cessation of registration	Division 138
6	Changes in the extent of creditable purpose	Division 129
7	Changing your accounting basis	Division 159
8	Company amalgamations	Division 90
8A	Compulsory third party schemes	Division 79
9	Customs security etc. given for taxable importations	Division 171
10	Deposits as security	Division 99
10A	Distributions from deceased estates	Division 139
10B	Excess GST	Division 142
11	Financial supplies (reduced credit acquisitions)	Division 70

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Section 37-1

<b>Checklist of special rules</b>		
<b>Item</b>	<b>For this case...</b>	<b>See:</b>
11A	Fringe benefits provided by input taxed suppliers	Division 71
12	Gambling	Division 126
12A	Goods applied solely to private or domestic use	Division 130
12B	Government entities	Division 149
13	GST branches	Division 54
14	GST groups	Division 48
15	GST joint ventures	Division 51
15A	GST religious groups	Division 49
17	Importations without entry for home consumption	Division 114
18	Insurance	Division 78
18A	Limited registration entities	Division 146
19	Long-term accommodation in commercial residential premises	Division 87
20	Non-deductible expenses	Division 69
20A	Non-profit sub-entities	Division 63
20B	Non-residents making supplies connected with the indirect tax zone	Division 83
21	Offshore supplies	Division 84
21A	Payment of GST by instalments	Division 162
22	Payments of taxes	Division 81
23	Pre-establishment costs	Division 60
23A	Providing additional consideration under gross-up clauses	Division 133
24	Reimbursement of employees etc.	Division 111
25	Representatives of incapacitated entities	Division 58
26	Resident agents acting for non-residents	Division 57
28	Sale of freehold interests etc.	Division 75
29	Second-hand goods	Division 66
29AA	Settlement sharing arrangements	Division 80

\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

**Chapter 2** The basic rules  
**Part 2-8** Checklist of special rules  
**Division 37** Checklist of special rules

Section 37-1

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<b>Checklist of special rules</b>		
<b>Item</b>	<b>For this case...</b>	<b>See:</b>
29A	Simplified accounting methods for retailers and small enterprise entities	Division 123
29B	Stock on hand on becoming registered etc.	Division 137
30	Supplies and acquisitions made on a progressive or periodic basis	Division 156
30A	Supplies in return for rights to develop land	Division 82
31	Supplies in satisfaction of debts	Division 105
32	Supplies of going concerns	Division 135
33	Supplies of things acquired etc. without full input tax credits	Division 132
33A	Supply under arrangement covered by PAYG voluntary agreement	Division 113
34	Supplies partly connected with the indirect tax zone	Division 96
35	Taxis	Division 144
35AA	Tax-related transactions	Division 110
35A	Telecommunication supplies	Division 85
35B	Third party payments	Division 134
35C	Time limit on entitlements to input tax credits	Division 93
36	Tourist refund scheme	Division 168
36A	Tradex scheme goods	Division 141
36AA	Valuable metals	Division 86
36B	Valuation of re-imported goods	Division 117
37	Valuation of taxable supplies of goods in bond	Division 108
38	Vouchers	Division 100

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## **Chapter 3—The exemptions**

### **Part 3-1—Supplies that are not taxable supplies**

#### **Division 38—GST-free supplies**

##### **Table of Subdivisions**

38-A	Food
38-B	Health
38-C	Education
38-D	Child care
38-E	Exports and other cross-border supplies
38-F	Religious services
38-G	Activities of charities etc.
38-I	Water, sewerage and drainage
38-J	Supplies of going concerns
38-K	Transport and related matters
38-L	Precious metals
38-M	Supplies through inwards duty free shops
38-N	Grants of land by governments
38-O	Farm land
38-P	Cars for use by disabled people
38-Q	International Mail
38-R	Telecommunication supplies made under arrangements for global roaming in Australia
38-S	Eligible emissions units
38-T	Inbound intangible consumer supplies

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Section 38-1

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**38-1 What this Division is about**

This Division sets out the supplies that are GST-free. If a supply is GST-free, then:

- no GST is payable on the supply;
- an entitlement to an input tax credit for anything acquired or imported to make the supply is not affected.

For the basic rules about supplies that are GST-free, see sections 9-30 and 9-80.

**Subdivision 38-A—Food**

**38-2 Food**

A supply of \*food is *GST-free*.

**38-3 Food that is not GST-free**

- (1) A supply is not GST-free under section 38-2 if it is a supply of:
  - (a) \*food for consumption on the \*premises from which it is supplied; or
  - (b) hot food for consumption away from those premises; or
  - (c) food of a kind specified in the third column of the table in clause 1 of Schedule 1, or food that is a combination of one or more foods at least one of which is food of such a kind; or
  - (d) a \*beverage (or an ingredient for a beverage), other than a beverage (or ingredient) of a kind specified in the third column of the table in clause 1 of Schedule 2; or
  - (e) food of a kind specified in regulations made for the purposes of this subsection.
- (2) However, this section does not apply to a supply of \*food of a kind specified in regulations made for the purposes of this subsection.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (3) The items in the table in clause 1 of Schedule 1 or 2 are to be interpreted subject to the other clauses of Schedule 1 or 2, as the case requires.

### **38-4 Meaning of *food***

- (1) **Food** means any of these, or any combination of any of these:
- (a) food for human consumption (whether or not requiring processing or treatment);
  - (b) ingredients for food for human consumption;
  - (c) \*beverages for human consumption;
  - (d) ingredients for beverages for human consumption;
  - (e) goods to be mixed with or added to food for human consumption (including condiments, spices, seasonings, sweetening agents or flavourings);
  - (f) fats and oils marketed for culinary purposes;
- but does not include:
- (g) live animals (other than crustaceans or molluscs); or
  - (ga) unprocessed cow's milk; or
  - (h) any grain, cereal or sugar cane that has not been subject to any process or treatment resulting in an alteration of its form, nature or condition; or
  - (i) plants under cultivation that can be consumed (without being subject to further process or treatment) as food for human consumption.
- (2) **Beverage** includes water.

### **38-5 Premises used in supplying food**

**Premises**, in relation to a supply of \*food, includes:

- (a) the place where the supply takes place; or
- (b) the grounds surrounding a cafe or public house, or other outlet for the supply; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Section 38-6**

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- (c) the whole of any enclosed space such as a football ground, garden, showground, amusement park or similar area where there is a clear boundary or limit;  
but does not include any part of a public thoroughfare unless it is an area designated for use in connection with supplies of food from an outlet for the supply of food.

**38-6 Packaging of food**

- (1) A supply of the packaging in which \*food is supplied is ***GST-free*** if the supply of the food is GST-free.
- (2) However, the supply of the packaging is GST-free under this section only to the extent that the packaging:
- (a) is necessary for the supply of the food; and
  - (b) is packaging of a kind in which food of that kind is normally supplied.

**Subdivision 38-B—Health**

**38-7 Medical services**

- (1) A supply of a \*medical service is ***GST-free***.
- (2) However, a supply of a \*medical service is *not* GST-free under subsection (1) if:
- (a) it is a supply of a \*professional service rendered in circumstances covered by a prescribed provision of regulations made under the *Health Insurance Act 1973*; or
  - (b) it is rendered for cosmetic reasons and is not a \*professional service for which medicare benefit is payable under Part II of the *Health Insurance Act 1973* (or for which medicare benefit would be payable under that Part if section 19AD of that Act were disregarded).
- (3) A supply of goods is ***GST-free*** if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (a) it is made to an individual in the course of supplying to him or her a \*medical service the supply of which is GST-free; and
- (b) it is made at the premises at which the medical service is supplied.

### 38-10 Other health services

- (1) A supply is ***GST-free*** if:
  - (a) it is a service of a kind specified in the table in this subsection, or of a kind specified in the regulations; and
  - (b) the supplier is a \*recognised professional in relation to the supply of services of that kind; and
  - (c) the supply would generally be accepted, in the profession associated with supplying services of that kind, as being necessary for the appropriate treatment of the \*recipient of the supply.

<b>Health services</b>	
<b>Item</b>	<b>Service</b>
1	Aboriginal or Torres Strait Islander health
2	Acupuncture
3	Audiology, audiometry
4	Chiropody
5	Chiropractic
6	Dental
7	Dietary
8	Herbal medicine (including traditional Chinese herbal medicine)
9	Naturopathy
10	Nursing
11	Occupational therapy
12	Optometry

\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

**Chapter 3** The exemptions

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<b>Health services</b>	
<b>Item</b>	<b>Service</b>
13	Osteopathy
14	Paramedical
15	Pharmacy
16	Psychology
17	Physiotherapy
18	Podiatry
19	Speech pathology
20	Speech therapy
21	Social work

- (2) However, a supply of a pharmacy service is *not* GST-free under subsection (1) unless it is:
- (a) a supply relating to a supply that is GST-free because of section 38-50; or
  - (b) a service of conducting a medication review.
- (3) A supply of goods is ***GST-free*** if:
- (a) it is made to a person in the course of supplying to the person a service the supply of which is GST-free under subsection (1) (other than a service referred to in item 8, 9, 12 or 15 of the table in subsection (1)); and
  - (b) it is made at the premises at which the service is supplied.
- (4) A supply of goods is ***GST-free*** if:
- (a) it is made to a person in the course of supplying to the person a service referred to in item 8 or 9 of the table in subsection (1); and
  - (b) it is supplied, and used or consumed, at the premises at which the service is supplied.
- (5) A supply is ***GST-free*** if it is provided by an ambulance service in the course of the treatment of the \*recipient of the supply.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

### 38-15 Other government funded health services

A supply is ***GST-free*** if:

- (a) it is a supply of a health service in connection with a supply that is GST-free because of section 38-7 or 38-10; and
- (b) the supplier receives funding from the Commonwealth, a State or a Territory in connection with the supply of the health service; and
- (c) the supply of the health service is of a kind determined in writing by the \*Health Minister.

### 38-20 Hospital treatment

- (1) A supply of \*hospital treatment is ***GST-free***.
- (2) However, a supply of \*hospital treatment is *not* GST-free to the extent that it relates to a supply of a \*professional service that, because of subsection 38-7(2), is not GST-free.
- (3) A supply of goods is ***GST-free*** if it is a supply that is directly related to a supply of \*hospital treatment that is:
  - (a) GST-free because of subsection (1); and
  - (b) supplied by, or on behalf of, the supplier of the hospital treatment.

### 38-25 Residential care etc.

- (1) A supply of services is ***GST-free*** if:
  - (a) it is a supply of services covered by Schedule 1 to the \*Quality of Care Principles; and
  - (b) it is provided through a residential care service (within the meaning of the *Aged Care Act 1997*); and
  - (c) the supplier is an approved provider (within the meaning of that Act).
- (2) A supply of services is ***GST-free*** if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Chapter 3** The exemptions

**Part 3-1** Supplies that are not taxable supplies

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- (a) the services are provided to one or more aged or disabled people; and
  - (b) the \*Aged Care Minister has determined in writing that the services are of a kind covered by Schedule 1 to the \*Quality of Care Principles; and
  - (c) the supplier receives funding from the Commonwealth, a State or a Territory in connection with the supply.
- (3) A supply of services is ***GST-free*** if:
- (a) the services are provided to one or more aged or disabled people in a residential setting; and
  - (b) the \*Aged Care Minister has determined in writing that the services are of a kind covered by Schedule 1 to the \*Quality of Care Principles; and
  - (c) the services include, and are only provided to people who require, the services (***care services***) set out in:
    - (i) item 2.1 (daily living activities assistance) of Part 2 of that Schedule; or
    - (ii) item 3.8 (nursing services) of Part 3 of that Schedule.
- (3A) Services provided to a resident of a \*retirement village are taken, for the purposes of paragraph (3)(a), to be provided in a residential setting if, and only if:
- (a) he or she is a resident of a \*serviced apartment in the retirement village; and
  - (b) there is in force a written agreement under which the operator of the retirement village provides daily meals and heavy laundry services to all of the residents of the apartment.
- (3B) However, services provided to a resident of a \*serviced apartment in a \*retirement village are not taken, for the purposes of paragraph (3)(a), to be provided in a residential setting if:
- (a) the \*Aged Care Minister has determined in writing:
    - (i) the levels of care services that residents of serviced apartments in retirement villages must require in order for subsection (3) to apply; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (ii) the way in which the levels of care services required by residents are to be assessed; and
  - (b) the \*Aged Care Secretary has not, in accordance with the determination, assessed the person to whom the services are provided as requiring the levels of care services so determined.
- (3C) A determination made for the purposes of paragraph (3B)(a) may be restricted to a specified class of residents of \*serviced apartments in \*retirement villages.
- (4) A supply of accommodation is **GST-free** if it is made to a person in the course of making a supply to that person that is GST-free under subsection (1), (2) or (3).
- (4A) A supply is **GST-free** if:
- (a) it is made to a person who is a person of a kind referred to in paragraph (3)(c); and
  - (b) it is:
    - (i) a supply, by way of lease, hire or licence, of \*residential premises consisting of a \*serviced apartment in a \*retirement village; or
    - (ii) a sale of \*real property that is residential premises consisting of a serviced apartment in a retirement village; or
    - (iii) a supply of an excluded security (within the meaning of the *Corporations Act 2001*) in respect of which the right to participate in a retirement village scheme (within the meaning of that Act) entitles the person to use or occupy a serviced apartment in a retirement village; and
  - (c) in a case where:
    - (i) a determination made for the purposes of paragraph (3B)(a) is in force; and
    - (ii) the determination is not restricted under subsection (3C) in such a way that the determination excludes the person;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Chapter 3** The exemptions

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the \*Aged Care Secretary has, in accordance with the determination, assessed the person as requiring the levels of care services determined in the determination; and

- (d) it is made in connection with one or more supplies, or proposed supplies, to the person that are or will be GST-free under subsection (3).
- (5) However, a supply of services that is covered by an extra services fee within the meaning of Division 35 of the *Aged Care Act 1997* is only ***GST-free*** under this section to the extent that the services are covered by Schedule 1 to the \*Quality of Care Principles.

**38-30 Home care etc.**

- (1) A supply of \*home care is ***GST-free*** if:
  - (a) home care subsidy is payable under Part 3.2 of the *Aged Care Act 1997* or Part 3.2 of the *Aged Care (Transitional Provisions) Act 1997* to the supplier for the care; or
  - (b) the Commonwealth contribution amount worked out in respect of the supplier, using section 48-1A of the *Aged Care Act 1997*, for the recipient of the care in respect of the payment period (within the meaning of that Act) in which the supply is made, is greater than zero; or
  - (c) both of the following apply:
    - (i) the supplier is eligible for home care subsidy under section 46-1 of the *Aged Care (Transitional Provisions) Act 1997* in the payment period (within the meaning of that Act) in which the supply is made;
    - (ii) the supply is a supply of a kind specified in the regulations.
- (2) A supply of care is ***GST-free*** if the supplier receives funding under the *Home and Community Care Act 1985* in connection with the supply.
- (3) A supply of \*home care is ***GST-free*** if the supply is of services:
  - (a) that are provided to one or more aged or disabled people; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (b) that are of a kind covered by item 2.1 (daily living activities assistance) of Part 2 of Schedule 1 to the \*Quality of Care Principles.
- (4) A supply of care is **GST-free** if:
  - (a) the supplier receives funding from the Commonwealth, a State or a Territory in connection with the supply; and
  - (b) the supply of the care is of a kind determined in writing by the \*Aged Care Minister to be similar to a supply that is GST-free because of subsection (2).

### **38-35 Flexible care**

A supply of flexible care (within the meaning of section 49-3 of the *Aged Care Act 1997*) is **GST-free** if flexible care subsidy is payable under Part 3.3 of that Act or Part 3.3 of the *Aged Care (Transitional Provisions) Act 1997* to the supplier for the care.

### **38-38 Disability support provided to NDIS participants**

- A supply is **GST-free** if the supply:
- (a) is a supply to a participant (within the meaning of the *National Disability Insurance Scheme Act 2013*) for whom a participant's plan is in effect under section 37 of that Act; and
  - (b) is a supply of one or more of the reasonable and necessary supports specified in the statement included, under subsection 33(2) of that Act, in the participant's plan; and
  - (c) is made under a written agreement, between the supplier and the participant or another person, that:
    - (i) identifies the participant; and
    - (ii) states that the supply is a supply of one or more of the reasonable and necessary supports specified in the statement included, under subsection 33(2) of that Act, in the participant's plan; and
  - (d) is of a kind that the \*Disability Services Minister has determined in writing.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**38-40 Specialist disability services**

A supply of services is ***GST-free*** if the supplier receives funding under the *Disability Services Act 1986* or under a complementary \*State law or \*Territory law in respect of the services.

**38-45 Medical aids and appliances**

- (1) A supply is ***GST-free*** if:
  - (a) it is covered by Schedule 3 (medical aids and appliances), or specified in the regulations; and
  - (b) the thing supplied is specifically designed for people with an illness or disability, and is not widely used by people without an illness or disability.
- (2) A supply is ***GST-free*** if the thing supplied is supplied as a spare part for, and is specifically designed as a spare part for, another thing the supply of which would be GST-free under subsection (1).
- (3) However, a supply is *not* GST-free under subsection (1) or (2) if the supplier and the \*recipient have agreed that the supply, or supplies of a kind that include that supply, not be treated as GST-free supplies.

**38-47 Other GST-free health goods**

- (1) A supply is ***GST-free*** if it is a supply of goods of a kind that the \*Health Minister, by determination in writing, declares to be goods the supply of which is GST-free.
- (2) However, a supply is *not* GST-free under subsection (1) if the supplier and the \*recipient have agreed that the supply, or supplies of a kind that include that supply, not be treated as GST-free supplies.

**38-50 Drugs and medicinal preparations etc.**

- (1) A supply of a drug or medicinal preparation is ***GST-free*** if the supply is on prescription and:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (a) under a \*State law or a \*Territory law in the State or Territory in which the supply takes place, supply of the drug or medicinal preparation is restricted, but may be supplied on prescription; or
  - (b) the drug or medicinal preparation is a pharmaceutical benefit (within the meaning of Part VII of the *National Health Act 1953*).
- (2) A supply of a drug or medicinal preparation is **GST-free** if, under a \*State law or a \*Territory law in the State or Territory in which it is supplied, the supply of the drug or medicinal preparation to an individual for private or domestic use or consumption is restricted but may be made by:
- (a) a \*medical practitioner, \*dental practitioner or pharmacist; or
  - (b) any other person permitted by or under that law to do so.
- (3) Subsection (2) does not cover the supply of a drug or medicinal preparation of a kind specified in the regulations.
- (4) A supply of a drug, medicine or other pharmaceutical item is **GST-free** if the supply is on prescription and:
- (a) it is supplied as a pharmaceutical benefit (within the meaning of section 91 of the *Veterans' Entitlements Act 1986*); and
  - (b) it is supplied under an approved scheme (within the meaning of that section).
- (4A) A supply of a drug, medicine or other pharmaceutical item is **GST-free** if the supply is on prescription and:
- (a) it is supplied as a pharmaceutical benefit (within the meaning of section 5 of the *Military Rehabilitation and Compensation Act 2004*); and
  - (b) it is supplied in accordance with a determination made under paragraph 286(1)(c) of that Act.
- (5) A supply of a drug or medicinal preparation is **GST-free** if:
- (a) the drug or medicinal preparation is an analgesic that has a single active ingredient the supply of which as a drug or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- medicinal preparation would be GST-free under subsection (2) if it were supplied in a larger quantity; and
- (b) the drug or medicinal preparation is of a kind the supply of which is declared by the \*Health Minister to be GST-free, by determination in writing.
- (6) A supply of a drug or medicinal preparation is ***GST-free*** if:
- (a) the drug or medicinal preparation is the subject of an approval under paragraph 19(1)(a) of the *Therapeutic Goods Act 1989*, and any conditions to which the approval is subject have been complied with; or
  - (b) the drug or medicinal preparation is supplied under an authority under subsection 19(5) of that Act, and the supply is in accordance with any regulations made for the purposes of subsection 19(7) of that Act; or
  - (ba) the supply of the drug or medicinal preparation is authorised by rules under subsection 19(7A) of that Act; or
  - (c) the drug or medicinal preparation is exempted from the operation of Part 3 of that Act under regulation 12A of the Therapeutic Goods Regulations.
- (7) A supply of a drug or medicinal preparation covered by this section is ***GST-free*** if, and only if:
- (a) the drug or medicinal preparation is for human use or consumption; and
  - (b) the supply is to an individual for private or domestic use or consumption.

**38-55 Private health insurance etc.**

- (1) A supply of \*private health insurance is ***GST-free***.
- (2) A supply of insurance against liability to pay for services supplied by ambulance is ***GST-free***.
- (3) However, a supply of re-insurance is *not* GST-free under this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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### **38-60 Third party procured GST-free health supplies**

#### *Insurers*

- (1) If:
- (a) a supply is a supply of a service to an insurer; and
  - (b) the service is the supplier making one or more other supplies of goods or services to an individual; and
  - (c) at least one of the other supplies is:
    - (i) wholly or partly \*GST-free under this Subdivision; and
    - (ii) for settling one or more claims under an \*insurance policy of which the insurer is an insurer;

the first-mentioned supply is ***GST-free*** to the extent that the other supplies mentioned in paragraph (b) are GST-free under this Subdivision.

Note: For subparagraph (c)(ii), the insurer may be an insurer of the policy because of a portfolio transfer (see section 78-118).

#### *Compulsory third party scheme operators*

- (2) If:
- (a) a supply is a supply of a service to an \*operator of a \*compulsory third party scheme; and
  - (b) the service is the supplier making one or more other supplies of goods or services to an individual; and
  - (c) at least one of the other supplies is:
    - (i) wholly or partly \*GST-free under this Subdivision; and
    - (ii) made under the compulsory third party scheme;

the first-mentioned supply is ***GST-free*** to the extent that the other supplies mentioned in paragraph (b) are GST-free under this Subdivision.

#### *Government agencies*

- (3) If:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (a) a supply is a supply of a service to an \*Australian government agency; and
- (b) the service is the supplier making one or more other supplies of goods or services to an individual; and
- (c) at least one of the other supplies is wholly or partly \*GST-free under this Subdivision;

the first-mentioned supply is ***GST-free*** to the extent that the other supplies mentioned in paragraph (b) are GST-free under this Subdivision.

*Parties may agree for supply not to be GST-free*

- (4) However, a supply is not ***GST-free*** (to any extent) under this section if the supplier and the \*recipient have agreed that the supply, or supplies of a kind that include that supply, not be treated as GST-free supplies.

**Subdivision 38-C—Education**

**38-85 Education courses**

A supply is ***GST-free*** if it is a supply of:

- (a) an \*education course; or
- (b) administrative services directly related to the supply of such a course, but only if they are supplied by the supplier of the course.

**38-90 Excursions or field trips**

- (1) A supply is ***GST-free*** if it is a supply of an excursion or field trip, but only if the excursion or field trip:
  - (a) is directly related to the curriculum of an \*education course; and
  - (b) is not predominantly recreational.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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(2) However:

- (a) if the course is a \*tertiary course, a \*tertiary residential college course or a \*professional or trade course—any supply of accommodation as part of the excursion or field trip is *not* GST-free; and
- (b) in any case—any supply of \*food as part of the excursion or field trip is *not* GST-free under this section.

### **38-95 Course materials**

A supply of \*course materials for a subject undertaken in an \*education course is ***GST-free***.

### **38-97 Lease etc. of curriculum related goods**

A supply by way of lease or hire of goods is ***GST-free*** if:

- (a) the goods are for use directly or principally by a student in undertaking a \*pre-school course, \*primary course or \*secondary course in which the student is enrolled; and
- (b) the entity supplying the course leases or hires the goods; and
- (c) at all times while the lease or hiring has effect, the entity supplying the course has the right to decide who uses goods and the use to which the goods are put; and
- (d) the lease or hiring is not part of an arrangement that includes:
  - (i) a transfer of ownership of the goods; or
  - (ii) an agreement to transfer ownership of the goods; or
  - (iii) imposing an obligation, or conferring a right, to transfer ownership of the goods.

### **38-100 Supplies that are *not* GST-free**

To avoid doubt, the following supplies related to an \*education course are *not* GST-free:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (a) a supply by way of sale, lease or hire of goods (other than \*course materials covered by section 38-95, or a supply by way of lease or hire that is covered by section 38-97);
- (b) a supply of membership of a student organisation.

**38-105 Accommodation at boarding schools etc.**

- (1) A supply is ***GST-free*** if:
  - (a) it is a supply of \*student accommodation to students undertaking a \*primary course, a \*secondary course or a \*special education course; and
  - (b) the supplier of the accommodation also supplies the course.
- (2) A supply is ***GST-free*** if:
  - (a) it is a supply of \*student accommodation to students who are undertaking a \*primary course, a \*secondary course or a \*special education course; and
  - (b) the accommodation is provided in a hostel whose primary purpose is to provide accommodation for students from rural or remote locations who are undertaking such courses.
- (3) ***Student accommodation*** means the right to occupy the whole or part of the premises used to provide the accommodation, including, if it is provided as part of the right so to occupy, the supply of:
  - (a) cleaning and maintenance; or
  - (b) electricity, gas, air-conditioning or heating; or
  - (c) telephone, television, radio or any other similar thing.
- (4) However, a supply is *not* GST-free under subsection (1) or (2) to the extent that it consists of the supply of \*food.

**38-110 Recognition of prior learning etc.**

- (1) A supply is ***GST-free*** if the supply is the assessment or issue of qualifications for the purpose of:
  - (a) access to education; or
  - (b) membership of a professional or trade association; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (c) registration or licensing for a particular occupation; or
  - (d) employment.
- (2) However, a supply is *not* GST-free under subsection (1) unless the supply is carried out by:
- (a) a professional or trade association; or
  - (b) an \*education institution; or
  - (c) an entity that is registered by a training recognition authority of a State or Territory in accordance with the Australian Recognition Framework to provide skill recognition (assessment only) services; or
  - (d) an authority of the Commonwealth or of a State or Territory; or
  - (e) a local government body.

### **Subdivision 38-D—Child care**

#### **38-145 Child care—approved child care services under the family assistance law**

A supply is ***GST-free*** if:

- (a) it is a supply of child care by an approved child care service (within the meaning of section 3 of the *A New Tax System (Family Assistance) (Administration) Act 1999*); or
- (b) it is a supply of an excursion that is directly related to a supply of child care covered by paragraph (a).

#### **38-150 Other child care**

- (1) A supply is ***GST-free*** if it is a supply of child care specified in a determination made under subsection (2).
- (2) The \*Child Care Minister may, by legislative instrument, determine kinds of child care for the purposes of subsection (1). A kind of child care may only be included in a determination if the supplier of the care is eligible for Commonwealth funding in respect of the kind of care.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**38-155 Supplies directly related to child care that is GST-free**

A supply is **GST-free** if it is a supply that is directly related to a supply of child care that is:

- (a) GST-free because of section 38-145 or 38-150; and
- (b) supplied by, or on behalf of, the supplier of the child care.

**Subdivision 38-E—Exports and other cross-border supplies**

**38-185 Exports of goods**

- (1) The third column of this table sets out supplies that are **GST-free**:

<b>GST-free exports of goods</b>		
<b>Item</b>	<b>Topic</b>	<b>These supplies are GST-free ...</b>
1	Export of goods—general	a supply of goods, but only if the supplier exports them from the indirect tax zone before, or within 60 days (or such further period as the Commissioner allows) after: (a) the day on which the supplier receives any of the *consideration for the supply; or (b) if, on an earlier day, the supplier gives an *invoice for the supply—the day on which the supplier gives the invoice.
2	Export of goods—supplies paid for by instalments	a supply of goods for which the *consideration is provided in instalments under a contract that requires the goods to be exported, but only if the supplier exports them from the indirect tax zone before, or within 60 days (or such further period as the Commissioner allows) after: (a) the day on which the supplier receives any of the final instalment of the consideration for the supply; or (b) if, on an earlier day, the supplier gives an *invoice for that final instalment—the day on which the supplier gives the invoice.
2A	Export of goods—supplies to	a supply of goods without *consideration to an *associate of the supplier, but only if the supplier exports them from the indirect tax zone.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**GST-free exports of goods**

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Item	Topic	These supplies are GST-free ...
	associates without consideration	
3	Export of aircraft or ships	a supply of an aircraft or *ship, but only if the recipient of the aircraft or ship exports it from the indirect tax zone under its own power within 60 days (or such further period as the Commissioner allows) after taking physical possession of it.
4	Export of aircraft or ships—paid for by instalments	a supply of an aircraft or *ship for which the *consideration is provided in instalments under a contract that requires the aircraft or ship to be exported, but only if the *recipient exports it from the indirect tax zone before, or within 60 days (or such further period as the Commissioner allows) after, the earliest day on which one or more of the following occurs:  (a) the supplier receives any of the final instalment of the consideration for the supply;  (b) the supplier gives an *invoice for that final instalment;  (c) the supplier delivers the aircraft or ship to the recipient or (at the recipient's request) to another person.
4A	Export of new recreational boats	a supply of a *ship, but only if:  (a) the ship is a *new recreational boat on the earliest day (the <i>receipt day</i> ) on which one or more of the following occurs:  (i) the *recipient takes physical possession of the ship;  (ii) if *consideration for the supply is provided in instalments under a contract that requires the ship to be exported—the supplier receives any of the final instalment;  (iii) if consideration for the supply is provided in instalments under a contract that requires the ship to be exported—the supplier gives an *invoice for the final instalment; and  (b) the supplier or recipient exports the ship from the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**GST-free exports of goods**

<b>Item</b>	<b>Topic</b>	<b>These supplies are GST-free ...</b>
		indirect tax zone within 12 months (or such further period as the Commissioner allows) after the receipt day; and (c) subsection (6) does not apply at any time during the period: (i) starting on the receipt day; and (ii) ending when the supplier or recipient exports the ship.
5	Export of goods that are to be consumed on international flights or voyages	a supply of: (a) *aircraft's stores, or spare parts, for use, consumption or sale on an aircraft on a flight that has a destination outside the indirect tax zone; or (b) *ship's stores, or spare parts, for use, consumption or sale on a *ship on a voyage that has a destination outside the indirect tax zone; whether or not part of the flight or voyage involves a journey between places in the indirect tax zone.
6	Export of goods used to repair etc. imported goods	a supply of goods in the course of repairing, renovating, modifying or treating other goods from outside the indirect tax zone whose destination is outside the indirect tax zone, but only if: (a) the goods are attached to, or become part of, the other goods; or (b) the goods become unusable or worthless as a direct result of being used to repair, renovate, modify or treat the other goods.
7	Goods exported by travellers as accompanied baggage	a supply of goods to a *relevant traveller, but only if: (a) the supply is made in accordance with the rules specified in the regulations; and (b) the goods are exported as accompanied baggage of the relevant traveller.

(2) However, a supply covered by any of items 1 to 6 in the table in subsection (1) is *not* GST-free if the supplier reimports the goods into the indirect tax zone.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (3) Without limiting items 1 and 2 in the table in subsection (1), a supplier of goods is treated, for the purposes of those items, as having exported the goods from the indirect tax zone if:
- (a) before the goods are exported, the supplier supplies them to an entity that is not \*registered or \*required to be registered; and
  - (b) that entity exports the goods from the indirect tax zone; and
  - (c) the goods have been entered for export within the meaning of section 113 of the *Customs Act 1901*; and
  - (d) since their supply to that entity, the goods have not been altered or used in any way, except to the extent (if any) necessary to prepare them for export; and
  - (e) the supplier has sufficient documentary evidence to show that the goods were exported; and
  - (f) if that entity is covered by paragraph 168-5(1A)(c)—the supplier has a declaration by that entity stating that:
    - (i) a payment has not been sought under section 168-5 for the supply; and
    - (ii) if the goods are \*wine—a payment has not been sought under section 25-5 of that Act for the supply.

However, if the goods are reimported into the indirect tax zone, the supply is *not* GST-free unless the reimportation is a \*taxable importation.

Note: The entity will be covered by paragraph 168-5(1A)(c) if the entity is an individual who resides in an external Territory.

- (4) Without limiting item 2A in the table in subsection (1), a supplier of goods is treated, for the purposes of that item, as having exported the goods from the indirect tax zone if:
- (a) before the goods are exported, the supplier supplies them to an entity that:
    - (i) is an \*associate of the supplier; and
    - (ii) is not \*registered or \*required to be registered; and
  - (b) the associate exports the goods from the indirect tax zone within 60 days (or such further period as the Commissioner allows) after the earlier of the following:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (i) the day the goods were delivered in the indirect tax zone to the associate;
- (ii) the day the goods were made available in the indirect tax zone to the associate; and
- (c) the goods have been entered for export within the meaning of section 113 of the *Customs Act 1901*; and
- (d) since their supply to the associate, the goods have not been altered or used in any way, except to the extent (if any) necessary to prepare them for export; and
- (e) the supplier has sufficient documentary evidence to show that the goods were exported; and
- (f) if the associate is covered by paragraph 168-5(1A)(c)—the supplier has a declaration by the associate stating that:
  - (i) a payment has not been sought under section 168-5 for the supply; and
  - (ii) if the goods are \*wine—a payment has not been sought under section 25-5 of that Act for the supply.

However, if the goods are reimported into the indirect tax zone, the supply is *not* GST-free unless the reimportation is a \*taxable importation.

Note: The associate will be covered by paragraph 168-5(1A)(c) if the associate is an individual who resides in an external Territory.

*Export of new recreational boats*

- (5) For the purposes of item 4A of the table in subsection (1), the \*ship is a ***new recreational boat*** if the ship:
  - (a) has not been substantially reconstructed; and
  - (b) has not been sold, leased or used since the completion of its construction, except in connection with:
    - (i) the supply or acquisition of the ship as stock held for the purpose of sale or exchange in \*carrying on an \*enterprise; or
    - (ii) the supply mentioned in that item, or the acquisition of the ship by the \*recipient as mentioned in that item; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (c) was designed, and is fitted out, principally for use in activities done as private recreational pursuits or hobbies; and
  - (d) is not a commercial ship.
- (6) For the purposes of item 4A in the table in subsection (1), this subsection applies if, apart from use of the \*ship by the supplier in connection with the supply of the ship to the \*recipient, the \*ship is used:
- (a) as security for the performance of an obligation (other than an obligation relating to the acquisition of the ship); or
  - (b) in \*carrying on an \*enterprise in the indirect tax zone; or
  - (c) in the indirect tax zone in carrying on an enterprise outside the indirect tax zone, not including use that involves the ship being used:
    - (i) in a way that is private or domestic in nature; or
    - (ii) in an activity, or series of activities, done as a private recreational pursuit or hobby; or
- Example: Allowing an employee to live on the ship, or to take the ship on a fishing trip.
- (d) for \*consideration, unless the consideration:
    - (i) consists of the provision of services by an employee of an enterprise carried on by the \*recipient outside the indirect tax zone; or
    - (ii) is in respect of the recipient competing in a race or other sporting event (e.g. a prize).

### **38-187 Lease etc. of goods for use outside the indirect tax zone**

A supply of goods is *GST-free* if:

- (a) the supply is by way of lease or hire; and
- (b) the goods are used outside the indirect tax zone.

Note: If goods are leased or hired and used partly in the indirect tax zone and partly outside the indirect tax zone, the supply could be taxable to the extent that the goods are used in the indirect tax zone (see section 9-5).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**38-188 Tooling used by non-residents to manufacture goods for export**

A supply of goods is *GST-free* if:

- (a) the \*recipient of the supply is a \*non-resident, and is not \*registered or \*required to be registered; and
- (b) the goods are jigs, patterns, templates, dies, punches and similar machine tools to be used in the indirect tax zone solely to manufacture goods that will be for export from the indirect tax zone.

**38-190 Supplies of things, other than goods or real property, for consumption outside the indirect tax zone**

- (1) The third column of this table sets out supplies that are *GST-free* (except to the extent that they are supplies of goods or \*real property):

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**Supplies of things, other than goods or real property, for consumption outside the indirect tax zone**

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Item	Topic	These supplies are GST-free (except to the extent that they are supplies of goods or *real property)...
1	Supply connected with property outside the indirect tax zone	a supply that is directly connected with goods or real property situated outside the indirect tax zone.
2	Supply to *non-resident outside the indirect tax zone.	a supply that is made to a *non-resident who is not in the indirect tax zone when the thing supplied is done, and: (a) the supply is neither a supply of work physically performed on goods situated in the indirect tax zone when the work is done nor a supply directly connected with *real property situated in the indirect tax zone; or (b) the *non-resident acquires the thing in *carrying on the non-resident's *enterprise, but is not *registered or *required to be registered.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Supplies of things, other than goods or real property, for consumption outside the indirect tax zone**

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Item	Topic	These supplies are GST-free (except to the extent that they are supplies of goods or *real property)...
3	Supplies used or enjoyed outside the indirect tax zone	a supply: <ul style="list-style-type: none"> <li>(a) that is made to a *recipient who is not in the indirect tax zone when the thing supplied is done; and</li> <li>(b) the effective use or enjoyment of which takes place outside the indirect tax zone;</li> </ul> other than a supply of work physically performed on goods situated in the indirect tax zone when the thing supplied is done, or a supply directly connected with *real property situated in the indirect tax zone.
4	Rights	a supply that is made in relation to rights if: <ul style="list-style-type: none"> <li>(a) the rights are for use outside the indirect tax zone; or</li> <li>(b) the supply is to an entity that is not an *Australian resident and is outside the indirect tax zone when the thing supplied is done.</li> </ul>
5	Export of services used to repair etc. imported goods	a supply that is constituted by the repair, renovation, modification or treatment of goods from outside the indirect tax zone whose destination is outside the indirect tax zone.

(2) However, a supply covered by any of items 1 to 5 in the table in subsection (1) is *not* GST-free if it is the supply of a right or option to acquire something the supply of which would be \*connected with the indirect tax zone and would not be \*GST-free.

(2A) A supply covered by any of items 2 to 4 in the table in subsection (1) is *not* \*GST-free if the acquisition of the supply relates (whether directly or indirectly, or wholly or partly) to the making of a supply of \*real property situated in the indirect tax zone that would be, wholly or partly, \*input taxed under Subdivision 40-B or 40-C.

Note: Subdivision 40-B deals with the supply of premises (including a berth at a marina) by way of lease, hire or licence. Subdivision 40-C deals

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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with the sale of residential premises and the supply of residential premises by way of long-term lease.

- (3) Without limiting subsection (2) or (2A), a supply covered by item 2 in that table is *not* GST-free if:
- (a) it is a supply under an agreement entered into, whether directly or indirectly, with a \*non-resident; and
  - (b) the supply is provided, or the agreement requires it to be provided, to another entity in the indirect tax zone; and
  - (c) for a supply other than an \*input taxed supply—none of the following applies:
    - (i) the other entity would be an \*Australian-based business recipient of the supply, if the supply had been made to it;
    - (ii) the other entity is an individual who is provided with the supply as an employee or \*officer of an entity that would be an Australian-based business recipient of the supply, if the supply had been made to it; or
    - (iii) the other entity is an individual who is provided with the supply as an employee or officer of the \*recipient, and the recipient's acquisition of the thing is solely for a \*creditable purpose and is not a \*non-deductible expense.
- (4) A supply is taken, for the purposes of item 3 in that table, to be a supply made to a \*recipient who is not in the indirect tax zone if:
- (a) it is a supply under an agreement entered into, whether directly or indirectly, with an \*Australian resident; and
  - (b) the supply is provided, or the agreement requires it to be provided, to another entity outside the indirect tax zone.
- (5) Subsection (4) does not apply to any of the following supplies:
- (a) a transport of goods within the indirect tax zone that is part of, or is connected with, the \*international transport of the goods;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (b) a loading or handling of goods within the indirect tax zone that is part of, or is connected with, the international transport of the goods;
- (c) a service, done within the indirect tax zone, in relation to the goods that facilitates the international transport of the goods;  
Example: The services of a customs broker in processing the information necessary for the clearance of goods into home consumption.
- (d) insuring transport covered by paragraph (a);
- (e) arranging transport covered by paragraph (a), or insurance covered by paragraph (d).

Note: The supply might still be GST-free under item 5, 5A, 6 or 7 in the table in subsection 38-355(1).

### **38-191 Supplies relating to the repair etc. of goods under warranty**

- (1) A supply of anything other than goods or \*real property is ***GST-free*** if:
  - (a) the \*recipient is a \*non-resident who:
    - (i) is not in the indirect tax zone when the thing supplied is done; and
    - (ii) acquires the thing in \*carrying on the recipient's \*enterprise, but is not \*registered or \*required to be registered; and
  - (b) the supply is constituted by the repair, renovation, modification or treatment of goods; and
  - (c) the repair, renovation, modification or treatment is done in order to meet the recipient's obligations under a warranty relating to the goods; and
  - (d) either:
    - (i) \*consideration for the warranty was included in the consideration for the supply of the goods; or
    - (ii) the supply of the warranty was a separate \*taxable supply to the supply of the goods.
- (2) A supply of goods is ***GST-free*** if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (a) it is made in the course of a supply that is GST-free under subsection (1), and to the same \*recipient; and
- (b) either:
  - (i) the goods are attached to, or become part of, the goods to which the warranty relates; or
  - (ii) the goods become unusable or worthless as a direct result of being used to repair, renovate, modify or treat the goods to which the warranty relates.

**Subdivision 38-F—Religious services**

**38-220 Religious services**

A supply is *GST-free* if it is a supply of service that:

- (a) is supplied by a \*ACNC-registered religious institution; and
- (b) is integral to the practice of that religion.

**Subdivision 38-G—Activities of charities etc.**

**38-250 Nominal consideration etc.**

- (1) A supply is *GST-free* if:
  - (a) the supplier is an \*endorsed charity, a \*gift-deductible entity or a \*government school; and
  - (b) the supply is for \*consideration that:
    - (i) if the supply is a supply of accommodation—is less than 75% of the \*GST inclusive market value of the supply; or
    - (ii) if the supply is not a supply of accommodation—is less than 50% of the GST inclusive market value of the supply.
- (2) A supply is *GST-free* if:
  - (a) the supplier is an \*endorsed charity, a \*gift-deductible entity or a \*government school; and
  - (b) the supply is for \*consideration that:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (i) if the supply is a supply of accommodation—is less than 75% of the cost to the supplier of providing the accommodation; or
  - (ii) if the supply is not a supply of accommodation—is less than 75% of the consideration the supplier provided, or was liable to provide, for acquiring the thing supplied.
- (4) Subsections (1) and (2) do not apply to a supply by a \*gift-deductible entity endorsed as a deductible gift recipient (within the meaning of the \*ITAA 1997) under section 30-120 of the ITAA 1997, unless:
- (a) the supplier is:
    - (i) an \*endorsed charity; or
    - (ii) a \*government school; or
    - (iii) a fund, authority or institution of a kind referred to in paragraph 30-125(1)(b) of the ITAA 1997; or
  - (b) each purpose to which the supply relates is a \*gift-deductible purpose of the supplier.

Note: This subsection denies GST-free status under this section to supplies by certain (but not all) gift-deductible entities that are only endorsed for the operation of a fund, authority or institution. However, supplies can be GST-free under this section if they relate to the principal purpose of the fund, authority or institution.

### 38-255 Second-hand goods

- (1) A supply of \*second-hand goods is ***GST-free*** if:
- (a) the supplier is an \*endorsed charity, a \*gift-deductible entity or a \*government school; and
  - (b) the goods were supplied to the endorsed charity, gift-deductible entity or government school:
    - (i) as a gift; or
    - (ii) by way of a supply that was GST-free because of a previous application of this section.

However, the supply is *not* GST-free if the endorsed charity, gift-deductible entity or government school has dealt with the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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goods in such a way that the goods no longer have their original character.

- (3) Subsection (1) does not apply to a supply by a \*gift-deductible entity endorsed as a deductible gift recipient (within the meaning of the \*ITAA 1997) under section 30-120 of the ITAA 1997, unless:
- (a) the supplier is:
    - (i) an \*endorsed charity; or
    - (ii) a \*government school; or
    - (iii) a fund, authority or institution of a kind referred to in paragraph 30-125(1)(b) of the ITAA 1997; or
  - (b) each purpose to which the supply relates is a \*gift-deductible purpose of the supplier.

Note: This subsection denies GST-free status under this section to supplies by certain (but not all) gift-deductible entities that are only endorsed for the operation of a fund, authority or institution. However, supplies can be GST-free under this section if they relate to the principal purpose of the fund, authority or institution.

**38-260 Supplies of retirement village accommodation etc.**

A supply is *GST-free* if:

- (a) the supplier is an \*endorsed charity that operates a \*retirement village; and
- (b) the supply is made to a resident of the retirement village; and
- (c) the supply is:
  - (i) a supply of accommodation in the retirement village, or a supply of a service related to the supply of the accommodation; or
  - (ii) a supply of meals.

**38-270 Raffles and bingo conducted by charities etc.**

- (1) A supply is *GST-free* if:
- (a) the supplier is an \*endorsed charity, a \*gift-deductible entity or a \*government school; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (b) the supply is:
    - (i) a supply of a ticket in a raffle; or
    - (ii) an acceptance of a person's participation in a game of bingo; or
    - (iii) a \*gambling supply of a kind specified in the regulations; and
  - (c) the supply does not contravene a \*State law or a \*Territory law.
- (3) Subsection (1) does not apply to a supply by a \*gift-deductible entity endorsed as a deductible gift recipient (within the meaning of the \*ITAA 1997) under section 30-120 of the ITAA 1997, unless:
- (a) the supplier is:
    - (i) an \*endorsed charity; or
    - (ii) a \*government school; or
    - (iii) a fund, authority or institution of a kind referred to in paragraph 30-125(1)(b) of the ITAA 1997; or
  - (b) each purpose to which the supply relates is a \*gift-deductible purpose of the supplier.

Note: This subsection denies GST-free status under this section to supplies by certain (but not all) gift-deductible entities that are only endorsed for the operation of a fund, authority or institution. However, supplies can be GST-free under this section if they relate to the principal purpose of the fund, authority or institution.

## Subdivision 38-I—Water, sewerage and drainage

### 38-285 Water

- (1) A supply of water is ***GST-free***.
- (2) However, a supply of water is *not* GST-free under this section if it is:
  - (a) supplied in a container; or
  - (b) transferred into a container;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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that has a capacity of less than 100 litres or such other quantity as the regulations specify.

- (3) It does not matter whether or not the amount of water supplied or transferred fills the container.

**38-290 Sewerage and sewerage-like services**

- (1) A supply of sewerage services is *GST-free*.
- (2) A supply that consists of removing waste matter from \*residential premises is *GST-free* if:
- (a) the premises are not serviced by sewers; and
  - (b) the waste matter is of a kind that would normally be removed using sewers if the premises were serviced by sewers.
- (3) A supply that consists of servicing a domestic self-contained sewage system is *GST-free*.

**38-295 Emptying of septic tanks**

A supply of a service that consists of the emptying of a septic tank is *GST-free*.

**38-300 Drainage**

A supply of a service that consists of draining storm water is *GST-free*.

**Subdivision 38-J—Supplies of going concerns**

**38-325 Supply of a going concern**

- (1) The \*supply of a going concern is *GST-free* if:
- (a) the supply is for \*consideration; and
  - (b) the \*recipient is \*registered or \*required to be registered; and
  - (c) the supplier and the recipient have agreed in writing that the supply is of a going concern.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (2) A **supply of a going concern** is a supply under an arrangement under 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, or will carry on, the enterprise until the day of the supply (whether or not as a part of a larger enterprise carried on by the supplier).

### Subdivision 38-K—Transport and related matters

#### 38-355 Supplies of transport and related matters

- (1) The third column of this table sets out supplies that are **GST-free**:

<b>Supplies of transport and related matters</b>		
<b>Item</b>	<b>Topic</b>	<b>These supplies are GST-free ...</b>
1	Transport of passengers to, from or outside the indirect tax zone	the transport of a passenger: <ul style="list-style-type: none"> <li>(a) from the last place of departure in the indirect tax zone to a destination outside the indirect tax zone; or</li> <li>(b) from a place outside the indirect tax zone to the first place of arrival in the indirect tax zone; or</li> <li>(c) from a place outside the indirect tax zone to the same or another place outside the indirect tax zone.</li> </ul>
2	Transport of passengers on domestic legs of international flights	the transport of a passenger within the indirect tax zone by air, but only if: <ul style="list-style-type: none"> <li>(a) the transport is part of a wider arrangement, itinerary or contract for transport by air involving international travel; and</li> <li>(b) at the time the arrangement, itinerary or contract was entered into, the transport within the indirect tax zone formed part of a ticket for international travel, or was cross referenced to such a ticket, issued at that time.</li> </ul>

\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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<b>Supplies of transport and related matters</b>		
<b>Item</b>	<b>Topic</b>	<b>These supplies are GST-free ...</b>
3	Domestic air travel of non-residents	the transport of a passenger within the indirect tax zone by air, but only if: (a) the passenger is a *non-resident; and (b) the supply was purchased while the passenger was outside the indirect tax zone.
4	Transport of passengers on domestic legs of international sea voyages	the transport of a passenger within the indirect tax zone by sea, but only if: (a) the transport is part of a journey by sea from the indirect tax zone to a destination outside the indirect tax zone, or from a destination outside the indirect tax zone to the indirect tax zone; and (b) the transport is provided by the supplier who transports the passenger to or from the indirect tax zone.
5	Transport etc. of goods	subject to subsections (2) and (3), the *international transport of goods: (a) from their *place of export in the indirect tax zone to a destination outside the indirect tax zone; or (b) from a place outside the indirect tax zone to their *place of consignment in the indirect tax zone; or (c) from a place outside the indirect tax zone to the same or another place outside the indirect tax zone.
5A	Loading or handling etc.	subject to subsections (2) and (3): (a) loading or handling of goods, the *international transport of which is covered by item 5, during the course of the international transport; or (b) supply of a service, during the course of the international transport of goods covered by item 5, that facilitates the international transport.
6	Insuring transport etc.	subject to subsection (3): (a) insuring transport covered by item 1, 2, 3 or 4; or (b) insuring the *international transport of goods from their *place of export in the indirect tax zone to a

\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Supplies of transport and related matters**

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Item	Topic	These supplies are GST-free ...
		destination outside the indirect tax zone; or
		(c) insuring:
		(i) the transport of goods from a place outside the indirect tax zone to their *place of consignment in the indirect tax zone; and
		(ii) the subsequent transport of those goods within the indirect tax zone, if it is an integral part of the transport of goods from the place outside the indirect tax zone to the place of consignment in the indirect tax zone; including loading and handling within the indirect tax zone that is part of that transport; or
		(d) insuring the transport of goods from a place outside the indirect tax zone to the same or another place outside the indirect tax zone.
7	Arranging transport etc.	subject to subsection (3):
		(a) arranging transport covered by item 1, 2, 3 or 4; or
		(b) arranging the *international transport of goods covered by item 5; or
		(c) arranging insurance covered by item 6.

(2) Paragraphs (a) and (b) of item 5, and item 5A, in the table in subsection (1) do not apply to a supply to the extent that the thing supplied is done in the indirect tax zone, unless:

- (a) the \*recipient of the supply:
  - (i) is a \*non-resident; and
  - (ii) is not in the indirect tax zone when the thing supplied is done in the indirect tax zone; or
- (b) the supply is done by the supplier of the transport of the goods from or to the indirect tax zone (whichever is relevant).

(3) Items 5 and 5A, paragraphs (b) to (d) of item 6, and paragraphs (b) and (c) of item 7, in the table in subsection (1) do not apply to a supply to the extent that:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (a) the supply is, or relates to, the \*international transport of goods; and
- (b) the supplier is a \*redeliverer that is treated as the supplier of the goods under subsection 84-81(4); and
- (c) the supply of the goods is a \*taxable supply.

**38-360 Travel agents arranging overseas supplies**

A supply is *GST-free* if:

- (a) the supplier makes it in the course of \*carrying on an \*enterprise as a travel agent; and
- (b) it consists of arranging for the making of a supply, the effective use or enjoyment of which is to take place outside the indirect tax zone.

**Subdivision 38-L—Precious metals**

**38-385 Supplies of precious metals**

A supply of \*precious metal is *GST-free* if:

- (a) it is the first supply of that precious metal after its refining by, or on behalf of, the supplier; and
- (b) the entity that refined the precious metal is a \*refiner of precious metal; and
- (c) the \*recipient of the supply is a \*dealer in precious metal.

Note: Any other supply of precious metal is input taxed under section 40-100.

**Subdivision 38-M—Supplies through inwards duty free shops**

**38-415 Supplies through inwards duty free shops**

A supply is *GST-free* if the supply is a sale of \*airport shop goods through an \*inwards duty free shop to a \*relevant traveller.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## **Subdivision 38-N—Grants of land by governments**

### **38-445 Grants of freehold and similar interests by governments**

- (1) A supply by the Commonwealth, a State or a Territory of land on which there are no improvements is ***GST-free*** if:
  - (a) the supply is of a freehold interest in the land; or
  - (b) the supply is by way of \*long-term lease.
- (1A) A supply by the Commonwealth, a State or a Territory of land is ***GST-free*** if:
  - (a) the supply is of a freehold interest in the land, or is by way of \*long-term lease; and
  - (b) the Commonwealth, State or Territory had previously supplied the land, by way of lease, to the \*recipient of the supply; and
  - (c) at the time of that previous supply, there were no improvements on the land; and
  - (d) because conditions to which that lease was subject had been satisfied, the recipient was entitled to the supply of the freehold interest or the supply by way of long-term lease.
- (2) However, the supply is *not* GST-free if, since 1 July 2000, the land has already been the subject of a supply that is GST-free under this section.

### **38-450 Leases preceding grants of freehold and similar interests by governments**

- (1) A supply by the Commonwealth, a State or a Territory of land on which there are no improvements is ***GST-free*** if:
  - (a) the supply is by way of lease (other than \*long-term lease); and
  - (b) the lease is subject to conditions the satisfaction of which will entitle the \*recipient of the supply to the grant of a freehold interest in the land or a long-term lease of the land.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (2) A supply consisting of the surrender, to the Commonwealth, a State or Territory, of a lease over land is ***GST-free*** if:
- (a) the supplier acquired the land under a supply that:
    - (i) was GST-free under subsection (1); or
    - (ii) if the supply was made before 1 July 2000—would have been GST-free under subsection (1) if it had been made on or after that day; and
  - (b) solely or partly in return for the surrender of the lease, the Commonwealth, State or Territory makes a supply of the land to the supplier that is GST-free under section 38-445.

**Subdivision 38-O—Farm land**

**38-475 Subdivided farm land**

- (1) The supply of a freehold interest in, or the lease by an \*Australian government agency of or the \*long term lease of, \*potential residential land is ***GST-free*** if:
- (a) the land is subdivided from land on which a \*farming business has been \*carried on for at least 5 years; and
  - (b) the supply is made to an \*associate of the supplier of the land without \*consideration or for consideration that is less than the \*GST inclusive market value of the supply.
- (2) An entity \*carries on a ***farming business*** if it carries on a \*business of:
- (a) cultivating or propagating plants, fungi or their products or parts (including seeds, spores, bulbs and similar things), in any physical environment; or
  - (b) maintaining animals for the purpose of selling them or their bodily produce (including natural increase); or
  - (c) manufacturing dairy produce from raw material that the entity produced; or
  - (d) planting or tending trees in a plantation or forest that are intended to be felled.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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### **38-480 Farm land supplied for farming**

The supply of a freehold interest in, or the lease by an \*Australian government agency of or the \*long term lease of, land is ***GST-free*** if:

- (a) the land is land on which a \*farming business has been \*carried on for at least the period of 5 years preceding the supply; and
- (b) the \*recipient of the supply intends that a farming business be carried on, on the land.

### **Subdivision 38-P—Cars for use by disabled people**

#### **38-505 Disabled veterans**

- (1) A supply is ***GST-free*** if it is a supply of a \*car to an individual who:
  - (a) has served in the Defence Force or in any other armed force of the Sovereign; and
  - (b) as a result of that service:
    - (i) has lost a leg or both arms; or
    - (ii) has had a leg, or both arms, rendered permanently and completely useless; or
    - (iii) is a veteran to whom section 24 of the *Veterans' Entitlements Act 1986* applies and receives a pension under Part II of that Act; or
    - (iv) is receiving a Special Rate Disability Pension under Part 6 of Chapter 4 of the *Military Rehabilitation and Compensation Act 2004*, or satisfies the eligibility criteria in section 199 of that Act; and
  - (c) intends to use the car in his or her personal transportation during all of the \*Subdivision 38-P period.
- (2) However, a supply covered by subsection (1) is *not* GST-free to the extent that the \*GST inclusive market value of the \*car exceeds the \*car limit.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (3) In working out the \*GST inclusive market value of the \*car for the purposes of subsection (2), disregard any value that is attributable to modifications made to the car solely for the purpose of:
  - (a) adapting it for driving by the person; or
  - (b) adapting it for transporting the person.
- (4) A supply is ***GST-free*** if it is a supply of \*car parts that are for a \*car for an individual to whom paragraphs (1)(a), (b) and (c) apply.

**38-510 Other disabled people**

- (1) A supply is ***GST-free*** if it is a supply of a \*car to an individual who:
  - (a) has a current certificate of medical eligibility issued by a \*medical practitioner, in the \*approved form, certifying that the individual has lost the use of one or more limbs to such an extent that the individual is unable to use public transport; and
  - (b) intends to use the car in his or her personal transportation to or from gainful employment during all of the \*Subdivision 38-P period.
- (2) However, a supply covered by subsection (1) is *not* GST-free to the extent that the \*GST inclusive market value of the \*car exceeds the \*car limit.
- (3) In working out the \*GST inclusive market value of the \*car for the purposes of subsection (2), disregard any value that is attributable to modifications made to the car solely for the purpose of:
  - (a) adapting it for driving by the individual; or
  - (b) adapting it for transporting the individual.
- (4) A supply is ***GST-free*** if it is a supply of \*car parts that are for a \*car for an individual to whom paragraphs (1)(a) and (b) applies.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## **Subdivision 38-Q—International mail**

### **38-540 International mail**

A supply is ***GST-free*** if it is a supply of services to a foreign postal administration for:

- (a) the delivery in the indirect tax zone; or
- (b) the transit through the indirect tax zone;  
of postal articles mailed outside the indirect tax zone.

## **Subdivision 38-R—Telecommunication supplies made under arrangements for global roaming in the indirect tax zone**

### **38-570 Telecommunication supplies made under arrangements for global roaming in the indirect tax zone**

- (1) A \*telecommunication supply is ***GST-free*** if:
  - (a) the supply is to enable the use in the indirect tax zone of a portable device for sending and receiving signals, writing, images, sounds or information by an electromagnetic system while the device is linked to:
    - (i) an international mobile subscriber identity; or
    - (ii) an IP address; or
    - (iii) another internationally recognised identifier; containing a home network identity that indicates a subscription to a telecommunications network outside the indirect tax zone; and
  - (b) the supply is covered by subsection (2) or (3).

*Supply by non-resident telecommunications supplier*

- (2) This subsection covers the supply if:
  - (a) the supply is made to the subscriber in connection with the subscription; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (b) the billing of the subscriber for the supply is to an address outside the indirect tax zone; and
- (c) the supply is made by a \*non-resident that:
  - (i) \*carries on outside the indirect tax zone an \*enterprise of making \*telecommunication supplies; and
  - (ii) does not \*carry on in the indirect tax zone such an enterprise.

*Supply by Australian resident telecommunications supplier*

- (3) This subsection covers the supply if:
  - (a) the supply is made by an \*Australian resident that is:
    - (i) a carrier, or a carriage service provider, as defined in the *Telecommunications Act 1997*; or
    - (ii) an internet service provider as defined in the *Online Safety Act 2021*; and
  - (b) the supply is provided to the user in the indirect tax zone of the device; and
  - (c) the supply is made to a \*non-resident that:
    - (i) \*carries on outside the indirect tax zone an \*enterprise of making \*telecommunication supplies; and
    - (ii) does not \*carry on in the indirect tax zone such an enterprise.

**Subdivision 38-S—Eligible emissions units**

**38-590 Eligible emissions units**

A supply of an \*eligible emissions unit is ***GST-free***.

**Subdivision 38-T—Inbound intangible consumer supplies**

**38-610 Inbound intangible consumer supplies**

- (1) An \*inbound intangible consumer supply is ***GST-free*** if:
  - (a) it is made by a \*non-resident; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (b) it is covered by a determination under subsection (2).
- (2) The Minister may, by legislative instrument, determine that a specified class of \*inbound intangible consumer supplies are GST-free.
- (3) However, the Minister must not make the determination unless:
  - (a) the \*Foreign Minister has advised the Minister in writing that the treatment of the class of supplies under the \*GST law would, apart from the determination, be inconsistent with Australia's international obligations; and
  - (b) the Minister is satisfied that similar supplies made by \*Australian residents would be GST-free.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## **Division 40—Input taxed supplies**

### **Table of Subdivisions**

40-A	Financial supplies
40-B	Residential rent
40-C	Residential premises
40-D	Precious metals
40-E	School tuckshops and canteens
40-F	Fund-raising events conducted by charities etc.
40-G	Inbound intangible consumer supplies

### **40-1 What this Division is about**

This Division provides for the supplies that are input taxed. If a supply is input taxed, then:

- no GST is payable on the supply;
- there is no entitlement to an input tax credit for anything acquired or imported to make the supply (see sections 11-15 and 15-10).

For the basic rules about supplies that are input taxed, see sections 9-30 and 9-80.

### **Subdivision 40-A—Financial supplies**

#### **40-5 Financial supplies**

- (1) A \*financial supply is *input taxed*.
- (2) *Financial supply* has the meaning given by the regulations.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## Subdivision 40-B—Residential rent

### 40-35 Residential rent

- (1) A supply of premises that is by way of lease, hire or licence (including a renewal or extension of a lease, hire or licence) is **input taxed** if:
- (a) the supply is of \*residential premises (other than a supply of \*commercial residential premises or a supply of accommodation in commercial residential premises provided to an individual by the entity that owns or controls the commercial residential premises); or
  - (b) the supply is of \*commercial accommodation and Division 87 (which is about long-term accommodation in commercial premises) would apply to the supply but for a choice made by the supplier under section 87-25.
- (1A) A supply of a berth at a marina that is by way of lease, hire or licence (including a renewal or extension of a lease, hire or licence) is **input taxed** if:
- (a) the berth is occupied, or is to be occupied, by a \*ship used as a residence; and
  - (b) the supply is of \*commercial accommodation and Division 87 (which is about long-term accommodation in commercial premises) would apply to the supply but for a choice made by the supplier under section 87-25.
- (2) However:
- (a) the supply is input taxed only to the extent that the premises are to be used predominantly for residential accommodation (regardless of the term of occupation); and
  - (b) the supply is not input taxed under this section if the lease, hire or licence, or the renewal or extension of a lease, hire or licence, is a \*long-term lease.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## **Subdivision 40-C—Residential premises**

### **40-65 Sales of residential premises**

- (1) A sale of \*real property is *input taxed*, but only to the extent that the property is \*residential premises to be used predominantly for residential accommodation (regardless of the term of occupation).
- (2) However, the sale is *not* input taxed to the extent that the \*residential premises are:
  - (a) \*commercial residential premises; or
  - (b) \*new residential premises other than those used for residential accommodation (regardless of the term of occupation) before 2 December 1998.

Note: For sales of residential premises that are new residential premises, the recipient of the supply must pay an amount representing the GST on the supply to the Commissioner under section 14-250 in Schedule 1 to the *Taxation Administration Act 1953*, and the entity liable for the GST on the supply is entitled to a credit for that payment under section 18-60 in that Schedule.

### **40-70 Supplies of residential premises by way of long-term lease**

- (1) A supply is *input taxed* if:
  - (a) the supply is of \*real property but only to the extent that the property is \*residential premises to be used predominantly for residential accommodation (regardless of the term of occupation); and
  - (b) the supply is by way of \*long-term lease.
- (2) However, the supply is *not* input taxed to the extent that the \*residential premises are:
  - (a) \*commercial residential premises; or
  - (b) \*new residential premises other than those used for residential accommodation (regardless of the term of occupation) before 2 December 1998.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## 40-75 Meaning of *new residential premises*

*When premises are new residential premises*

- (1) \*Residential premises are ***new residential premises*** if they:
- (a) have not previously been sold as residential premises (other than \*commercial residential premises) and have not previously been the subject of a \*long-term lease; or
  - (b) have been created through \*substantial renovations of a building; or
  - (c) have been built, or contain a building that has been built, to replace demolished premises on the same land.

Paragraphs (b) and (c) have effect subject to paragraph (a).

Note 1: For example, residential premises will be new residential premises if they are created as described in paragraph (b) or (c) to replace earlier premises that had ceased to be new residential premises because of paragraph (a).

Note 2: However, premises that are new residential premises because of paragraph (b) or (c) will cease to be new residential premises once they are sold, or supplied by way of long-term lease, as residential premises (see paragraph (a)).

Note 3: Premises created because of the registration of, for example, a strata title plan, or a plan to subdivide land, may not become new residential premises (see subsection (2AA)).

- (2) However, the \*residential premises are not ***new residential premises*** if, for the period of at least 5 years since:
- (a) if paragraph (1)(a) applies (and neither paragraph (1)(b) nor paragraph (1)(c) applies)—the premises first became residential premises; or
  - (b) if paragraph (1)(b) applies—the premises were last \*substantially renovated; or
  - (c) if paragraph (1)(c) applies—the premises were last built; the premises have only been used for making supplies that are \*input taxed because of paragraph 40-35(1)(a).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Section 40-75

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*Subdivisions etc. may not result in new residential premises*

(2AA) Despite subsection (1), the \*residential premises are not **new residential premises** if:

- (a) they are created from residential premises that became the subject of a \*property subdivision plan; and
- (b) the residential premises referred to in paragraph (a) were not new residential premises immediately before they became the subject of that plan.

This subsection has effect subject to paragraphs (1)(b) and (c).

*Disregard certain supplies of the premises*

(2A) A supply of the \*residential premises is disregarded as a sale or supply for the purposes of applying paragraph (1)(a):

- (a) if it is a supply by a member of a \*GST group to another member of the GST group; or
- (b) if:
  - (i) it is a supply by the \*joint venture operator of a \*GST joint venture to another entity that is a \*participant in the joint venture; and
  - (ii) the other entity acquired the interest, unit or lease for consumption, use or supply in the course of activities for which the joint venture was entered into.

(2B) A supply (the **wholesale supply**) of the \*residential premises is disregarded as a sale or supply for the purposes of applying paragraph (1)(a) if:

- (a) the premises from which the residential premises were created had earlier been supplied to the \*recipient of the wholesale supply or one or more of its \*associates; and
- (b) an arrangement (including an agreement) was made by:
  - (i) the supplier of the earlier supply, or one or more associates of the supplier; and
  - (ii) the recipient of the earlier supply, or one or more associates of the recipient; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

(c) under the arrangement, the wholesale supply was conditional on:

- (i) specified building or renovation work being undertaken by the recipient of the earlier supply, or by one or more associates of the recipient; or
- (ii) circumstances existing as specified in regulations made for the purposes of this subparagraph.

Note 1: The premises referred to in paragraph (a) could be vacant land.

Note 2: For subparagraph (c)(ii), circumstances may be specified by class (see subsection 13(3) of the *Legislation Act 2003*).

Note 3: This subsection does not apply to a supply if certain commercial commitments were in place before 27 January 2011 (see item 12 of Schedule 4 to the *Tax Laws Amendment (2011 Measures No. 9) Act 2012*).

(2C) A supply of the \*residential premises is disregarded as a sale or supply for the purposes of applying paragraph (1)(a) if it is made because a \*property subdivision plan relating to the premises was lodged for registration (however described) by the \*recipient of the supply or the recipient's \*associate.

Note: This subsection does not apply to a supply if the plan was lodged for registration before 27 January 2011 (see item 13 of Schedule 4 to the *Tax Laws Amendment (2011 Measures No. 9) Act 2012*).

*New residential premises include associated land*

(3) To avoid doubt, if the \*residential premises are new residential premises because of paragraph (1)(b) or (c), the new residential premises include land of which the new residential premises are a part.

## **Subdivision 40-D—Precious metals**

### **40-100 Precious metals**

A supply of \*precious metal is *input taxed*.

Note: If the supply is the first supply of precious metal after refinement, the supply is GST-free under section 38-385.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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### **Subdivision 40-E—School tuckshops and canteens**

#### **40-130 School tuckshops and canteens**

- (1) A supply of \*food is *input taxed* if:
  - (a) the supply is made by a non-profit body through a shop operating on the grounds of a \*school that supplies \*primary courses or \*secondary courses; and
  - (b) the non-profit body chooses to have all its supplies of food through the shop treated as input taxed.
- (2) However, the non-profit body:
  - (b) cannot revoke the choice within 12 months after the day on which the non-profit body made the choice; and
  - (c) cannot make a further choice within 12 months after the day on which the non-profit body revoked a previous choice.
- (3) This section does not apply to a supply of \*food by a \*school to boarding students of the school as part of their board.

### **Subdivision 40-F—Fund-raising events conducted by charities etc.**

#### **40-160 Fund-raising events conducted by charities etc.**

- (1) A supply is *input taxed* if:
  - (a) the supplier is an \*endorsed charity, a \*gift-deductible entity or a \*government school; and
  - (b) the supply is made in connection with a \*fund-raising event; and
  - (c) the supplier chooses to have all supplies that it makes in connection with the event treated as input taxed; and
  - (d) the event is referred to in the supplier's records as an event that is treated as input taxed.
- (3) Subsection (1) does not apply to a supply by a \*gift-deductible entity endorsed as a deductible gift recipient (within the meaning

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

of the \*ITAA 1997) under section 30-120 of the ITAA 1997,  
unless:

- (a) the supplier is:
  - (i) an \*endorsed charity; or
  - (ii) a \*government school; or
  - (iii) a fund, authority or institution of a kind referred to in paragraph 30-125(1)(b) of the ITAA 1997; or
- (b) each purpose to which the supply relates is a \*gift-deductible purpose of the supplier.

Note: This subsection denies input taxed status under this section to supplies by certain (but not all) gift-deductible entities that are only endorsed for the operation of a fund, authority or institution. However, supplies can be input taxed under this section if they relate to the principal purpose of the fund, authority or institution.

#### **40-165 Meaning of *fund-raising event***

- (1) Any of these is a ***fund-raising event*** if it is conducted for the purpose of fund-raising and it does not form any part of a series or regular run of like or similar events:
  - (a) a fete, ball, gala show, dinner, performance or similar event;
  - (b) an event comprising sales of goods if:
    - (i) each sale is for a \*consideration that does not exceed \$20 or such other amount as the regulations specify; and
    - (ii) selling such goods is not a normal part of the supplier's \*business;
  - (c) an event that the Commissioner decides, on an application by the supplier in writing, to be a fund-raising event.

Note: Refusing an application for a decision under this paragraph is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

- (2) Paragraph (1)(b) does not apply to an event that involves the sale of alcoholic beverages or tobacco products.
- (3) The Commissioner must not make a decision under paragraph (1)(c) unless satisfied that:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

**Chapter 3** The exemptions

**Part 3-1** Supplies that are not taxable supplies

**Division 40** Input taxed supplies

**Section 40-180**

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- (a) the supplier is not in the \*business of conducting such events;  
and
  - (b) the proceeds from conducting the event are for the direct benefit of the supplier's charitable or non-profit purposes.
- (4) The Commissioner may determine, in writing, the frequency with which events may be held without forming any part of a series or regular run of like or similar events for the purposes of subsection (1).

**Subdivision 40-G—Inbound intangible consumer supplies**

**40-180 Inbound intangible consumer supplies**

- (1) An \*inbound intangible consumer supply is *input taxed* if:
- (a) it is made by a \*non-resident; and
  - (b) it is covered by a determination under subsection (2).
- (2) The Minister may, by legislative instrument, determine that a specified class of \*inbound intangible consumer supplies are input taxed.
- (3) However, the Minister must not make the determination unless:
- (a) the \*Foreign Minister has advised the Minister in writing that the treatment of the class of supplies under the \*GST law would, apart from the determination, be inconsistent with Australia's international obligations; and
  - (b) the Minister is satisfied that similar supplies made by \*Australian residents would be input taxed.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## Part 3-2—Non-taxable importations

### Division 42—Non-taxable importations

#### 42-1 What this Division is about

This Division sets out the importations that are non-taxable. No GST is payable on an importation that is non-taxable (see sections 7-1 and 13-5).

For the basic rules about non-taxable importations, see sections 13-10 and 13-25.

#### 42-5 Non-taxable importations—Schedule 4 to the *Customs Tariff Act 1995*

- (1) An importation of goods is a ***non-taxable importation*** if the goods are covered by item 4, 10, 11, 15, 18, 21, 21A, 23, 24, 25, 26 or 27 in Schedule 4 to the *Customs Tariff Act 1995*.
- (1A) An importation of a container is a ***non-taxable importation*** if:
  - (a) goods covered by item 22 in Schedule 4 to the *Customs Tariff Act 1995* are imported in or on the container; and
  - (b) the container will be exported from the indirect tax zone without being put to any other use.
- (1C) An importation of goods is a ***non-taxable importation*** if the goods are covered by:
  - (a) item 1, 3, 7, 12, 13 or 29 in Schedule 4 to the *Customs Tariff Act 1995*; and
  - (b) regulations made for the purposes of this subsection.
- (2) To avoid doubt, a reference to goods that are covered by an item in Schedule 4 to the *Customs Tariff Act 1995* includes a reference to goods to which that item would apply apart from the operation of subsection 18(1) of that Act.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

Section 42-10

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**42-10 Goods returned to the indirect tax zone in an unaltered condition**

- (1) An importation of goods is a *non-taxable importation* if:
- (a) the goods were exported from the indirect tax zone and are returned to the indirect tax zone, without having been subject to any treatment, industrial processing, repair, renovation, alteration or any other process since their export; and
  - (b) the importer was not entitled to, and did not claim, a payment under Division 168 (about the tourist refund scheme) related to the export of the goods; and
  - (c) the importer:
    - (i) is the manufacturer of the goods; or
    - (ii) has previously acquired the goods, and the supply by means of which the importer acquired the goods was a \*taxable supply (or would have been a taxable supply but for section 66-45); or
    - (iii) has previously imported the goods, and the previous importation was a \*taxable importation in respect of which the GST was paid.
- (2) An importation of goods is a *non-taxable importation* if:
- (a) the importer had manufactured, acquired or imported the goods before 1 July 2000; and
  - (b) the goods were exported from the indirect tax zone before, on or after 1 July 2000; and
  - (c) the goods are returned to the indirect tax zone on or after 1 July 2000, without having been subject to any treatment, industrial processing, repair, renovation, alteration or any other process since their export; and
  - (d) the importer was not entitled to, and did not claim, a payment under Division 168 (about the tourist refund scheme) related to the export of the goods; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (e) the ownership of the goods when they are returned to the indirect tax zone is the same as their ownership on 1 July 2000.

Note: An importation covered by this section may also be duty-free under item 17 of Schedule 4 to the *Customs Tariff Act 1995*.

#### 42-15 Supplies of low value goods

- (1) An importation of goods is a ***non-taxable importation*** to the extent that a supply of the goods was a \*supplier-taxed offshore supply of low value goods.

Note 1: Under Subdivision 84-C, offshore supplies of low value goods may be treated as connected with the indirect tax zone (this is not the case if the supplier reasonably believes there will be a taxable importation: see section 84-83).

Note 2: There are limits on refunds of excess GST paid as a result of the incorrect treatment of the supply as a taxable supply, if this section has been treated as applying: see section 142-16.

- (2) However, this section does not apply unless the \*Comptroller-General of Customs is notified that the supply was a \*taxable supply at or before the time by which the \*taxable importation would (apart from this section) have been made.
- (3) The notice must be given, in the \*approved form, by or on behalf of the importer of the goods.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Chapter 4** The special rules

**Division 45** Introduction

Section 45-1

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## **Chapter 4—The special rules**

### **Division 45—Introduction**

#### **45-1 What this Chapter is about**

This Chapter sets out the special rules for the GST. The special rules apply only in particular circumstances, and are generally quite limited in their scope.

The special rules modify the application of the basic rules for the GST in Chapter 2.

Note 1: The special rules that modify each group of basic rules in Chapter 2 are specifically identified in tables located at the end of the Divisions and Subdivisions in Chapter 2. In addition, a checklist of special rules is set out in Part 2-8.

Note 2: This section is an explanatory section.

#### **45-5 The effect of special rules**

The provisions of this Chapter override the provisions of Chapter 2 (except section 29-25), but only to the extent of any inconsistency.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## **Part 4-1—Special rules mainly about particular ways entities are organised**

**Note:** The special rules in this Part mainly modify the operation of Part 2-2 so far as that Part deals with liability for GST and entitlement to input tax credits, but the special rules also affect other aspects of Part 2-2 and the other Parts of Chapter 2.

### **Division 48—GST groups**

#### **Table of Subdivisions**

- 48-A Formation and membership of GST groups
- 48-B Consequences of GST groups
- 48-C Administrative matters
- 48-D Ceasing to be a member of a GST group

#### **48-1 What this Division is about**

Companies within a 90% owned group, and in some cases other entities (such as non-profit bodies), can form a GST group. One member of the group then deals with all the GST liabilities and entitlements (except for GST on most taxable importations) of the group, and (in most cases) intra-group transactions are excluded from the GST.

**Note:** Provisions for members of GST groups apply for the wine equalisation tax (see Subdivision 21-B of the Wine Tax Act) and the luxury car tax (see Subdivision 16-A of the *A New Tax System (Luxury Car Tax) Act 1999*).

### **Subdivision 48-A—Formation and membership of GST groups**

#### **48-5 Formation of GST groups**

- (1) Two or more entities may form a \*GST group if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (a) each of the entities \*satisfies the membership requirements of the group; and
- (b) each of the entities agrees in writing to the formation of the group; and
- (c) one of those entities notifies the Commissioner, in the \*approved form, of the formation of the group; and
- (d) that entity is nominated, in that notice, to be the \*representative member of the group; and
- (e) that entity is an \*Australian resident.

A group of entities that is so formed is a ***GST group***.

- (2) If 2 or more entities would \*satisfy the membership requirements for the \*GST group, the group need not include all those entities.
- (3) The formation of the \*GST group takes effect from the start of the day specified in the notice under paragraph (1)(c) (whether that day is before, on or after the day on which the entities decided to form the group).
- (4) However, if the notice was given to the Commissioner after the day by which the entity nominated to be the \*representative member of the group is required to give to the Commissioner a \*GST return for the tax period in which the day specified in the notice occurs, the formation of the \*GST group takes effect from the start of:
  - (a) the day specified in the notice, if that day is approved by the Commissioner under section 48-71; and
  - (b) if paragraph (a) does not apply—such other day as the Commissioner approves under that section.

**48-7 Membership of GST groups**

- (1) A ***member*** of a \*GST group is an entity that:
  - (a) formed the group under section 48-5, or was added to the group under section 48-70; and
  - (b) \*satisfies the membership requirements of the group.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (2) However, the entity is not a member of the \*GST group if the entity has, since the last time the entity became such a member:
  - (a) left, or been removed from, the group under section 48-70; or
  - (b) ceased to \*satisfy the membership requirements of the group.
- (3) The \*representative member of a \*GST group must notify the Commissioner, in the \*approved form, if a \*member of the group no longer \*satisfies the membership requirements for the GST group.
- (4) The notice must be given within 21 days after the \*member no longer \*satisfies the membership requirements for the \*GST group.

Note: Section 286-75 in Schedule 1 to the *Taxation Administration Act 1953* provides an administrative penalty for breach of this subsection.

#### **48-10 Membership requirements of a GST group**

- (1) An entity *satisfies the membership requirements* of a \*GST group, or a proposed GST group, if the entity:
  - (a) is:
    - (i) a \*company; or
    - (ii) a \*partnership, trust or individual that satisfies the requirements specified in the regulations; and
  - (b) is, if the entity is a company, a company of the same \*90% owned group as all the other members of the GST group or proposed GST group that are also companies; and
  - (c) is \*registered; and
  - (d) has the same tax periods applying to it as the tax periods applying to all the other members of the GST group or proposed GST group; and
  - (e) accounts on the same basis as all the other members of the GST group or proposed GST group; and
  - (f) is not a member of any other GST group; and
  - (g) does not have any branch that is registered under Division 54.
- (2) Paragraph (1)(b) does not apply if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Chapter 4** The special rules

**Part 4-1** Special rules mainly about particular ways entities are organised

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- (a) the entity is a non-profit body; and
- (b) all the other members of the GST group or proposed GST group are non-profit bodies; and
- (c) the entity and all those other members are members of the same \*non-profit association.

Note 1: For the membership requirements of non-profit sub-entities, see section 63-50.

Note 2: For the membership requirements of a GST group of government related entities, see section 149-25.

(2A) Paragraph (1)(d) does not apply in relation to a tax period that the Commissioner has determined under section 27-30 if the tax period:

- (a) ends at the same time as a tax period (a *corresponding tax period*) of each of the other \*members of the \*GST group; and
- (b) is not longer than any corresponding tax period (other than a tax period that the Commissioner has determined under section 27-30).

(3) A \*company does not satisfy the membership requirements of a \*GST group, or a proposed GST group, if:

- (a) one or more other members of the GST group or proposed GST group are not companies; and
- (b) none of the members of the GST group or proposed GST group that are companies satisfy section 48-15.

**48-15 Relationship of companies and non-companies in a GST group**

(1) A \*company that is a member of a \*GST group, or a proposed GST group, satisfies this section if:

- (a) a \*partnership, trust or individual that is a member of the GST group or proposed GST group would, if it were another company, have \*at least a 90% stake in that company; or
- (b) the company has only one member, and that member:
  - (i) is a partner in a partnership that is a member of the GST group or proposed GST group; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (ii) is an individual that is a member of the GST group or proposed GST group; or
  - (iii) is a \*family member of that partner or individual; or
  - (c) the company has more than one member, each of whom is:
    - (i) a partner in the same partnership that is a member of the GST group or proposed GST group; or
    - (ii) a family member of any such partner;and one of the following applies:
    - (iii) at least 2 of the partners are members of the company;
    - (iv) one of the partners is a member of the company, and at least one other member of the company is a family member of a different partner;
    - (v) none of the partners is a member of the company, and the members of the company are not all family members of the same partner and no other partner; or
  - (d) the company has more than one member, each of whom is:
    - (i) an individual who is a member of the GST group or proposed GST group; or
    - (ii) a family member of that individual; or
  - (e) a trust is a member of the GST group or proposed GST group, and distributions of income or capital of the trust are not made except to an entity that is:
    - (i) the company; or
    - (ii) any other company that is a member of the GST group or proposed GST group; or
    - (ia) a member of, or a family member of a member of, any company referred to in subparagraph (i) or (ii) that is a company to which subsection (1A) applies; or
    - (iii) an \*endorsed charity or a \*gift-deductible entity.
- (1A) This subsection applies to a company if:
- (a) the company has only one member; or
  - (b) the company has more than one member, and:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Chapter 4** The special rules

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- (i) at least 2 of the members are beneficiaries of the trust in question (either directly, or indirectly through one or more interposed trusts); or
  - (ii) one of the members is such a beneficiary, and at least one other such beneficiary is a \*family member of a different member of the company; or
  - (iii) none of the members is such a beneficiary, and those family members (of the members of the company) who are such beneficiaries are not all family members of the same member of the company and no other member.
- (2) A person is a *family member* of an individual if the individual's family, within the meaning of section 272-95 in Schedule 2F to the \*ITAA 1936, includes that person. There are no family members of an entity that is not an individual.

**Subdivision 48-B—Consequences of GST groups**

**48-40 Who is liable for GST**

- (1) GST that is payable on any \*taxable supply an entity makes and that is attributable to a tax period during which the entity is a \*member of a \*GST group:
- (a) is payable by the \*representative member; and
  - (b) is not payable by the entity that made it (unless the entity is the representative member).

Note: However, each member may be jointly and severally liable to pay the GST that is payable by the representative member (see section 444-90 in Schedule 1 to the *Taxation Administration Act 1953*).

- (1A) GST that is payable on any \*taxable importation an entity makes while the entity is a \*member of a \*GST group:
- (a) is payable by the \*representative member; and
  - (b) is not payable by the member that made it (unless the member is the representative member).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Note: However, each member may be jointly and severally liable to pay the GST that is payable by the representative member (see section 44-90 in Schedule 1 to the *Taxation Administration Act 1953*).

- (2) However:
- (a) a supply that an entity makes to another \*member of the same \*GST group is treated as if it were not a \*taxable supply, unless:
    - (i) it is a taxable supply because of section 84-5 (which is about offshore supplies); or
    - (ii) the entity is a participant in a \*GST joint venture and acquired the thing supplied from the \*joint venture operator for the joint venture; and
  - (b) this section only applies to GST payable on a \*taxable importation made, by a member of the GST group other than the \*representative member, if the GST on the importation is payable at a time when GST on \*taxable supplies is normally payable by the representative member.
- (3) This section has effect despite sections 9-40 and 13-15 (which are about liability for GST).

#### **48-45 Who is entitled to input tax credits**

- (1) If an entity makes a \*creditable acquisition or \*creditable importation the input tax credit for which is attributable to a tax period during which the entity is a \*member of a \*GST group:
- (a) the \*representative member is entitled to the input tax credit on the acquisition or importation; and
  - (b) the entity making the acquisition or importation is not entitled to the input tax credit on the acquisition or importation (unless the entity is the representative member).
- (2) In deciding, for the purposes of subsection (1), whether an acquisition or importation by an entity is a \*creditable acquisition or \*creditable importation, the acquisition or importation is treated as being solely or partly for a \*creditable purpose if, and only if, it would be so treated if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (a) the GST group were treated as a single entity; and
  - (b) the GST group were not treated as a number of entities corresponding to the members of the GST group.
- (3) However, an acquisition that an entity makes from another \*member of the same \*GST group is not a \*creditable acquisition unless the supply of the thing acquired by the entity was a \*taxable supply because of section 84-5 (which is about offshore supplies).
- (4) This section has effect despite sections 11-5 and 15-5 (which are about what are creditable acquisitions and creditable importations), and sections 11-20 and 15-15 (which are about who is entitled to input tax credits).

**48-50 Adjustments**

- (1) Any \*adjustment that an entity has and that is attributable to a tax period during which the entity is a \*member of a \*GST group is to be treated as if:
- (a) the entity did not have the adjustment (unless the entity is the \*representative member); and
  - (b) the representative member had the adjustment.
- (2) This section has effect despite section 17-10 (which is about the effect of adjustments on net amounts).

**48-51 Consequences of being a member of a GST group for part of a tax period**

- (1) If you are a \*member of a \*GST group only for one or more parts of a tax period:
- (a) section 48-40 does not apply to the GST payable on a \*taxable supply that you make, to the extent that the GST would be attributable to a period to which subsection (2) applies if it were a tax period applying to you; and
  - (b) section 48-40 does not apply to the GST payable on a \*taxable importation that you make during a period to which subsection (2) applies; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (c) section 48-45 does not apply to the input tax credit for a \*creditable acquisition or \*creditable importation that you make, to the extent that the input tax credit would be attributable to a period to which subsection (2) applies if it were a tax period applying to you; and
  - (d) section 48-50 does not apply to an \*adjustment that you have that would be attributable to a period to which subsection (2) applies if it were a tax period applying to you.
- (2) This section applies to any period, during the tax period, during which you were not a \*member of that \*GST group or any other GST group.

#### **48-52 Consequences for a representative member of membership change during a tax period**

- (1) If an entity is a \*member of a \*GST group, of which you are the \*representative member, only for one or more parts of a tax period:
- (a) section 48-40 only applies to the GST payable on a \*taxable supply that the entity makes, to the extent that the GST would be attributable to a period to which subsection (2) applies if it were a tax period applying to the entity; and
  - (b) section 48-40 only applies to the GST payable on a \*taxable importation that the entity makes during a period to which subsection (2) applies; and
  - (c) section 48-45 only applies to the input tax credit for a \*creditable acquisition or \*creditable importation that the entity makes, to the extent that the input tax credit would be attributable to a period to which subsection (2) applies if it were a tax period applying to the entity; and
  - (d) section 48-50 only applies to an \*adjustment that the entity has that would be attributable to a period to which subsection (2) applies if it were a tax period applying to the entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (2) This section applies to any period, during the tax period, during which the entity was a \*member of the \*GST group of which you are the \*representative member.
- (3) However, if you are the \*representative member of the \*GST group only for one or more parts of the tax period, this section has effect subject to section 48-53.
- (4) If an entity is a \*member of different \*GST groups during the same tax period, subsections (1) and (2) apply separately in relation to each of those groups.

**48-53 Consequences of changing a representative member during a tax period**

- (1) If you are the \*representative member of a \*GST group only for one or more parts of a tax period, then, in relation to your capacity as the representative member:
  - (a) section 48-40 only applies to the GST payable on a \*taxable supply that an entity makes, to the extent that the GST would be attributable to a period to which subsection (2) applies if it were a tax period applying to you; and
  - (b) section 48-40 only applies to the GST payable on a \*taxable importation that an entity makes during a period to which subsection (2) applies; and
  - (c) section 48-45 only applies to the input tax credit for a \*creditable acquisition or \*creditable importation that an entity makes, to the extent that the input tax credit would be attributable to a period to which subsection (2) applies if it were a tax period applying to you; and
  - (d) section 48-50 only applies to an \*adjustment that an entity has that would be attributable to a period to which subsection (2) applies if it were a tax period applying to you.
- (2) This section applies to any period, during the tax period, during which you were the \*representative member of the \*GST group.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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### 48-55 GST groups treated as single entities for certain purposes

- (1) Despite sections 48-45 and 48-50, a \*GST group is treated as a single entity, and not as a number of entities corresponding to the \*members of the GST group, for the purposes of working out:
- (a) the amounts of any input tax credits to which the \*representative member is entitled; and
  - (b) whether the representative member has any \*adjustments; and
  - (c) the amounts of any such adjustments.

(1A) If:

- (a) while you were not a \*member of any \*GST group, you acquired or imported a thing; and
- (b) you become a member of a GST group at a time when you still hold the thing;

then, when the \*representative member of the GST group applies section 129-40 for the first time after you became a member of the GST group, the \*intended or former application of the thing is the extent of \*creditable purpose last used to work out:

- (c) the amount of the input tax credit to which you were entitled for the acquisition or importation; or
- (d) the amount of any \*adjustment you had under Division 129 in relation to the thing;

as the case requires.

- (2) This section has effect despite section 11-25 (which is about the amount of input tax credits) and section 17-10 (which is about the effect of adjustments on net amounts).

### 48-57 Tax invoices that are required to identify recipients

- (1) A document issued for a supply is taken to be a *tax invoice* if:
- (a) it would not, but for this section, be a tax invoice because it does not contain enough information to enable the identity, or the \*ABN, of the \*recipient of the supply to be clearly ascertained; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (b) there is no other reason why it would not be a tax invoice;  
and
- (c) the \*representative member of a \*GST group is entitled under section 48-45 to an input tax credit for the \*creditable acquisition relating to the supply; and
- (d) the document contains enough information to enable the identity of at least one of the following to be clearly ascertained:
  - (i) the GST group;
  - (ii) the representative member;
  - (iii) another entity that is or was a \*member of the GST group, if the representative member would still have been entitled under section 48-45 to that input tax credit if that other entity had been the recipient of the supply.

Note: Subparagraph (d)(iii) ensures that a member of the GST group identified in the document was a member of the group at the relevant time for the supply in question.

- (2) However, any obligation that the supplier of a \*taxable supply has under subsection 29-70(2) is an obligation to give to the \*recipient of the supply a document that would be a \*tax invoice for the supply even if subsection (1) of this section had not been enacted.

Note: This subsection ensures that a recipient's entitlement to a tax invoice, including (if subparagraph 29-70(1)(c)(ii) requires it) an entitlement to a tax invoice that enables the recipient's identity or the recipient's ABN to be clearly ascertained, is unaffected by this section.

- (3) This section has effect despite section 29-70 (which is about tax invoices).

**48-60 GST returns**

- (1) If you are a \*member of a \*GST group during the whole of a tax period, you are not required to give to the Commissioner a \*GST return for that tax period, unless you are the \*representative member of the group during that period.

Note: If you were not a member of a GST group during the whole of a tax period, you are still obliged to give a GST return for the tax period,

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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and (because of section 48-51) your net amount for the tax period will take into account your liabilities and entitlements relating to the one or more parts of the tax period during which you were not a member.

- (2) This section has effect despite section 31-5 (which is about who must give GST returns).

### **Subdivision 48-C—Administrative matters**

#### **48-70 Changing the membership etc. of GST groups**

- (1) The following actions may be taken, in accordance with subsection (2), in relation to a \*GST group:
- (a) the \*representative member of the group may, with the written agreement of an entity that \*satisfies the membership requirements of the GST group, add the entity to the group;
  - (b) the representative member may leave the group; or
  - (c) another \*member of the group, nominated by the members, who is an \*Australian resident may become the new representative member; or
  - (d) the representative member may remove from the group any other member of the group; or
  - (e) if a member of the group is an \*incapacitated entity—the entity’s \*representative may remove the entity from the group; or
  - (f) the representative member may dissolve the group.
- (2) The action is to be taken by notice given to the Commissioner, in the \*approved form, by:
- (a) if paragraph (1)(a), (d) or (f) applies—the \*representative member; or
  - (b) if paragraph (1)(b) or (c) applies—the new representative member of the group; or
  - (c) if paragraph (1)(e) applies—the \*representative of the \*incapacitated entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (3) The action takes effect from the start of the day specified in the notice (whether that day is before, on or after the day on which the notice was given to the Commissioner).
- (4) However, if the notice was given to the Commissioner after the day by which the \*representative member of the group, or the entity nominated to be the new representative member of the group, is required to give to the Commissioner a \*GST return for the tax period in which the day specified in the notice occurs, the action takes effect from the start of:
  - (a) the day specified in the notice, if that day is approved by the Commissioner under section 48-71; and
  - (b) if paragraph (a) does not apply—such other day as the Commissioner approves under that section.
- (5) Despite subsections (3) and (4), action taken under paragraph (1)(e) cannot take effect earlier than the day on which the \*member of the group became an \*incapacitated entity.
- (6) A \*GST group is taken to be dissolved if:
  - (a) a \*member of the group ceases to be the \*representative member of the group; and
  - (b) no other member of the group becomes the representative member of the group, with effect from the day after the previous representative member ceased to be the representative member of the group.
- (7) A notice that another \*member of the \*GST group has become the \*representative member of the group must be given to the Commissioner within 21 days after the other member became the representative member.

Note: Section 286-75 in Schedule 1 to the *Taxation Administration Act 1953* provides an administrative penalty for breach of this subsection.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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### **48-71 Approval of early day of effect of forming, changing etc. GST groups**

- (1) If an entity that gives a notice to the Commissioner under paragraph 48-5(1)(c) or subsection 48-70(2) applies, in the \*approved form, to the Commissioner for approval of a day specified in the notice, the Commissioner must:
  - (a) approve, for the purposes of subsection 48-5(4) or 48-70(4), the day specified in the notice; or
  - (b) approve another day for those purposes.

Note: Approving another day under paragraph (b) is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

- (2) The Commissioner may revoke an approval given under subsection (1) if the Commissioner is satisfied that the day approved is not appropriate.

Note: Revoking an approval under this subsection is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

- (3) The Commissioner must give notice, to the entity referred to in subsection (1), of any decision that he or she makes under this section.

### **48-73 Tax periods of GST groups with incapacitated members**

- (1) If a \*member of a \*GST group becomes an \*incapacitated entity, the \*representative member of that group may, by notifying the Commissioner in the \*approved form, elect for the tax period that applies at the time to the members of the group to end at the same time as the incapacitated entity's tax period ends under subsection 27-39(1).

Note 1: Section 31-10 provides for when a GST return must be given to the Commissioner for a tax period other than a quarterly tax period.

Note 2: If the representative member does not make an election under this section when a member of the group becomes an incapacitated entity, the member's membership of the group may cease if, because of

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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section 27-39, the tax periods applying to it are not the same as those applying to the other members of the group.

- (1A) If an entity ceases to be the \*representative member of a \*GST group as a result of becoming an \*incapacitated entity, the entity may make an election under subsection (1), in relation to becoming an incapacitated entity, as if the entity were still the representative member of the group.
- (1B) A notice under subsection (1) must be given to the Commissioner within 21 days after the \*member becomes an \*incapacitated entity.
- (2) If a tax period (the *first tax period*) ends on a particular day because of subsection (1), the next tax period starts on the day after that day and ends when the first tax period would have ended but for that subsection.
- (3) This section has effect despite Division 27 (which is about how to work out the tax periods that apply).

**48-75 Effect of representative member becoming an incapacitated entity**

- (1) If:
  - (a) the \*representative member of a \*GST group becomes an \*incapacitated entity; and
  - (b) the representative member does not cease to be a \*member of the group;the representative member ceases to be the representative member of the group unless all the other \*members of the group are incapacitated entities.
- (2) Subsection (1) does not apply for the purposes of the representative member making an election under subsection 48-73(1) relating to the representative member.
- (3) The \*representative member of a \*GST group ceases to be the representative member of the group if:
  - (a) all the \*members of the group are \*incapacitated entities; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (b) a member of the group who is not the representative member ceases to be an incapacitated entity.

### **Subdivision 48-D—Ceasing to be a member of a GST group**

#### **48-110 Adjustments after you cease to be a member of a GST group**

- (1) If you cease to be a member of a GST group (the *first GST group*), any \*adjustment that arises afterwards in relation to a supply, acquisition or importation that you made while a \*member of the first GST group (other than a supply to, or an acquisition from, another member of that group):
- (a) is an adjustment that you have; and
  - (b) is not an adjustment of the entity that is or was the \*representative member of the first GST group (unless you were that representative member).
- (2) In relation to the first GST group, this section has effect despite section 48-50 (which is about who has adjustments for a GST group).

#### **48-115 Changes in extent of creditable purpose after you cease to be a member of a GST group**

- (1) If:
- (a) either:
    - (i) while you were a \*member of a \*GST group (the *first GST group*), you acquired a thing (other than from another member of that group) or imported a thing; or
    - (ii) you acquired or imported a thing while you were not a member of any GST group, and you subsequently became a member of a GST group (the *first GST group*) while you still held the thing; and
  - (b) you cease to be a member of the first GST group;
- then, when applying section 129-40 for the first time after that cessation, the \*intended or former application of the thing is the extent of \*creditable purpose last used to work out:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (c) the amount of the input tax credit to which you or the \*representative member was entitled for the acquisition or importation; or
  - (d) the amount of any \*adjustment you or the representative member had under Division 129 in relation to the thing.
- (2) If:
- (a) while you were a \*member of a \*GST group (the ***first GST group***), you acquired a thing (other than from another member of that group) or imported a thing; and
  - (b) you have ceased to be a member of the first GST group; and
  - (c) you have an \*adjustment under Division 129 in relation to the thing, or the \*representative member of another GST group of which you are a \*member has that adjustment;
- then, for the purposes of working out the full input tax credit in section 129-70 or 129-75, you are taken not to have been a member of a GST group when you acquired or imported the thing.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## Division 49—GST religious groups

### Table of Subdivisions

- 49-A Approval of GST religious groups
- 49-B Consequences of approval of GST religious groups
- 49-C Administrative matters

### 49-1 What this Division is about

Some registered charitable bodies can be approved as a GST religious group. Transactions between members of the group are then excluded from the GST.

### Subdivision 49-A—Approval of GST religious groups

#### 49-5 Approval of GST religious groups

The Commissioner must approve 2 or more entities as a \*GST religious group if:

- (a) the entities jointly apply, in the \*approved form, for approval as a GST religious group; and
- (b) each of the entities \*satisfies the membership requirements for that GST religious group; and
- (c) the application nominates one of the entities to be the \*principal member for the group; and
- (d) the entity so nominated is an \*Australian resident.

A group of entities that is so approved is a ***GST religious group***.

Note: Refusing an application for approval under this section is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

Section 49-10

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**49-10 Membership requirements of a GST religious group**

An entity *satisfies the membership requirements* of a \*GST religious group, or a proposed GST religious group, if:

- (a) the entity is \*registered; and
- (b) the entity is endorsed as exempt from income tax under Subdivision 50-B of the \*ITAA 1997; and
- (c) all the other members of the GST religious group or proposed GST religious group are so endorsed; and
- (d) the entity and all those other members are part of the same religious organisation; and
- (e) the entity is not a member of any other GST religious group.

**Subdivision 49-B—Consequences of approval of GST religious groups**

**49-30 Supplies between members of GST religious groups**

- (1) A supply that a \*member of a \*GST religious group makes to another member of the same GST religious group is treated as if it were not a \*taxable supply.
- (2) This section has effect despite section 9-5 (which is about what are taxable supplies).

**49-35 Acquisitions between members of GST religious groups**

- (1) An acquisition that a \*member of a \*GST religious group makes from another member of the same GST religious group is treated as if it were not a \*creditable acquisition.
- (2) This section has effect despite section 11-5 (which is about what are creditable acquisitions).

**49-40 Adjustment events**

- (1) An \*adjustment event cannot arise in relation to:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (a) a supply that a \*member of a \*GST religious group makes to another member of the same GST religious group; or
  - (b) an acquisition that a member of a GST religious group makes from another member of the same GST religious group.
- (2) This section has effect despite section 19-10 (which is about what are adjustment events).

#### **49-45 Changes in the extent of creditable purpose**

- (1) An \*adjustment cannot arise under Division 129 in relation to an acquisition that a \*member of a \*GST religious group makes from another member of the same GST religious group.
- (2) This section has effect despite section 129-5 (which is about when adjustments can arise under Division 129).

#### **49-50 GST religious groups treated as single entities for certain purposes**

- (1) Despite sections 49-35, 49-40 and 49-45, a \*GST religious group is treated as a single entity, and not as a number of entities corresponding to the \*members of the GST religious group, for the purposes of working out:
- (a) whether acquisitions or importations by a member are for a \*creditable purpose; and
  - (b) the amounts of any input tax credits to which the member is entitled; and
  - (c) whether the member has any \*adjustments; and
  - (d) the amounts of any such adjustments.
- (2) This section has effect despite section 11-25 (which is about the amount of input tax credits) and section 17-10 (which is about the effect of adjustments on net amounts).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## Subdivision 49-C—Administrative matters

### 49-70 Changing the membership etc. of GST religious groups

#### *Changes made on application*

- (1) The Commissioner must, if the \*principal member of a \*GST religious group applies to the Commissioner in the \*approved form, do one or more of these (as requested in the application):
  - (a) approve, as an additional \*member of the GST religious group, another entity that \*satisfies the membership requirements for the GST religious group;
  - (b) revoke the approval of one of the members of the GST religious group as a member of the group;
  - (c) approve another member of the GST religious group to replace the applicant as the principal member of the group.

Note: Refusing an application for approval or revocation under this subsection is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

#### *Changes made without application*

- (2) The Commissioner must revoke the approval of one of the \*members of a \*GST religious group if satisfied that the member does not \*satisfy the membership requirements for the GST religious group.

Note: Revoking under this subsection an approval under this Division is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

### 49-75 Revoking the approval of GST religious groups

#### *Revoking on application*

- (1) The Commissioner must, if the principal member of a \*GST religious group applies to the Commissioner in the \*approved form, revoke the approval of the group as a GST religious group.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

Note: Refusing an application for revocation under this subsection is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

*Revoking without application*

- (2) The Commissioner must revoke the approval of the \*GST religious group if satisfied that none of its members, or only one of its members, \*satisfies the membership requirements for that GST religious group.

Note: Revoking under this subsection the approval of a GST group is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

### **49-80 Notification by principal members**

The principal member of a \*GST religious group must notify the Commissioner of any circumstances under which the Commissioner must:

- (a) revoke the approval of one of the \*members of the group under subsection 49-70(2); or  
(b) revoke the approval of the group under subsection 49-75(2).

The notification may (in appropriate cases) be in the form of an application under subsection 49-70(1) or 49-75(1). The notification, or application, must be given to the Commissioner within 21 days after the circumstances occurred.

### **49-85 Date of effect of approvals and revocations**

- (1) The Commissioner must decide the date of effect of any approval, or any revocation of an approval, under this Division.
- (2) The date of effect may be the day of the decision, or a day before or after that day. However, it must be a day on which, for all the \*members of the \*GST religious group in question, a tax period begins.

Note: Deciding under this section the date of effect of any approval, or any revocation of an approval, under this Division is a reviewable GST

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

**49-90 Notification by the Commissioner**

The Commissioner must give notice of any decision that he or she makes under this Division:

- (a) if the decision relates to the approval of 2 or more entities as a \*GST religious group—to the entity nominated in the application for approval to be the \*principal member of the group; or
- (b) otherwise—to the principal member of the \*GST religious group to which the decision relates.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## **Division 50—GST treatment of religious practitioners**

### **Guide to Division 50**

#### **50-1 What this Division is about**

Activities of a religious practitioner done in pursuit of his or her vocation as a religious practitioner and as a member of a religious institution will be treated as activities done by the religious institution, unless the religious practitioner is acting as an employee or agent.

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50-5 GST treatment of religious practitioners

#### **50-5 GST treatment of religious practitioners**

If a \*religious practitioner:

- (a) does an activity, or a series of activities:
  - (i) in pursuit of his or her vocation as a religious practitioner; and
  - (ii) as a member of a religious institution; and
- (b) does not do the activity, or series of activities, as an employee or agent of the religious institution or another entity;

the \*GST law applies as if the activity, or series of activities, had been done by the religious institution and not by the religious practitioner.

Note: This will mean that such an activity will be an enterprise of the religious institution under subsection 9-20(1) and not an enterprise of the religious practitioner.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## **Division 51—GST joint ventures**

### **Table of Subdivisions**

- 51-A Formation of and participation in GST joint ventures
- 51-B Consequences of GST joint ventures
- 51-C Administrative matters
- 51-D Ceasing to be a participant in, or an operator of, a GST joint venture

### **51-1 What this Division is about**

Entities engaged in a joint venture can form a GST joint venture. The joint venture operator then deals with the GST liabilities and entitlements arising from the joint venture operator's dealings on behalf of the participants in the joint venture.

Note: Provisions for participants in GST joint ventures apply for the wine equalisation tax (see Subdivision 21-C of the Wine Tax Act) and the luxury car tax (see Subdivision 16-B of the *A New Tax System (Luxury Car Tax) Act 1999*).

### **Subdivision 51-A—Formation of and participation in GST joint ventures**

#### **51-5 Formation of GST joint ventures**

- (1) Two or more entities may become the \*participants in a \*GST joint venture if:
  - (a) the joint venture is a joint venture for the exploration or exploitation of \*mineral deposits, or for a purpose specified in the regulations; and
  - (b) the joint venture is not a \*partnership; and
  - (d) each of those entities \*satisfies the participation requirements for that GST joint venture; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (e) each of those entities agrees in writing to the \*formation of the joint venture as a GST joint venture; and
- (ea) one of those entities, or another entity, is nominated, in that agreement, to be the \*joint venture operator of the joint venture; and
- (eb) the nominated joint venture operator notifies the Commissioner, in the \*approved form, of the formation of the joint venture as a GST joint venture; and
- (f) if the nominated joint venture operator is not a party to the joint venture agreement—the nominated joint venture operator satisfies the requirements of paragraphs 51-10(c) and (f).

Such a joint venture is a ***GST joint venture***.

- (2) Not all of the entities that are engaged in, or intend to engage in, the joint venture need to become \*participants in the \*GST joint venture.
- (3) The \*formation of the \*GST joint venture takes effect from the start of the day specified in the notice under paragraph (1)(eb) (whether that day is before, on or after the day on which the entities decided to form the joint venture).
- (4) However, if the notice was given to the Commissioner after the day by which the entity nominated to be the \*joint venture operator of the \*GST joint venture is required to give to the Commissioner a \*GST return for the tax period in which the day specified in the notice occurs, the \*formation of the GST joint venture takes effect from the start of:
  - (a) the day specified in the notice, if that day is approved by the Commissioner under section 51-75; and
  - (b) if paragraph (a) does not apply—such other day as the Commissioner approves under that section.

### **51-7 Participants in GST joint ventures**

- (1) A ***participant*** in a \*GST joint venture is an entity that:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (a) became a participant in the joint venture under section 51-5 or was added to the joint venture under section 51-70; and
  - (b) \*satisfies the participation requirements for the joint venture.
- (2) However, the entity is not a participant in the \*GST joint venture if the entity has, since the last time the entity became such a participant:
- (a) left, or been removed from, the joint venture under section 51-70; or
  - (b) ceased to \*satisfy the participation requirements for the joint venture.
- (3) The \*joint venture operator of a \*GST joint venture must notify the Commissioner, in the \*approved form, if a \*participant in the joint venture no longer \*satisfies the participation requirements for the GST joint venture.
- (4) The notice must be given within 21 days after the \*participant no longer \*satisfies the participation requirements for the \*GST joint venture.

Note: Section 286-75 in Schedule 1 to the *Taxation Administration Act 1953* provides an administrative penalty for breach of this subsection.

**51-10 Participation requirements of a GST joint venture**

An entity *satisfies the participation requirements* for a \*GST joint venture, or a proposed GST joint venture, if the entity:

- (a) participates in, or intends to participate in, the joint venture; and
- (b) is a party to a joint venture agreement with all the other entities participating in, or intending to participate in, the joint venture; and
- (c) is \*registered; and
- (f) accounts on the same basis as all those other participants.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## **Subdivision 51-B—Consequences of GST joint ventures**

### **51-30 Who is liable for GST**

- (1) GST payable on any \*taxable supply or \*taxable importation that the \*joint venture operator of a \*GST joint venture makes, on behalf of another entity that is a \*participant in the joint venture, in the course of activities for which the joint venture was entered into:

- (a) is payable by the joint venture operator; and
- (b) is not payable by the participant.

Note: However, each participant may be jointly and severally liable to pay the GST that is payable by the joint venture operator (see section 444-80 in Schedule 1 to the *Taxation Administration Act 1953*).

- (2) However, a supply that the \*joint venture operator of a \*GST joint venture makes is treated as if it were not a \*taxable supply if:
- (a) it is made to another entity that is a \*participant in the joint venture; and
  - (b) the participant acquired the thing supplied for consumption, use or supply in the course of activities for which the joint venture was entered into.
- (3) This section has effect despite sections 9-40 and 13-15 (which are about liability for GST).

### **51-35 Who is entitled to input tax credits**

- (1) If the \*joint venture operator of a \*GST joint venture makes a \*creditable acquisition or \*creditable importation, on behalf of another entity that is a \*participant in the joint venture, in the course of activities for which the joint venture was entered into:
- (a) the \*joint venture operator is entitled to the input tax credit for the acquisition or importation; and
  - (b) the participant is not entitled to the input tax credit on the acquisition or importation.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (2) This section has effect despite sections 11-20 and 15-15 (which are about who is entitled to input tax credits).

**51-40 Adjustments**

- (1) Any \*adjustment relating to any supply, acquisition or importation that the \*joint venture operator of a \*GST joint venture makes, on behalf of another entity that is a \*participant in the joint venture, in the course of activities for which the joint venture was entered into is to be treated as if:
- (a) the participant did not have the adjustment; and
  - (b) the entity that is the joint venture operator at the time the adjustment arises had the adjustment.
- (2) This section has effect despite section 17-10 (which is about the effect of adjustments on net amounts).

**51-45 Additional net amounts relating to GST joint ventures**

- (1) Division 17 applies to the \*joint venture operator of a \*GST joint venture as if the joint venture operator had an additional \*net amount, relating to the joint venture, for each tax period.
- (2) The additional \*net amount relating to the joint venture is worked out as if the joint venture operator:
- (a) is only liable for the GST on \*taxable supplies that the joint venture operator makes, on behalf of another entity that is a \*participant in the joint venture, in the course of activities for which the joint venture was entered into; and
  - (b) is only entitled to the input tax credits for \*creditable acquisitions or \*creditable importations that the joint venture operator makes on behalf of another entity that is a participant in the joint venture, in the course of activities for which the joint venture was entered into; and
  - (c) only has adjustments relating to supplies, acquisitions or importations that the joint venture operator makes, on behalf of another entity that is a participant in the joint venture, in

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

the course of activities for which the joint venture was entered into.

- (2A) However, while an election made by the \*joint venture operator under section 51-52 has effect:
- (a) Division 17 applies to the joint venture operator as if the joint venture operator had an additional \*net amount, relating to all the \*GST joint ventures for which the joint venture operator is the joint venture operator, for each tax period; and
  - (b) that additional net amount is worked out by aggregating what would be the additional \*net amounts relating to each GST joint venture under subsection (2) if that subsection applied.
- (3) This section has effect despite sections 17-5 and 17-10 (which are about net amounts and adjustments).

### **51-50 GST returns relating to GST joint ventures**

- (1) The \*joint venture operator of a \*GST joint venture must, in relation to each \*GST joint venture of the joint venture operator, give to the Commissioner a \*GST return for each tax period applying to the joint venture operator.
- (2) However, while an election made by the \*joint venture operator under section 51-52 has effect, the joint venture operator must, in relation to all the \*GST joint ventures for which the joint venture operator is the joint venture operator, give to the Commissioner a single \*GST return for each tax period applying to the joint venture operator.
- (3) This section has effect despite section 31-5 (which is about who must give GST returns).

### **51-52 Consolidation of GST returns relating to GST joint ventures**

#### *Electing to consolidate GST returns*

- (1) The \*joint venture operator of 2 or more \*GST joint ventures may, by notifying the Commissioner in the \*approved form, elect to give

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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to the Commissioner consolidated \*GST returns relating to all the GST joint ventures of the joint venture operator.

- (2) The election takes effect on the day specified in the notice. However, the day specified must be the first day of a tax period applying to the \*joint venture operator that has not already ceased when the notice is given.

*Withdrawal of elections*

- (3) The \*joint venture operator may, by notifying the Commissioner in the \*approved form, withdraw the election.
- (4) The withdrawal takes effect on the day specified in the notice. However, the day specified:
- (a) must be the first day of a tax period applying to the \*joint venture operator that has not already ceased when the notice is given; and
  - (b) must not be a day occurring earlier than 12 months after the election took effect.

*Disallowance of elections*

- (5) The Commissioner may disallow the election if the Commissioner is satisfied that the \*joint venture operator has a history of failing to comply with the joint venture operator's obligations (either as a joint venture operator or in any other capacity) under a \*taxation law.

Note: Disallowing an election is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

- (6) The disallowance is taken to have had effect from the start of the tax period in which the disallowance occurs.

**51-55 Payments of GST relating to GST joint ventures**

- (1) If the \*assessed net amount relating to one or more \*GST joint ventures for a tax period is greater than zero:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (a) the \*joint venture operator of that GST joint venture or those GST joint ventures must pay that assessed net amount to the Commissioner; and
  - (b) Division 33 applies to payment of that amount as if it were a payment the joint venture operator was obliged to make under section 33-3 or 33-5 (as the case requires).
- (2) This section has effect despite Division 33 (which is about payments of GST).

### **51-60 Refunds relating to GST joint ventures**

If the \*assessed net amount relating to one or more \*GST joint ventures for a tax period is less than zero, the Commissioner must, on behalf of the Commonwealth, pay that assessed net amount (expressed as a positive amount) to the \*joint venture operator of that GST joint venture or those GST joint ventures.

Note 1: See Division 3A of Part IIB of the *Taxation Administration Act 1953* for the rules about how the Commissioner must pay the operator. Division 3 of Part IIB allows the Commissioner to apply the amount owing as a credit against tax debts that the operator owes to the Commonwealth.

Note 2: Interest is payable under the *Taxation (Interest on Overpayments and Early Payments) Act 1983* if the Commissioner is late in refunding the amount.

### **Subdivision 51-C—Administrative matters**

#### **51-70 Changing the participants etc. of GST joint ventures**

- (1) The following actions may be taken in relation to a \*GST joint venture:
- (a) the \*joint venture operator of the joint venture may, with the written agreement of an entity that \*satisfies the participation requirements of the GST joint venture, add the entity to the joint venture;
  - (b) the joint venture operator may:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (i) if the joint venture operator is a \*participant in the joint venture—leave the joint venture; or
    - (ii) remove from the joint venture a participant in the joint venture;
  - (c) another entity, nominated by the participants in the joint venture, that satisfies the requirements of paragraphs 51-10(c) and (f) may become the joint venture operator;
  - (d) the joint venture operator may dissolve the joint venture; by notice given to the Commissioner, in the \*approved form, by the joint venture operator, or (if subparagraph (b)(i) or paragraph (c) applies) by the new joint venture operator of the joint venture.
- (2) The action takes effect from the start of the day specified in the notice (whether that day is before, on or after the day on which the notice was given to the Commissioner).
- (3) However, if the notice was given to the Commissioner after the day by which the \*joint venture operator of the joint venture, or the entity nominated to be the new joint venture operator of the joint venture, is required to give to the Commissioner a \*GST return for the tax period in which the day specified in the notice occurs, the action takes effect from the start of:
- (a) the day specified in the notice, if that day is approved by the Commissioner under section 51-75; and
  - (b) if paragraph (a) does not apply—such other day as the Commissioner approves under that section.
- (4) A \*GST joint venture is taken to be dissolved if:
- (a) an entity ceases to be the \*joint venture operator of the joint venture, and no other entity becomes the joint venture operator of the joint venture with effect from the day after the previous joint venture operator ceased to be the joint venture operator; or
  - (b) there are no longer 2 or more \*participants in the joint venture.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (5) A notice that another entity has become the \*joint venture operator of the \*GST joint venture must be given to the Commissioner within 21 days after the other entity became the joint venture operator.

Note: Section 286-75 in Schedule 1 to the *Taxation Administration Act 1953* provides an administrative penalty for breach of this subsection.

### **51-75 Approval of early day of effect of forming, changing etc. GST joint ventures**

- (1) If an entity that gives a notice to the Commissioner under paragraph 51-5(1)(eb) or subsection 51-70(1) applies, in the \*approved form, to the Commissioner for approval of a day specified in the notice, the Commissioner must:
- (a) approve, for the purposes of subsection 51-5(4) or 51-70(3), the day specified in the notice; or
  - (b) approve another day for those purposes.

Note: Approving another day under paragraph (b) is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

- (2) The Commissioner may revoke an approval given under subsection (1) if the Commissioner is satisfied that the day approved is not appropriate.

Note: Revoking an approval under this subsection is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

- (3) The Commissioner must give notice, to the entity referred to in subsection (1), of any decision that he or she makes under this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Subdivision 51-D—Ceasing to be a participant in, or an operator of, a GST joint venture**

**51-110 Adjustments after you cease to be a participant in a GST joint venture**

- (1) If you cease to be a participant in a GST joint venture, any \*adjustment that arises afterwards in relation to a supply, acquisition or importation that the \*joint venture operator made on your behalf in the course of activities for which the joint venture was entered into (other than a supply covered by subsection 51-30(2)):
  - (a) is an adjustment that you have; and
  - (b) is not an adjustment of the entity that is or was the joint venture operator.
- (2) This section has effect despite section 51-40 (which is about who has adjustments for a GST joint venture).

**51-115 Changes in extent of creditable purpose after you cease to be a member of a GST joint venture**

- (1) If:
  - (a) while you were a \*participant in a \*GST joint venture, you acquired or imported a thing by the joint venture operator acquiring or importing it on your behalf; and
  - (b) you cease to be a participant in the GST joint venture; then, when applying section 129-40 for the first time after that cessation, the \*intended or former application of the thing is the extent of \*creditable purpose last used to work out:
    - (c) under section 51-35, the amount of the input tax credit to which the \*joint venture operator was entitled for the acquisition or importation; or
    - (d) under section 51-40, the amount of any \*adjustment the joint venture operator had under Division 129 in relation to the acquisition or importation.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

(2) If:

- (a) while you were a \*participant in a \*GST joint venture, you acquired or imported a thing by the joint venture operator acquiring or importing it on your behalf; and
- (b) you have ceased to be a participant in the GST joint venture; and
- (c) you have an \*adjustment under Division 129 in relation to the acquisition or importation;

then, for the purposes of working out the full input tax credit in section 129-70 or 129-75, you are taken not to have been a participant of a GST joint venture when you acquired or imported the thing.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## Division 54—GST branches

### Table of Subdivisions

- 54-A Registration of GST branches
- 54-B Consequences of registration of GST branches
- 54-C Cancellation of registration of GST branches

### 54-1 What this Division is about

A branch of a registered entity can be separately registered as a GST branch. Separate GST returns are given, and separate payments and refunds of GST are made, in respect of the branch.

### Subdivision 54-A—Registration of GST branches

#### 54-5 Registration of GST branches

- (1) The Commissioner must \*register a branch of a \*registered entity if:
  - (a) the registered entity applies, in the \*approved form, for registration of the branch; and
  - (b) the Commissioner is satisfied that the branch maintains an independent system of accounting, and can be separately identified by reference to:
    - (i) the nature of the activities carried on through the branch; or
    - (ii) the location of the branch; and
  - (c) the Commissioner is satisfied that the registered entity is \*carrying on an \*enterprise through the branch, or intends to carry on an enterprise through the branch, from a particular date specified in the application.

A branch that is so registered is a ***GST branch***.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (2) A branch of a \*registered entity can be registered as a \*GST branch without all or any of the other branches of the entity being so registered.
- (3) However, a branch of a \*registered entity cannot be registered as a \*GST branch if the registered entity is a \*member of a \*GST group.

Note: Refusing an application for registration under this section is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

### **54-10 The date of effect of registration of a GST branch**

The Commissioner must decide the date from which \*registration as a \*GST branch takes effect. However, the date of effect must not be a day before:

- (a) the day specified in the application for that purpose; or
- (b) if the branch is being registered only because it is intended that an \*enterprise be \*carried on through the branch—the date of effect must not be a day before the day specified, in the application, as the day from which it is intended to carry on the enterprise through the branch.

Note: Deciding the date of effect of registration as a GST branch is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

### **54-15 GST branch registration number**

If the Commissioner \*registers a \*GST branch, the Commissioner must notify the registered entity of the branch's \*GST branch registration number.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## Subdivision 54-B—Consequences of registration of GST branches

### 54-40 Additional net amounts relating to GST branches

- (1) If an entity (the *parent entity*) has a \*GST branch, Division 17 applies to the parent entity as if it had an additional \*net amount, relating to the branch, for each tax period.
- (2) The additional \*net amount relating to the branch is worked out as if the branch were a separate entity and as if:
  - (a) all the supplies, acquisitions and importations made through the branch were made by that separate entity; and
  - (b) all the \*adjustments that the parent entity has arising from such supplies, acquisitions and importations were adjustments that the branch has; and
  - (c) all transfers of anything by the branch to the parent entity (including any other branch of the parent entity), that would have been supplies made by the branch if it were an entity, were supplies made by the separate entity; and
  - (d) all transfers of anything by the parent entity (including any other branch of the parent entity) to the branch, that would have been acquisitions made by the branch if it were an entity, were acquisitions made by the separate entity; and
  - (e) all adjustments that the branch would have had, if it were an entity, relating to the supplies and acquisitions it would have made as mentioned in paragraphs (c) and (d), were adjustments that the branch had.
- (3) This section has effect despite sections 17-5 and 17-10 (which are about net amounts and adjustments).

### 54-45 Net amounts of parent entities

- (1) If an entity (the *parent entity*) has a \*GST branch, the parent entity's \*net amount is worked out as if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (a) all the supplies, acquisitions and importations made through any GST branch of the parent entity were not supplies for which the parent entity is liable for GST, or acquisitions or importations for which the parent entity is entitled to input tax credits; and
  - (b) the parent entity does not have any \*adjustments arising from such supplies, acquisitions and importations; and
  - (c) all transfers of anything by the parent entity to any GST branch of the parent entity, that would have been supplies made to the branch if it were an entity, were supplies made by the parent entity; and
  - (d) all transfers of anything by any GST branch of the parent entity to the parent entity, that would have been acquisitions made from the branch if it were an entity, were acquisitions made by the parent entity; and
  - (e) all adjustments that the parent entity would have had, if the GST branches of the parent entity were entities, relating to the supplies and acquisitions the parent entity would have made as mentioned in paragraphs (c) and (d), were adjustments that the parent entity had.
- (2) However, the parent entity has no \*net amount under this section if all the \*enterprises that it \*carries on are carried on through its \*GST branches.
- (3) This section has effect despite sections 17-5 and 17-10 (which are about net amounts and adjustments).

### **54-50 Tax invoices and adjustment notes**

- (1) The \*GST branch registration number of a \*GST branch must be set out in:
- (a) any \*tax invoice relating to a \*taxable supply made through that GST branch; and
  - (b) any \*adjustment note for a \*decreasing adjustment that arose from the occurrence of an \*adjustment event relating to a \*taxable supply made through that GST branch; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (c) any \*third party adjustment note for a decreasing adjustment under section 134-5 that relates to a taxable supply made through that GST branch.
- (2) This section has effect despite sections 29-70 and 29-75 (which are about tax invoices and adjustment notes), and section 134-20 (which is about third party adjustment notes).

**54-55 GST returns relating to GST branches**

- (1) An entity must, in relation to each \*GST branch of the entity, give to the Commissioner a \*GST return for each tax period applying to the entity.
- (3) The entity must still give a \*GST return under section 31-5, unless all the \*enterprises that it \*carries on are carried on through its \*GST branches.
- (4) This section has effect despite section 31-5 (which is about who must give GST returns).

**54-60 Payments of GST relating to GST branches**

- (1) If an entity has a \*GST branch and the \*assessed net amount relating to the \*GST branch for a tax period is greater than zero:
  - (a) the entity must pay that assessed net amount to the Commissioner; and
  - (b) Division 33 applies to payment of that amount as if it were a payment the entity was obliged to make under section 33-3 or 33-5 (as the case requires).
- (2) This section has effect despite Division 33 (which is about payments of GST).

**54-65 Refunds relating to GST branches**

If an entity has a \*GST branch and the \*assessed net amount relating to the \*GST branch for a tax period is less than zero, the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

Commissioner must, on behalf of the Commonwealth, pay that assessed net amount (expressed as a positive amount) to the entity.

Note 1: See Division 3A of Part IIB of the *Taxation Administration Act 1953* for the rules about how the Commissioner must pay the entity. Division 3 of Part IIB allows the Commissioner to apply the amount owing as a credit against tax debts that the entity owes to the Commonwealth.

Note 2: Interest is payable under the *Taxation (Interest on Overpayments and Early Payments) Act 1983* if the Commissioner is late in refunding the amount.

### **Subdivision 54-C—Cancellation of registration of GST branches**

#### **54-70 When an entity must apply for cancellation of registration of a GST branch**

- (1) If an entity has a \*GST branch and the entity is not \*carrying on any \*enterprise through the branch, the entity must apply to the Commissioner in the \*approved form for cancellation of the \*registration of the branch.
- (2) The entity must lodge its application within 21 days after the day on which it ceased to \*carry on any \*enterprise through the branch.

#### **54-75 When the Commissioner must cancel registration of a GST branch**

- (1) The Commissioner must cancel the \*registration of a \*GST branch of an entity if:
  - (a) the entity has applied for cancellation of registration in the \*approved form; and
  - (b) at the time it applied, the branch had been registered for at least 12 months.

Note: Refusing to cancel the registration of a GST branch under this subsection is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (2) The Commissioner must cancel the \*registration of a \*GST branch of the entity (even if the entity has not applied for cancellation of the registration) if:
- (a) the Commissioner is satisfied that the entity is not \*carrying on an \*enterprise through the branch; and
  - (b) the Commissioner believes on reasonable grounds that the entity is unlikely to carry on an enterprise through the branch for at least 12 months.

Note: Cancelling the registration of a GST branch under this subsection is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

- (3) The Commissioner must notify the entity of any decision he or she makes in relation to it under this section. If the Commissioner decides to cancel the \*registration, the notice must specify the date of effect of the cancellation.

**54-80 The date of effect of cancellation of registration of a GST branch**

The Commissioner must decide the date on which the cancellation of the \*registration of a \*GST branch of an entity under subsection 54-75(1) or (2) takes effect. That date may be any day occurring before, on or after the day on which the Commissioner makes the decision.

Note: Deciding the date of effect of the cancellation of the registration of a GST branch is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

**54-85 Application of Subdivision 25-B**

Subdivision 25-B does not apply to the cancellation of the \*registration of a \*GST branch.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**54-90 Effect on GST branches of cancelling the entity's registration**

If an entity's \*registration is cancelled, the registration of any \*GST branches of the entity ceases to have effect from the day the cancellation takes effect.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## Division 57—Resident agents acting for non-residents

### 57-1 What this Division is about

This Division effectively makes resident agents acting for non-residents responsible for the GST consequences of what the non-residents do through their resident agents.

### 57-5 Who is liable for GST

- (1) GST payable on a \*taxable supply or \*taxable importation made by a \*non-resident through a \*resident agent:
  - (a) is payable by the agent; and
  - (b) is not payable by the non-resident.
- (2) This section has effect despite sections 9-40 and 13-15 (which are about liability for GST).
- (3) However, this section does not apply to a \*taxable supply if:
  - (a) apart from this section, the \*non-resident would not be liable to pay GST on the supply; or
  - (b) the non-resident makes the supply through an \*enterprise that the non-resident \*carries on in the indirect tax zone.

### 57-7 Agreement to apply this Division to all supplies through a resident agent

- (1) Subsection 9-26(1) does not apply to a supply made by a \*non-resident through a \*resident agent if:
  - (a) section 57-5 would apply to the supply if that subsection did not apply to the supply; and
  - (b) the non-resident and the agent have agreed in writing that that subsection will not apply to any supplies made by the non-resident through the agent; and
  - (c) the supply is made no earlier than:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (i) if the agreement specifies a time (not earlier than the start of the day the agreement is made) as the time the agreement takes effect—that time; or
- (ii) otherwise—the start of the day the agreement is made.

Note: An agreement under paragraph (1)(b) prevents subsection 9-26(1) having the effect that the supply would not be connected with the indirect tax zone (that subsection could otherwise result in the GST on the supply being reverse charged to the recipient under Division 84).

- (2) If the \*recipient of the supply is an \*Australian-based business recipient, the recipient must be given a notice in the \*approved form by:
  - (a) if the agreement referred to in paragraph (1)(b) specifies that the \*non-resident is to give the notice—the non-resident; or
  - (b) otherwise—the \*resident agent.
- (3) The notice must be given no later than 7 days after the earlier of:
  - (a) the first day any of the \*consideration for the supply is provided; or
  - (b) the day on which an \*invoice for the supply is issued.

Note: Subsection 286-75(7) in Schedule 1 to the *Taxation Administration Act 1953* provides an administrative penalty for breach of subsection (2) or this subsection.

- (4) If the \*non-resident and the agent agree in writing to terminate the agreement referred to in paragraph (1)(b), this section ceases to apply:
  - (a) if the agreement to terminate specifies a time (not earlier than the start of the day the agreement to terminate is made) as the time the termination takes effect—at that time; or
  - (b) otherwise—at the start of the day the agreement to terminate is made.

### 57-10 Who is entitled to input tax credits

- (1) If a \*non-resident makes a \*creditable acquisition or \*creditable importation through a \*resident agent:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (a) the agent is entitled to the input tax credit on the acquisition or importation; and
  - (b) the non-resident is not entitled to the input tax credit on the acquisition or importation.
- (2) This section has effect despite sections 11-20 and 15-15 (which are about who is entitled to input tax credits).

**57-15 Adjustments**

- (1) Any \*adjustment that a \*non-resident has relating to a supply, acquisition or importation made through a \*resident agent is to be treated as if:
- (a) the non-resident did not have the adjustment; and
  - (b) the agent had the adjustment.
- (2) This section has effect despite section 17-10 (which is about the effect of adjustments on net amounts).

**57-20 Resident agents are required to be registered**

- (1) A \*resident agent who is acting as agent for a \*non-resident is ***required to be registered*** if the non-resident is \*registered or \*required to be registered.
- (2) The section has effect despite section 23-5 (which is about who is required to be registered).

**57-25 Cancellation of registration of a resident agent**

- (1) The Commissioner must cancel the \*registration of a \*resident agent if the Commissioner is satisfied that the resident agent is not \*required to be registered.

Note: Cancelling the registration of a resident agent under this subsection is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

- (2) The Commissioner must notify the \*resident agent of the cancellation.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (3) Sections 25-50 and 25-55 do not apply to the cancellation of the \*registration of a \*resident agent.

### **57-30 Notice of cessation of agency**

A \*resident agent who ceases to act as agent for a \*non-resident must notify the Commissioner of that cessation, in the \*approved form, within 14 days after so ceasing to act.

### **57-35 Tax periods of resident agents**

- (1) If you are a \*resident agent who is acting as agent for a \*non-resident, the Commissioner must determine that the **tax periods** that apply to you are each individual month if the Commissioner is satisfied that the non-resident's \*GST turnover meets the \*tax period turnover threshold.

Note: Determining under this section the tax periods applying to you is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

- (2) The determination takes effect on the day specified in the determination. However, the day specified must be 1 January, 1 April, 1 July or 1 October.

Note: Deciding the date of effect of the determination is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

- (3) This section has effect in addition to section 27-15 (which is about determination of one month tax periods).

### **57-40 GST returns for non-residents**

- (1) A \*non-resident is not required to give a \*GST return for a tax period if:
- (a) the non-resident's \*net amount for the tax period is zero; or
  - (b) the only \*taxable supplies or \*taxable importations that the non-resident made that are attributable to the tax period are

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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taxable supplies or taxable importations made through a  
\*resident agent.

- (2) This section has effect despite section 31-5 (which is about who must give GST returns).

**57-45 Resident agents giving GST returns**

If you are a \*resident agent acting for a \*non-resident, subsection 31-15(2) does not apply to you in relation to a tax period if, during the tax period:

- (a) the non-resident made \*taxable supplies, or supplies that would have been taxable supplies had they not been \*GST-free or \*input taxed, through you as agent; or
- (b) the non-resident made \*creditable acquisitions through you as agent.

**57-50 Non-residents that belong to GST groups**

This Division does not apply in relation to a \*non-resident that is a \*member of a \*GST group.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## Division 58—Representatives of incapacitated entities

### 58-1 What this Division is about

This Division sets out how to ascribe activities of a representative of an incapacitated entity between the representative and the incapacitated entity for GST purposes.

In particular, supplies, acquisitions and importations, and associated acts and omissions, by the representative are, in most cases, treated as having been by the incapacitated entity. This ensures that a transaction by the representative has the same consequences under the GST law as if the incapacitated entity had no representative.

However, in most cases, GST-related liabilities and entitlements are allocated to the representative for transactions that are within the scope of the representative's responsibility or authority.

Note: This Division does not apply to a representative to the extent that paragraph 105-5(1)(a) (which is about supplies by creditors in satisfaction of debts) will apply to its supplies. See section 58-95.

### 58-5 General principle for the relationship between incapacitated entities and their representatives

- (1) Subject to this Division, any supply, acquisition or importation by an entity in the capacity of a \*representative of another entity that is an \*incapacitated entity is taken to be a supply, acquisition or importation by the other entity.
- (2) Subject to this Division, any other act, or any omission, of an entity in the capacity of a \*representative of another entity that is an \*incapacitated entity is taken to be an act or omission of the other entity, but only for the purposes of determining, for the purposes of the \*GST law:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (a) whether a supply or importation is a \*taxable supply or \*taxable importation, or the amount of GST payable on the supply or importation; or
  - (b) whether an acquisition or importation is a \*creditable acquisition or \*creditable importation, or the amount of the input tax credit for the acquisition or importation; or
  - (c) whether an \*adjustment arises in relation to a supply, acquisition or importation, or the amount of such an adjustment.
- (3) To avoid doubt, if the other entity ceases to be an \*incapacitated entity, this section continues to apply in relation to the supply, acquisition or importation, or to the act or omission, after the other entity ceases to be an incapacitated entity.
- (4) To avoid doubt, to the extent that an act or omission referred to in subsection (2) relates to deciding to \*account on a cash basis, that subsection does not apply for the purposes of determining, for the purposes of the \*GST law, whether an \*adjustment arises under Division 21 in relation to a supply or acquisition.

**58-10 Circumstances in which representatives have GST-related liabilities and entitlements**

*General rule*

- (1) A \*representative of an \*incapacitated entity:
- (a) is liable to pay any GST that the incapacitated entity would, but for this section or section 48-40, be liable to pay on a \*taxable supply or a \*taxable importation; and
  - (b) is entitled to any input tax credit that the incapacitated entity would, but for this section or section 48-45, be entitled to for a \*creditable acquisition or a \*creditable importation; and
  - (c) has any \*adjustment that the incapacitated entity would, but for this section or section 48-50, have;
- to the extent that the making of the supply, importation or acquisition to which the GST, input tax credit or adjustment relates

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

is within the scope of the representative's responsibility or authority for managing the incapacitated entity's affairs.

*Exceptions for certain taxable supplies*

- (2) This section does not apply to the GST payable on a \*taxable supply to the extent that one or more of the following apply:
- (a) the \*incapacitated entity received the \*consideration for the supply before the \*representative became a representative of the incapacitated entity;
  - (b) if, under Division 83 or section 84-5 or 86-5, the GST is payable by the recipient of the supply—the incapacitated entity provided the consideration for the supply before the representative became a representative of the incapacitated entity;
  - (c) if:
    - (i) the supply is a supply for which a \*voucher to which Division 100 applies is redeemed; and
    - (ii) the incapacitated entity supplied the voucher before the representative became a representative of the incapacitated entity;the consideration for the supply referred to in subparagraph (i) does not exceed the consideration provided for the incapacitated entity's supply of the voucher.

*Exception for certain creditable acquisitions*

- (3) This section does not apply to an input tax credit for a \*creditable acquisition to the extent that the \*incapacitated entity provided the \*consideration for the acquisition before the \*representative became a representative of the incapacitated entity.

*Exceptions for certain adjustments*

- (4) This section does not apply to an \*adjustment to the extent that one or more of the following apply:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (a) if the adjustment relates to a supply—the \*incapacitated entity received the \*consideration for the supply before the \*representative became a representative of the incapacitated entity;
- (b) if the adjustment relates to an acquisition—the incapacitated entity provided the consideration for the supply before the representative became a representative of the incapacitated entity;
- (c) the adjustment would not be attributable to a tax period applying to the representative in the capacity of a representative of the incapacitated entity.

*Incapacitated entity not liable to pay GST etc.*

- (5) An \*incapacitated entity or, if the incapacitated entity is a \*member of a \*GST group, the \*representative member of that group:
  - (a) is not liable to pay the GST on a \*taxable supply or a \*taxable importation to the extent that a \*representative of the incapacitated entity is liable under this section to pay the GST on the supply or importation; and
  - (b) is not entitled to the input tax credit for a \*creditable acquisition or a \*creditable importation to the extent that a representative of the incapacitated entity is entitled under this section to the input tax credit for the acquisition or importation; and
  - (c) does not have an \*adjustment to the extent that a representative of the incapacitated entity has the adjustment under this section.

*Other*

- (6) This section has effect despite sections 9-40, 11-20, 13-15, 15-15, 83-5, 84-10 and 86-5 and subsections 48-40(1) and (1A), 48-45(1) and 48-50(1) (which are about who is liable for GST, and who is entitled to input tax credits).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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### 58-15 Adjustments for bad debts

- (1) For the purposes of determining whether an \*adjustment arises under section 21-5 or 21-15 for the whole or a part of a debt relating to a \*taxable supply or \*creditable acquisition for which a \*representative of an \*incapacitated entity is liable to pay GST, or is entitled to an input tax credit, under section 58-10:
  - (a) the adjustment cannot arise if, when the whole or part of the debt is written off, or has been \*overdue for 12 months, the representative \*accounts on a cash basis; but
  - (b) it does not matter whether the incapacitated entity accounts on a cash basis at that or any other time.
- (2) This section has effect despite subsections 21-5(2) and 21-15(2) (which preclude adjustments for bad debts when accounting on a cash basis).

### 58-20 Representatives are required to be registered

- (1) A \*representative of an \*incapacitated entity is ***required to be registered*** in that capacity if the incapacitated entity is \*registered or \*required to be registered.
- (2) This section has effect despite section 23-5 (which is about who is required to be registered).

### 58-25 Cancellation of registration of a representative

- (1) The Commissioner must cancel the \*registration of a \*representative of an \*incapacitated entity if the Commissioner is satisfied that the representative is not \*required to be registered in that capacity.

Note: Cancelling the registration of a representative under this subsection is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).
- (2) The Commissioner must notify the \*representative of the cancellation.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (3) Sections 25-50 and 25-55 do not apply to the cancellation of the \*registration of a \*representative of an \*incapacitated entity.

**58-30 Notice of cessation of representation**

A \*representative who ceases to be a representative of an \*incapacitated entity must notify the Commissioner of that cessation, in the \*approved form, within 21 days after so ceasing.

**58-35 Tax periods of representatives**

- (1) If a \*representative of an \*incapacitated entity is \*required to be registered in that capacity, the tax periods applying to the representative in that capacity are the same tax periods that apply to the incapacitated entity.
- (2) This section has effect despite Division 27 (which is about how to work out the tax periods that apply).

**58-40 Effect on attribution rules of not accounting on a cash basis**

- (1) If:
- (a) a \*representative of an \*incapacitated entity does not \*account on a cash basis; and
  - (b) because of section 58-10, all or part of the amount of GST payable on a \*taxable supply is payable by the representative, or the representative is entitled to all or part of the input tax credit for a \*creditable acquisition;
- then, to the extent that, but for this section, the GST or input tax credit would be attributable to a tax period that ended before the representative became a representative of the incapacitated entity, the GST or input tax credit is instead attributable to the first tax period applying to the representative in that capacity.
- (2) This section has effect despite sections 29-5 and 29-10 (which are about attribution of GST on taxable supplies and of input tax credits for creditable acquisitions).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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### **58-45 GST returns for representatives of incapacitated entities**

- (1) If an individual is appointed as a \*representative of 2 or more \*incapacitated entities, the individual may give to the Commissioner one \*GST return for a tax period in respect of the entities if the entities are \*members of the same \*GST group.
- (2) This section has effect despite section 31-5 (which is about who must give GST returns).

### **58-50 Representatives to give GST returns for incapacitated entities**

- (1) A \*representative of an \*incapacitated entity must give to the Commissioner a \*GST return for a tax period applying to the incapacitated entity if:
  - (a) the incapacitated entity has failed to give to the Commissioner a GST return for a tax period; and
  - (b) the Commissioner, in writing, directs the representative to give to the Commissioner a GST return.

Note: Deciding to direct a representative of an incapacitated entity to give to the Commissioner a GST return is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

- (2) The tax period may be any tax period applying to the \*incapacitated entity, including:
  - (a) a tax period that ends before the \*representative became a representative of the incapacitated entity; and
  - (b) a tax period that starts after the representative became a representative of the incapacitated entity.
- (3) The \*GST return by the \*representative:
  - (a) must be in accordance with the requirements of Division 31 as they would apply in relation to the \*incapacitated entity except to the extent that the direction under paragraph (1)(b) modifies those requirements; and
  - (b) must be given to the Commissioner within the period specified in the direction.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (4) Without limiting the matters that the Commissioner may take into account in deciding whether to give a direction under paragraph (1)(b), the Commissioner must take into account:
  - (a) the likelihood of a dividend to unsecured creditors of the \*incapacitated entity being declared, and the likely amounts of any such dividend; and
  - (b) the likelihood that, if the Commissioner were given the \*GST return, it would reveal a liability to pay an amount to the Commissioner under the \*GST law; and
  - (c) the availability of books and records that would make it possible to prepare the GST return; and
  - (d) the likelihood that the cost to the \*representative of preparing the GST return would be covered by the incapacitated entity's assets without resulting in an unreasonable impact on the other creditors of the incapacitated entity.
- (5) The \*incapacitated entity is taken to have complied with Division 31 in relation to giving a \*GST return for a tax period if the \*representative gives to the Commissioner a return for the tax period in accordance with this section.
- (6) A direction under paragraph (1)(b) is not a legislative instrument.
- (7) This section has effect despite section 31-5 (which is about who must give GST returns).

**58-55 Incapacitated entities not required to give GST returns in some cases**

- (1) An \*incapacitated entity is not required to give a \*GST return for a tax period if:
  - (a) the entity's \*net amount for the tax period is zero; and
  - (b) the entity does not have an \*increasing adjustment that is attributable to the tax period; and
  - (c) the entity is not liable for GST that is attributable to the tax period.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (2) This section has effect despite section 31-5 (which is about who must give GST returns).

**58-60 Representative to notify Commissioner of certain liabilities etc.**

- (1) A \*representative of an \*incapacitated entity must notify the Commissioner, in the \*approved form, of an amount of GST for which the entity is liable, or an \*increasing adjustment that the entity has, if:
- (a) the representative becomes aware, or could reasonably be expected to have become aware, of the amount of GST, or the adjustment; and
  - (b) the amount of GST, or the adjustment, has not been taken into account in any \*GST return that has been given to the Commissioner; and
  - (c) the Commissioner has not been previously notified of the amount of GST, or the adjustment, under this section.

Note: Section 286-75 in Schedule 1 to the *Taxation Administration Act 1953* provides an administrative penalty for breach of this subsection.

- (2) The notification must be given to the Commissioner before the day on which the \*representative declares a dividend to unsecured creditors of the \*incapacitated entity.
- (3) This section does not apply if the \*representative is a representative of a kind that does not have the capacity to declare dividends to unsecured creditors of the \*incapacitated entity.
- (4) This section does not apply in circumstances determined by the Commissioner under subsection (5).
- (5) The Commissioner may, by legislative instrument, determine circumstances in which this section does not apply.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**58-65 Money available to meet representative's liabilities**

A \*representative of an \*incapacitated entity who is liable to pay an amount because of this Division is authorised and required to apply any money which the representative receives in his or her capacity as that representative in order to pay the liability.

**58-70 Protection for actions of representative**

A \*representative of an \*incapacitated entity is not liable to civil or criminal proceedings in relation to an act done, or omitted to be done, in good faith, in the performance or purported performance, or exercise or purported exercise, of the representative's duties or powers under, or in relation to, the \*GST law.

**58-95 Division does not apply to the extent that the representative is a creditor of the incapacitated entity**

This Division does not apply in relation to a \*representative of an entity to the extent that paragraph 105-5(1)(a) will apply to a supply by the representative of the entity's property.

Note: For example, if the representative:

- (a) is a mortgagee in possession of the entity's property; and
- (b) is not a representative of the entity for any other reason;

the representative need not register under section 58-20 if it will supply that property in or towards the satisfaction of a debt owed to it by the entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## **Division 60—Pre-establishment costs**

### **60-1 What this Division is about**

This Division enables input tax credits to arise in some circumstances in which acquisitions and importations are made before a company is in existence.

### **60-5 Input tax credit for acquisitions and importations before establishment**

- (1) If you make a \*creditable acquisition that is a \*pre-establishment acquisition, or a \*creditable importation that is a \*pre-establishment importation, relating to a \*company before it is in existence:
  - (a) you are not entitled to the input tax credit on the acquisition or importation; and
  - (b) once the company is in existence, it is entitled to the input tax credit on the acquisition or importation.
- (2) This section has effect despite sections 11-20 and 15-15 (which are about who is entitled to input tax credits).

### **60-10 Registration etc. not needed for input tax credits**

- (1) If you make a \*pre-establishment acquisition, the fact that you are not \*registered or \*required to be registered does not stop the acquisition being a \*creditable acquisition.
- (2) If you make a \*pre-establishment importation, the fact that you are not \*registered or \*required to be registered does not stop the acquisition being a \*creditable importation.
- (3) This section has effect despite sections 11-5 and 15-5 (which are about what are creditable acquisitions and creditable importations).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**60-15 Pre-establishment acquisitions and importations**

- (1) An acquisition that you make is a *pre-establishment acquisition*, and an importation that you make is a *pre-establishment importation*, if:
- (a) you do not \*apply the thing acquired or imported for any purpose other than for a \*creditable purpose relating to a \*company not yet in existence; and
  - (b) the company comes into existence, and becomes \*registered, within 6 months after the acquisition or importation; and
  - (c) you become a member, officer or employee of the company; and
  - (d) in the case of an acquisition—you have been fully reimbursed by the company for the \*consideration you provided for the acquisition; and
  - (e) in the case of an importation—you have been fully reimbursed by the company:
    - (i) for the \*assessed GST paid on the importation; and
    - (ii) for the cost of acquiring or producing the thing imported.
- (2) However, the acquisition or importation is *not* a *pre-establishment acquisition* or a *pre-establishment importation* if:
- (a) you are entitled to an input tax credit for the acquisition or importation; or
  - (b) the company acquires the thing acquired or imported, and that acquisition by the company is a \*creditable acquisition.

**60-20 Creditable purpose**

- (1) If, before a \*company is in existence, you make an acquisition or importation:
- (a) for the purpose of bringing the company into existence; or
  - (b) for the purpose of the company \*carrying on an \*enterprise after it is in existence;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

you acquire or import the thing for a *creditable purpose* only to the extent that you acquire or import it for either or both of those purposes.

- (2) However, you do not acquire or import the thing for a creditable purpose to the extent that:
  - (a) the acquisition or importation relates (directly or indirectly) to the company making supplies that would be \*input taxed; or
  - (b) the acquisition or importation is of a private or domestic nature.
- (3) An acquisition or importation is not treated, for the purposes of paragraph (2)(a), as relating to making supplies that would be \*input taxed to the extent that the supply is made through an \*enterprise, or a part of an enterprise, that the company will \*carry on outside the indirect tax zone.
- (4) This section has effect despite sections 11-15 and 15-10 (which are about creditable purpose).

#### **60-25 Attributing the input tax credit for pre-establishment acquisitions**

- (1) The input tax credit to which a \*company is entitled under this Division for an acquisition that you made is attributable to the tax period (applying to the company) in which you were fully reimbursed by the company for the \*consideration you paid for the acquisition.
- (2) However, if the company does not hold a copy of a \*tax invoice that you (or your agent) hold for the acquisition when the company gives to the Commissioner a \*GST return for the tax period to which the input tax credit for the acquisition would otherwise be attributable, then:
  - (a) the input tax credit (including any part of the input tax credit) is not attributable to that tax period; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (b) the input tax credit (or the part of the input tax credit) is attributable to the first tax period for which the company gives to the Commissioner a GST return at a time when it holds a copy of that tax invoice.

However, this subsection does not apply in circumstances of a kind determined in writing by the Commissioner, under subsection 29-10(3), to be circumstances in which the requirement for a tax invoice does not apply.

For the giving of GST returns to the Commissioner, see Division 31.

- (3) This section has effect despite section 29-10 (which is about attributing input tax credits for acquisitions).

**60-30 Attributing the input tax credit for pre-establishment importations**

- (1) The input tax credit to which a \*company is entitled under this Division for an importation that you made is attributable to the tax period (applying to the company) in which you were fully reimbursed by the company:
  - (a) for the \*assessed GST paid on the importation; and
  - (b) for the cost of acquiring or producing the thing imported.
- (2) This section has effect despite section 29-15 (which is about attributing input tax credits for importations).

**60-35 Application of Division 129**

If a \*company is entitled under this Division to an input tax credit for an acquisition or importation, the acquisition or importation is treated, for the purposes of Division 129 (which is about changes in the extent of creditable purpose), as if the company had made it.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## **Division 63—Non-profit sub-entities**

### **63-1 What this Division is about**

Some kinds of non-profit entities may choose to have some (or all) of their separately identifiable branches treated as separate entities for GST purposes.

Note: The parent entities then cease to be responsible, for GST purposes, for these branches. (By way of contrast, parent entities would remain responsible for their branches if they registered them under Division 54.)

### **63-5 Entities that may choose to apply this Division**

- (1) An entity may choose to apply this Division.
- (2) However, the entity must be \*registered and must be:
  - (a) an \*endorsed charity or a \*government school; or
  - (aa) a \*gift-deductible entity that is a non-profit body; or
  - (b) a non-profit body that is exempt from income tax under any of these provisions of the \*ITAA 1997:
    - (i) section 50-5 (charity, education and science);
    - (ii) section 50-10 (community service);
    - (iii) section 50-15 (employees and employers);
    - (iv) section 50-40 (primary and secondary resources, and tourism);
    - (v) item 9.1 or 9.2 of section 50-45 (sports, culture and recreation).

### **63-10 Period for which a choice has effect**

- (1) The choice has effect from the time the entity makes the choice.
- (2) The choice ceases to have effect if:
  - (a) the entity revokes the choice; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (b) the entity ceases to meet the requirements of subsection 63-5(2).
- (3) However, the entity:
  - (a) cannot revoke the choice within 12 months after the day on which the entity made the choice; and
  - (b) cannot make a further choice within 12 months after the day on which the entity revoked a previous choice.

**63-15 Consequences of choosing to apply this Division**

- (1) While the choice has effect, any branch of the entity is treated, for the purposes of the \*GST law (other than sections 63-5 and 63-10 and this section), as an entity if that branch:
  - (a) maintains an independent system of accounting; and
  - (b) can be separately identified by reference to:
    - (i) the nature of the activities carried on through the branch; or
    - (ii) the location of the branch; and
  - (c) is referred to in the entity's records to the effect that it is to be treated as a separate entity for the purposes of the GST law.
- (2) The branch's treatment as an entity ceases if:
  - (a) the choice ceases to have effect; or
  - (b) the branch ceases to meet the requirements of paragraphs (1)(a), (b) and (c).However, if the branch is \*registered, its treatment as an entity continues until its registration is cancelled.
- (3) At all times during its treatment as an entity, the branch is a ***non-profit sub-entity***.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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### **63-20 Non-profit sub-entities may register**

- (1) A \*non-profit sub-entity may apply to be \*registered under section 23-10 even if it is not \*carrying on an \*enterprise and is not intending to carry on an enterprise.
- (2) The Commissioner must \*register the \*non-profit sub-entity whether or not the Commissioner is satisfied that it is \*carrying on an \*enterprise or intending to carry on an enterprise.
- (3) This section has effect despite section 23-10 (which is about who may be registered) and section 25-5 (which is about when the Commissioner must register an entity).

### **63-25 Registration turnover threshold for non-profit sub-entities**

- (1) Subsection 23-15(2) applies in relation to a \*non-profit sub-entity of an entity (the *parent entity*) whether or not the parent entity is a non-profit body.
- (2) Regulations made for the purposes of paragraph 23-15(2)(b) may:
  - (a) provide that they apply only to \*non-profit sub-entities, or only to other non-profit entities; or
  - (b) specify one amount for \*non-profit sub-entities and a different amount for other non-profit entities.

### **63-27 Application of particular provisions relating to charities etc.**

#### *Application of particular provisions*

- (1) For the purposes of the provisions mentioned in subsection (2), a \*non-profit sub-entity of an entity (the *parent entity*) is taken to be a body of the following type, if the parent entity is a body of that type:
  - (a) a non-profit body;
  - (b) a \*gift-deductible entity;
  - (c) a \*government school;
  - (d) an \*endorsed charity;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (e) a gift-deductible entity endorsed as a deductible gift recipient (within the meaning of the \*ITAA 1997) under section 30-120 of the ITAA 1997;
  - (f) a fund, authority or institution of a kind referred to in paragraph 30-125(1)(b) of the ITAA 1997;
  - (g) a body that has a particular \*gift-deductible purpose;
  - (h) a body that operates a particular \*retirement village;
  - (i) a particular \*school.
- (2) The provisions are:
- (a) subsection 9-17(2) (gifts to non-profit bodies not consideration); and
  - (b) Subdivision 38-G (Activities of charities etc.); and
  - (c) Subdivision 40-E (Schools tuckshops and canteens); and
  - (d) Subdivision 40-F (fund-raising events); and
  - (e) section 111-18 (reimbursement of volunteers' expenses); and
  - (f) section 129-45 (Gifts to gift-deductible entities); and
  - (g) Division 157 (Accounting basis of charities etc.).
- (3) To avoid doubt, subsection (1) does not prevent the \*non-profit sub-entity being a body of a particular type merely because the parent entity is not a body of that type.

**63-30 When non-profit sub-entities must apply for cancellation of registration**

- (1) If a \*non-profit sub-entity is \*registered and it does not meet the requirements of paragraphs 63-15(1)(a), (b) and (c), it must apply to the Commissioner in the \*approved form for cancellation of its \*registration. It must lodge the application within 21 days after the day on which it ceased to meet those requirements.
- (2) Section 25-50 (which is about cancelling registration) does not apply to \*non-profit sub-entities.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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### **63-35 When the Commissioner must cancel registration of non-profit sub-entities**

- (1) The Commissioner must cancel \*registration of a \*non-profit sub-entity (even if it has not applied for cancellation of the registration) if the Commissioner is satisfied that the sub-entity does not meet the requirements of paragraphs 63-15(1)(a), (b) and (c).

Note: Cancelling registration under this subsection is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

- (2) The Commissioner must notify the sub-entity if the Commissioner decides to cancel its \*registration. The notice must specify the date of effect of the cancellation.
- (3) Subsection 25-55(2) (which is about cancelling registration) does not apply to \*non-profit sub-entities.

### **63-40 Effect on adjustments of becoming a non-profit sub-entity**

- (1) If a branch of an entity becomes a \*non-profit sub-entity, any \*adjustment arising afterwards in relation to a supply, acquisition or importation, made by the entity through the branch before it became a non-profit sub-entity:
  - (a) is taken to be an adjustment that the non-profit sub-entity has, as if the non-profit sub-entity had made the supply, acquisition or importation; and
  - (b) is not taken to be an adjustment that the entity has.
- (2) For the purpose of applying subsection (1) to an adjustment under Division 129 relating to a thing acquired or imported before the branch became a \*non-profit sub-entity, that Division applies as if:
  - (a) the extent to which the acquisition or importation of the thing was for a \*creditable purpose were the extent to which the non-profit sub-entity acquired or imported it for a creditable purpose; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

**Section 63-45**

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- (b) the extent to which the thing has been \*applied for a creditable purpose since its acquisition or importation were the extent to which the non-profit sub-entity applied it for a creditable purpose.

**63-45 Effect on adjustments of ceasing to be a non-profit sub-entity**

- (1) If a branch of an entity ceases to be a \*non-profit sub-entity, any \*adjustment arising afterwards in relation to a supply, acquisition or importation, made by the branch while it was a non-profit sub-entity, is taken to be an adjustment that the entity has, as if the entity had made the supply, acquisition or importation.
- (2) For the purpose of applying subsection (1) to an adjustment under Division 129 relating to a thing acquired or imported before the branch ceased to be a \*non-profit sub-entity, that Division applies as if:
  - (a) the extent to which the acquisition or importation of the thing was for a \*creditable purpose were the extent to which the entity acquired or imported it for a creditable purpose; and
  - (b) the extent to which the thing has been \*applied for a creditable purpose since its acquisition or importation were the extent to which the entity applied it for a creditable purpose.

**63-50 Membership requirements of GST groups**

A \*non-profit sub-entity *satisfies the membership requirements* for a \*GST group, or a proposed GST group, if:

- (a) it is \*registered; and
- (b) it has the same tax periods applying to it as the tax periods applying to all the other members of the GST group or proposed GST group; and
- (c) it accounts on the same basis as all those other members; and
- (d) it is not a \*member of any other GST group; and
- (e) each of the other members of the GST group or proposed GST group is either:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (i) the entity of which the non-profit sub-entity is a branch;  
or
- (ii) another branch of that entity that is a non-profit  
sub-entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## Part 4-2—Special rules mainly about supplies and acquisitions

Note: The special rules in this Part mainly modify the operation of Part 2-2, but they may affect other Parts of Chapter 2 in minor ways.

### Division 66—Second-hand goods

#### Table of Subdivisions

- 66-A Input tax credits for acquiring second-hand goods
- 66-B Acquisitions of second-hand goods that are divided for re-supply

#### 66-1 What this Division is about

This Division allows you to claim input tax credits for your acquisitions of second-hand goods, even though GST was not payable on the supply of the goods to you. However, some limitations apply, and a form of global accounting is used for some acquisitions of second-hand goods that are divided for re-supply.

#### Subdivision 66-A—Input tax credits for acquiring second-hand goods

#### 66-5 Creditable acquisitions of second-hand goods

- (1) If you acquire \*second-hand goods for the purposes of sale or exchange (but not for manufacture) in the ordinary course of \*business, the fact that the supply of the goods to you is not a \*taxable supply does not stop the acquisition being a \*creditable acquisition.
- (2) However, this section does not apply, and is taken never to have applied, to the acquisition if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (a) the supply of the goods to you was a \*taxable supply, or was \*GST-free; or
  - (b) you \*imported the goods; or
  - (c) the supply of the goods to you was a supply by way of hire; or
  - (d) Subdivision 66-B applies to the acquisition; or
  - (e) you make a supply of the goods that is not a taxable supply.
- (3) This section has effect despite section 11-5 (which is about what is a creditable acquisition).

### **66-10 Amounts of input tax credits for creditable acquisitions of second-hand goods**

- (1) The amount of the input tax credit for a \*creditable acquisition of \*second-hand goods for which the \*consideration is more than \$300 is:
- (a) an amount equal to  $\frac{1}{11}$  of the \*consideration that you provide, or are liable to provide, for the acquisition; or
  - (b) if that amount is more than the amount of the GST payable on a \*taxable supply of the goods that you make—the amount of GST on that taxable supply.
- (1A) The amount of the input tax credit for a \*creditable acquisition of \*second-hand goods for which the \*consideration is \$300 or less is an amount equal to  $\frac{1}{11}$  of the \*consideration that you provide, or are liable to provide, for the acquisition.
- (2) However, this section does not apply if the supply of the goods to you is a \*taxable supply.
- (3) This section has effect despite section 11-25 (which is about the amount of input tax credits for creditable acquisitions).

### **66-15 Attributing input tax credits for creditable acquisitions of second-hand goods**

- (1) If:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (a) you are entitled, under this Division, to the input tax credit for a \*creditable acquisition of \*second-hand goods; and
  - (b) either the \*consideration for the acquisition was more than \$300 or you choose to have this section apply to the acquisition;
- the input tax credit for the acquisition is attributable to:
- (c) the tax period in which any \*consideration is received for a subsequent \*taxable supply of the goods; or
  - (d) if, before any of the consideration is received, you have issued an \*invoice relating to the supply—the tax period in which the invoice is issued.
- (2) However, if you \*account on a cash basis, then:
- (a) if, in a tax period, *all* of the \*consideration is received for the subsequent \*taxable supply—the input tax credit for the acquisition is attributable to that tax period; or
  - (b) if, in a tax period, *part* of the consideration is received—the input tax credit for the acquisition is attributable to that tax period, but only to the extent that the consideration is received in that tax period; or
  - (c) if, in a tax period, *none* of the consideration is received—none of the input tax credit for the acquisition is attributable to that tax period.
- (4) This section has effect despite section 29-10 (which is about attributing the input tax credits for creditable acquisitions).

**66-17 Records of creditable acquisitions of second-hand goods**

- (1) If you make a \*creditable acquisition of second-hand goods and the supply of the goods to you was not a \*taxable supply:
- (a) subsection 29-10(3) applies to the acquisition as if references to a \*tax invoice were references to a record you prepared that complies with this section; and
  - (b) subsection 29-20(3) applies to an adjustment event relating to the acquisition as if references to an \*adjustment note were

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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references to a record you prepared that complies with this section.

- (2) To comply with this section, the record must:
- (a) set out the name and address of the entity that supplied the goods to you; and
  - (b) describe the goods (including their quantity); and
  - (c) set out the date of, and the \*consideration for, the acquisition.
- (2A) Subsection 29-10(3) does not apply to a \*creditable acquisition of \*second-hand goods if:
- (a) the supply to which the acquisition relates is not a \*taxable supply; and
  - (b) the amount that would have been the \*value of the supply (if it had been a \*taxable supply) does not exceed \$50, or such higher amount as the regulations made for the purposes of subsection 29-80(1) specify.
- (2B) Subsection 29-20(3) does not apply to a \*decreasing adjustment relating to a \*creditable acquisition of \*second-hand goods if:
- (a) the supply to which the acquisition relates is not a \*taxable supply; and
  - (b) the amount of the adjustment does not exceed \$50, or such higher amount as the regulations made for the purposes of subsection 29-80(2) specify.
- (3) This section has effect despite section 29-10 (which is about attributing the input tax credits for creditable acquisitions) and section 29-20 (which is about attributing decreasing adjustments).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Section 66-40

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**Subdivision 66-B—Acquisitions of second-hand goods that are divided for re-supply**

**66-40 Acquisitions of second-hand goods that can be used to offset GST on future re-supplies**

- (1) This Subdivision applies to an acquisition of \*second-hand goods if:
  - (a) you acquire the goods for the purposes of sale or exchange (but not for manufacture) in the ordinary course of \*business; and
  - (b) either the \*consideration for the acquisition was more than \$300 or you choose to have this section apply to the acquisition; and
  - (c) the goods are of such a kind, or they are supplied to you in such a way, that it would be reasonable to expect you to divide them before supplying them in 2 or more separate supplies; and
  - (d) you do not subsequently make a single supply of the entirety of the goods acquired.
- (2) However, this Subdivision does not apply, and is taken never to have applied, to the acquisition if:
  - (a) the \*consideration for the acquisition separately itemises the consideration for the different goods acquired, and your division of the goods before supplying them:
    - (i) corresponds to that itemisation; or
    - (ii) does not involve dividing the goods any further than the division indicated by that itemisation; or
  - (b) the supply of the goods to you was a \*taxable supply, or was \*GST-free; or
  - (c) you \*imported the goods; or
  - (d) the supply of the goods to you was a supply by way of hire; or
  - (e) you make a supply of the goods, or of part of the goods, that is not a taxable supply (other than because of section 66-45).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

### **66-45 Future re-supplies that are not taxable supplies**

- (1) A supply you make is not a \*taxable supply if:
- (a) it is a supply of goods that were part of an acquisition you made that was an acquisition of \*second-hand goods to which this Subdivision applied; and
  - (b) your \*total Subdivision 66-B credit amount is more than your \*total Subdivision 66-B GST amount; and
  - (c) what would be the amount of GST payable on the supply, if the supply were a taxable supply, is less than or equal to the difference between:
    - (i) your \*total Subdivision 66-B credit amount; and
    - (ii) your \*total Subdivision 66-B GST amount.

Note: This section will not apply unless the record keeping requirements of section 66-55 are met.

- (2) This section has effect despite section 9-5 (which is about what are taxable supplies).

### **66-50 Future re-supplies on which GST is reduced**

- (1) The amount of GST on a \*taxable supply you make is reduced if:
- (a) it is a supply of goods that were part of an acquisition you made that was an acquisition of \*second-hand goods to which this Subdivision applied; and
  - (b) your \*total Subdivision 66-B credit amount is more than your \*total Subdivision 66-B GST amount; and
  - (c) what would be the amount of GST payable on the supply, if the amount were not reduced under this section, is more than the difference between:
    - (i) your total Subdivision 66-B credit amount; and
    - (ii) your total Subdivision 66-B GST amount.

Note: This section will not apply unless the record keeping requirements of section 66-55 are met.

- (2) The amount by which the GST on the supply is reduced is an amount equal to the difference between:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Section 66-55**

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- (a) your \*total Subdivision 66-B credit amount; and
  - (b) your \*total Subdivision 66-B GST amount.
- (3) This section has effect despite section 9-70 (which is about the amount of GST on taxable supplies).

Note: Section 9-90 (rounding of amounts of GST) can apply to amounts of GST worked out using this section.

**66-55 Records of acquisitions of second-hand goods to which this Subdivision applied**

Sections 66-45 and 66-50 do not apply to a supply of goods you made unless you hold a record, relating to the acquisition of \*second-hand goods of which the goods supplied were a part, that:

- (a) sets out the name and address of the entity that supplied the goods to you; and
- (b) describes the goods (including their quantity); and
- (c) sets out the date of, and the \*consideration for, the acquisition.

**66-60 Input tax credits for acquiring second-hand goods the supply of which is not fully taxable**

- (1) If an entity acquires \*second-hand goods, and, because of section 66-45 and for no other reason, the supply of the goods to the entity is not a \*taxable supply:
- (a) the fact that the supply is not a taxable supply does not stop the acquisition being a \*creditable acquisition; and
  - (b) the amount of the input tax credit for the creditable acquisition is worked out as if the supply were a taxable supply.
- (2) If:
- (a) an entity makes a \*creditable acquisition of \*second-hand goods; and
  - (b) the amount of GST on the supply of the goods to the entity was reduced because of section 66-50;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

the amount of the input tax credit for the creditable acquisition is worked out as if that amount of GST had not been so reduced.

- (3) This section has effect despite section 11-5 (which is about what is a creditable acquisition) and section 11-25 (which is about the amount of input tax credits for creditable acquisitions).

### **66-65 Total Subdivision 66-B credit amounts and Subdivision 66-B GST amounts**

- (1) Your *total Subdivision 66-B credit amount* is the sum of the amounts of the input tax credits to which you would have been entitled, for all your acquisitions of \*second-hand goods to which this Subdivision applied, if this Subdivision had not applied to them.
- (2) Your *total Subdivision 66-B GST amount* is the sum of:
- (a) all the amounts of GST that, but for the operation of section 66-45, would have been payable on supplies that you made; and
  - (b) all the amounts by which GST payable on supplies that you made has been reduced under section 66-50.

### **66-70 Commissioner may determine rules for applying this Subdivision**

- (1) The Commissioner may, in writing, determine:
- (a) that acquisitions of \*second-hand goods of a specified kind are, or are not, acquisitions of second-hand goods to which this Subdivision applies; or
  - (b) how \*total Subdivision 66-B credit amounts or \*total Subdivision 66-B GST amounts are to be worked out in specified circumstances.
- (2) Determinations under subsection (1) override the provisions of this Subdivision (except this section), but only to the extent of any inconsistency.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Section 69-1

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## Division 69—Non-deductible expenses

### Table of Subdivisions

- 69-A Non-deductible expenses generally
- 69-B Elections for GST purposes relating to meal entertainment and entertainment facilities

### 69-1 What this Division is about

Some expenses that are not deductible under the ITAA 1997 do not give rise to creditable acquisitions or creditable importations. The amount of input tax credits on some creditable acquisitions or creditable importations of cars is reduced.

### Subdivision 69-A—Non-deductible expenses generally

#### 69-5 Non-deductible expenses do not give rise to creditable acquisitions or creditable importations

- (1) An acquisition is not a \*creditable acquisition to the extent that it is a \*non-deductible expense.
- (2) An importation is not a \*creditable importation to the extent that it is a \*non-deductible expense.
- (3) An acquisition or importation is a ***non-deductible expense*** if it is not deductible under Division 8 of the \*ITAA 1997 because of one of the following:
  - (a) section 26-5 of the \*ITAA 1997 (Penalties);
  - (b) section 26-30 of the \*ITAA 1997 (Relative's travel expenses);
  - (c) section 26-40 of the \*ITAA 1997 (Maintaining your family);
  - (d) section 26-45 of the \*ITAA 1997 (Recreational club expenses);

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (e) section 26-50 of the \*ITAA 1997 (Expenses for a leisure facility);
  - (f) Division 32 of the \*ITAA 1997 (Entertainment expenses);
  - (g) Division 34 of the \*ITAA 1997 (Non-compulsory uniforms);
  - (h) section 51AK of the \*ITAA 1936 (Agreements for the provision of non-deductible non-cash business benefits).
- (3A) An acquisition or importation is also a **non-deductible expense** to the extent that it is not deductible under Division 8 of the \*ITAA 1997 because of one of the following:
- (a) section 51AEA of the \*ITAA 1936 (Meal entertainment—election to use the 50/50 split method);
  - (b) section 51AEB of the ITAA 1936 (Meal entertainment—election to use the 12 week register method);
  - (c) section 51AEC of the ITAA 1936 (Entertainment facility—election to use the 50/50 split method).
- (4) If the entity making the acquisition or importation is an \*exempt entity, the acquisition or importation is a **non-deductible expense** if it would have been a non-deductible expense under subsection (3) or (3A) had the entity not been an exempt entity.
- (5) This section has effect despite sections 11-5 and 15-5 (which are about what is a creditable acquisition and what is a creditable importation).

### **69-10 Amounts of input tax credits for creditable acquisitions or creditable importations of certain cars**

- (1) If:
- (a) you are entitled to an input tax credit for a \*creditable acquisition or \*creditable importation of a \*car; and
  - (b) you are not, for the purposes of the *A New Tax System (Luxury Car Tax) Act 1999*, entitled to quote an \*ABN in relation to the supply to which the creditable acquisition relates, or in relation to the importation, as the case requires; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Division 69** Non-deductible expenses

**Section 69-10**

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- (c) the \*GST inclusive market value of the car exceeds the \*car limit for the \*financial year in which you first used the car for any purpose;  
the amount of the input tax credit on the acquisition or importation is the amount of GST payable on the supply or importation of the car up to <sup>1</sup>/<sub>11</sub> of that limit.
- (2) However, if:
- (a) the supply of the car is \*GST-free to any extent under Subdivision 38-P; or
  - (b) the importation of the car is non-taxable to any extent under paragraph 13-10(b) because it would have been GST-free to any extent under Subdivision 38-P if it had been a supply;
- you are not entitled to the input tax credit for the acquisition or importation.
- (3) If your acquisition or importation is \*partly creditable, the input tax credit is reduced to the extent (expressed as a percentage) to which the acquisition or importation is made for a \*creditable purpose.
- (4) This section does not apply in relation to:
- (a) the acquisition or importation of a \*car that is not a \*luxury car because of subsection 25-1(2) of the *A New Tax System (Luxury Car Tax) Act 1999*; or
- Note: Emergency vehicles, cars fitted to transport disabled people, non-passenger commercial vehicles, motor homes and campervans are not luxury cars under that subsection.
- (b) the acquisition of a car by lease or hire.
- (5) This section has effect despite sections 11-25 and 15-20 (which are about the amount of input tax credits on creditable acquisitions and creditable importations).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## **Subdivision 69-B—Elections for GST purposes relating to meal entertainment and entertainment facilities**

### **69-15 What this Subdivision is about**

The GST consequences of incurring certain expenses for the provision of meal entertainment and entertainment facilities depend on elections made under fringe benefits tax law. These elections might not be made until after GST returns are due.

This Subdivision allows elections to be made for GST purposes so that GST returns can take into account the likely application of subsection 69-5(3A) to those expenses, before the fringe benefits tax elections are made.

### **69-20 Effect of elections on net amounts**

- (1) If you make an election under this Subdivision that has effect during a particular tax period, your \*net amount for the tax period must be worked out on the basis of that election.
- (2) This section has effect despite section 17-5 (which is about working out your net amount).

### **69-25 Election to use the 50/50 split method for meal entertainment**

You may elect to have acquisitions or importations treated, for the purposes of this Subdivision, as \*non-deductible expenses because of paragraph 69-5(3A)(a), to the extent that the acquisitions or importations would be non-deductible expenses because of that paragraph if:

- (a) an election were in force under section 37AA of the *Fringe Benefits Tax Assessment Act 1986* (but no further election were in force under section 37CA of that Act); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Section 69-30

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- (b) section 51AEA of the \*ITAA 1936 were to apply, because of that election, to expenses relating to the acquisitions or importations.

**69-30 Election to use the 12 week register method for meal entertainment**

- (1) You may elect to have acquisitions or importations treated, for the purposes of this Subdivision, as \*non-deductible expenses because of paragraph 69-5(3A)(b), to the extent that the acquisitions or importations would be non-deductible expenses because of that paragraph if:
  - (a) an election were in force under section 37CA of the *Fringe Benefits Tax Assessment Act 1986*; and
  - (b) section 51AEB of the \*ITAA 1936 were to apply, because of that election, to expenses relating to the acquisitions or importations.
- (2) However, you cannot make the election unless you have a \*valid meal entertainment register.

**69-35 Election to use the 50/50 split method for entertainment facilities**

You may elect to have acquisitions or importations treated, for the purposes of this Subdivision, as \*non-deductible expenses because of paragraph 69-5(3A)(c), to the extent that the acquisitions or importations would be non-deductible expenses because of that paragraph if:

- (a) an election were in force under section 152B of the *Fringe Benefits Tax Assessment Act 1986*; and
- (b) section 51AEC of the \*ITAA 1936 were to apply, because of that election, to expenses relating to the acquisitions or importations.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

**69-40 When elections take effect**

- (1) An election under this Subdivision is taken to have effect, or to have had effect, from the start of the tax period specified in the election.
- (2) The tax period may be a future tax period or the current tax period. It cannot be a tax period that has already come to an end.

**69-45 When elections cease to have effect**

If a circumstance specified in the second column of the following table occurs, the election ceases to have effect from the start of the tax period specified in the third column:

<b>When elections cease to have effect</b>			
<b>Item</b>	<b>Kind of election</b>	<b>Circumstance</b>	<b>Tax period</b>
1	Any election under this Subdivision	You withdraw the election	The tax period (which must not be a past tax period) specified in the withdrawal
2	An election under section 69-25	You make an election under section 69-30	The tax period at the start of which the election under section 69-30 takes effect
3	An election under section 69-30	You make an election under section 69-25	The tax period at the start of which the election under section 69-25 takes effect
4	An election under section 69-30	You cease to have a *valid meal entertainment register	The tax period during which you cease to have such a register
5	An election under section 69-25 or 69-30	You make an election under section 37AA or 37CA of the <i>Fringe Benefits Tax Assessment Act 1986</i>	The tax period during which the election is made

\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

Section 69-50

When elections cease to have effect			
Item	Kind of election	Circumstance	Tax period
6	An election under section 69-35	You make an election under section 152B of that Act	The tax period during which the election is made

**69-50 Adjustment events relating to elections**

- (1) The following are *adjustment events* if they have the effect of changing the extent to which an acquisition you made is a \*creditable acquisition:
  - (a) an election you make under this Subdivision ceases to have effect at a time other than the start of an \*FBT year;
  - (b) an election is made under section 37AA, 37CA or 152B of the *Fringe Benefits Tax Assessment Act 1986* for an FBT year, without one or more corresponding elections under this Subdivision having been made covering all the tax periods in that year;
  - (c) an election is not made under section 37AA, 37CA or 152B of that Act for an FBT year, but one or more corresponding elections have been made under this Subdivision covering one or more of the tax periods in that year.
- (2) However, an \*adjustment event under this section arises only in respect of a tax period in which:
  - (a) the day occurs by which you are required, under section 68 of the *Fringe Benefits Tax Assessment Act 1986*, to furnish a return to the Commissioner relating to an \*FBT year; or
  - (b) if you are not required under that section to lodge a return relating to that FBT year—the day occurs by which you would have been required under that section to lodge a return relating to that FBT year, if you were required to lodge the return.
- (3) Subdivision 19-C applies to the acquisition in question as if every \*adjustment event under this section that occurred during the \*FBT

\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

year, and that relates to the acquisition, occurred during the tax period referred to in paragraph 19-70(a).

- (4) This table sets out when elections that you make or fail to make under section 37AA, 37CA or 152B of the *Fringe Benefits Tax Assessment Act 1986* correspond to elections under this Subdivision:

<b>Corresponding elections</b>		
<b>Item</b>	<b>These elections under the <i>Fringe Benefits Tax Assessment Act 1986</i>...</b>	<b>correspond to these elections under this Subdivision...</b>
1	an election under section 37AA, but without a further election under section 37CA	an election under section 69-25
2	an election under section 37AA, together with a further election under section 37CA	an election under section 69-30
3	an election under section 152B	an election under section 69-35

### **69-55 Adjustment notes not required**

Subsection 29-20(3) does not apply to a \*decreasing adjustment arising from an \*adjustment event of a kind referred to in section 69-50.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

## Division 70—Financial supplies (reduced credit acquisitions)

### 70-1 What this Division is about

In some cases, acquisitions relating to financial supplies can attract a reduced input tax credit, even though no input tax credit could arise under the basic rules.

### 70-5 Acquisitions that attract the reduced credit

- (1) The regulations may provide that acquisitions of a specified kind that relate to making \*financial supplies can give rise to an entitlement to a reduced input tax credit. These are **reduced credit acquisitions**.
- (1A) However, an acquisition is not a reduced credit acquisition to the extent (if any) that, without this Division applying, an entity is entitled to an input tax credit for the acquisition.

Note: Acquisitions relating to financial supplies can give rise to input tax credits: see subsections 11-15(4) and (5).
- (2) For each kind of \*reduced credit acquisition specified, the regulations must specify a percentage to which the input tax credit is reduced.

### 70-10 Extended meaning of *creditable purpose*

- (1) The fact that a \*reduced credit acquisition relates to making \*financial supplies does not stop it being for a \*creditable purpose, to the extent that it relates to making financial supplies.
- (2) The fact that you \*apply a \*reduced credit acquisition in making \*financial supplies does not stop it being applied for a \*creditable purpose, to the extent that it relates to making financial supplies.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (3) This section has effect despite sections 11-15 and 129-50 (which are about the meaning of creditable purpose).

### **70-15 How much are the reduced input tax credits?**

- (1) The amount of an input tax credit for a \*creditable acquisition of a \*reduced credit acquisition is an amount equal to the GST payable on the supply of the acquisition multiplied by the percentage specified under subsection 70-5(2) for acquisitions of that kind.
- (2) However, the amount of such an input tax credit is further reduced if the acquisition is only \*partly creditable.
- (3) This section has effect despite section 11-25 (which is about the amount of input tax credits).

### **70-20 Extent of creditable purpose**

- (1) If:
- (a) a \*reduced credit acquisition is a \*creditable acquisition; and
  - (b) it is not wholly for a \*creditable purpose because of this Division;
- it is \*partly creditable.
- (2) The extent to which the acquisition is acquired or applied for a \*creditable purpose is worked out using the following formula:

$$\text{Extent of creditable purpose} + \left[ \text{Extent of Division 70 creditable purpose} \times \text{Percentage credit reduction} \right]$$

where:

***extent of creditable purpose*** is the extent to which the purpose for which you applied or acquired the acquisition was a \*creditable purpose otherwise than because of this Division, expressed as a percentage.

***extent of Division 70 creditable purpose*** is the extent to which the purpose for which you applied or acquired the acquisition was a

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Division 70** Financial supplies (reduced credit acquisitions)

**Section 70-25**

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\*creditable purpose because of this Division, expressed as a percentage.

**percentage credit reduction** is the reduced input tax credit percentage prescribed for the purposes of subsection 70-5(2) for an acquisition of that kind.

Note: This section affects sections 11-30 and 129-40. It is used even if the reduced credit acquisition is used wholly in carrying on your enterprise (unless the acquisition was wholly for a creditable purpose because of this Division, then section 70-15 applies).

Example 1: You make a reduced credit acquisition of \$110,000, wholly for the purposes of carrying on your enterprise, partly for the purpose of making financial supplies (40%) and partly for the purpose of making taxable supplies (60%). Assume the percentage credit reduction to be 50%. The extent to which you make the acquisition for a creditable purpose is:

$$60\% + \left[ 40\% \times 50\% \right] = 80\%$$

Applying section 11-30, your input tax credit is \$8,000 (assuming you were liable for all the consideration).

Example 2: You subsequently apply the acquisition partly in making financial supplies (40%), partly in making taxable supplies (40%) and partly for private use (20%). The extent to which you made the acquisition for a creditable purpose is:

$$40\% + \left[ 40\% \times 50\% \right] = 60\%$$

Applying Division 129, your input tax credit is reduced to \$6,000, giving you an increasing adjustment of \$2,000.

- (3) The Commissioner may determine, in writing, one or more ways in which to work out, for the purpose of subsection (2), the extent to which an acquisition is for a \*creditable purpose.

**70-25 Sale of reduced credit acquisitions (Division 132)**

(1) If:

- (a) you supply a \*reduced credit acquisition in circumstances to which Division 132 applies; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (b) you made the acquisition for a \*creditable purpose because of this Division, or you applied the acquisition for a \*creditable purpose because of this Division;  
this section applies for the purposes of Division 132.
- (2) In working out the full input tax credit in subsection 132-5(2), the reference to a \*creditable purpose in paragraph (a) of the definition of **full input tax credit** is to be read as a reference to a \*creditable purpose otherwise than because of Division 70.
- (3) In working out the adjusted input tax credit in subsection 132-5(2), the extent of the \*creditable purpose because of subsection 132-5(4) is increased by the following extent:

$$\text{Extent of Division 70} \times \text{Percentage credit} \\ \text{creditable purpose} \quad \text{reduction}$$

where:

**extent of Division 70 creditable purpose** has the same meaning as in section 70-20.

**percentage credit reduction** has the same meaning as in section 70-20.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## Division 71—Fringe benefits provided by input taxed suppliers

### 71-1 What this Division is about

Suppliers making input taxed supplies may not be entitled to input tax credits for acquisitions or importations they make to provide fringe benefits to their employees.

Note: Under the *Fringe Benefits Tax Assessment Act 1986*, a lower rate of fringe benefits tax is payable for providing fringe benefits without entitlement to input tax credits.

### 71-5 Acquisitions by input taxed suppliers to provide fringe benefits

- (1) An acquisition that solely or partly relates to making supplies that are \*input taxed is not a \*creditable acquisition if:
  - (a) the acquisition would (but for this section) be an acquisition of a kind referred to in paragraph 149A(2)(b) of the *Fringe Benefits Tax Assessment Act 1986*; and
  - (b) the acquisition specifically relates to the provision of a particular benefit (within the meaning of that Act) in respect of which \*fringe benefits tax is or will be payable.
- (2) However, this section does not apply to an acquisition if:
  - (a) the only reason it relates to making supplies that are \*input taxed is because it relates to making \*financial supplies; and
  - (b) you do not \*exceed the financial acquisitions threshold.
- (3) This section has effect despite section 11-5 (which is about what is a creditable acquisition).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**71-10 Importations by input taxed suppliers to provide fringe benefits**

- (1) An importation that solely or partly relates to making supplies that are \*input taxed is not a \*creditable importation if:
  - (a) the importation would (but for this section) be an importation of a kind referred to in paragraph 149A(2)(b) of the *Fringe Benefits Tax Assessment Act 1986*; and
  - (b) the importation specifically relates to the provision of a particular benefit (within the meaning of that Act) in respect of which \*fringe benefits tax is or will be payable.
- (2) However, this section does not apply to an importation if:
  - (a) the only reason it relates to making supplies that are \*input taxed is because it relates to making \*financial supplies; and
  - (b) you do not \*exceed the financial acquisitions threshold.
- (3) This section has effect despite section 15-5 (which is about what is a creditable importation).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Section 72-1

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## **Division 72—Associates**

### **Table of Subdivisions**

- 72-A Supplies without consideration
- 72-B Acquisitions without consideration
- 72-C Supplies for inadequate consideration
- 72-D Application of this Division to certain sub-entities

### **72-1 What this Division is about**

This Division ensures that supplies to, and acquisitions from, your associates *without* consideration are brought within the GST system, and that supplies to your associates for inadequate consideration are properly valued for GST purposes.

### **Subdivision 72-A—Supplies without consideration**

#### **72-5 Taxable supplies without consideration**

- (1) The fact that a supply to your \*associate is without \*consideration, does not stop the supply being a \*taxable supply if:
  - (a) your associate is not \*registered or \*required to be registered;  
or
  - (b) your associate acquires the thing supplied otherwise than solely for a \*creditable purpose.
- (2) This section has effect despite paragraphs 9-5(a) and 84-5(1)(a) (which would otherwise require a taxable supply to be for consideration).
- (3) However, this section does not apply to any supply that is constituted by an insured entity settling a claim under an \*insurance policy or by an entity (other than an \*operator) settling a claim under a \*compulsory third party scheme.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

### **72-10 The value of taxable supplies without consideration**

- (1) If a supply to your \*associate without \*consideration is a \*taxable supply, its *value* is the \*GST exclusive market value of the supply.
- (2) This section has effect despite section 9-75 (which is about the value of taxable supplies).
- (3) This section does not apply to a supply that is a \*taxable supply because of section 84-5 (which is about offshore supplies).

### **72-15 Attributing the GST to tax periods**

- (1) The tax period to which the GST on a \*taxable supply to your \*associate without \*consideration is attributable is the tax period in which the supply first becomes a supply that is \*connected with the indirect tax zone.
- (2) This section has effect despite section 29-5 (which is about attributing GST on taxable supplies).

### **72-20 Supplies and acquisitions that would otherwise be sales etc.**

- (1) If, apart from a lack of \*consideration:
  - (a) a supply to your \*associate from you; or
  - (b) a supply to you from your associate;would be a sale or some other kind of supply, the supply is taken for the purposes of the \*GST law to be a supply of that kind.
- (2) If, apart from a lack of \*consideration:
  - (a) an acquisition by your \*associate from you; or
  - (b) an acquisition by you from your associate;would be by sale or some other means, the acquisition is taken for the purposes of the \*GST law to be an acquisition by that means.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Section 72-25

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**72-25 Supplies that would otherwise be GST-free, input taxed or financial supplies**

The fact that a supply to or from your \*associate is without \*consideration does not stop the supply from being any of the following for the purposes of the \*GST law:

- (a) a \*GST-free supply;
- (b) a supply that is \*input taxed;
- (c) a \*financial supply.

**Subdivision 72-B—Acquisitions without consideration**

**72-40 Creditable acquisitions without consideration**

- (1) The fact that an acquisition from your \*associate is without \*consideration does not stop the acquisition being a \*creditable acquisition if you acquire the thing supplied otherwise than solely for a \*creditable purpose.
- (2) This section has effect despite paragraph 11-5(c) (which would otherwise require a creditable acquisition to be for consideration).
- (3) However, this section does not apply to any acquisition that is constituted by an insurer settling a claim under an \*insurance policy or by an \*operator settling a claim under a \*compulsory third party scheme.

**72-45 The amount of the input tax credit**

- (1) The amount of the input tax credit on an acquisition from your \*associate that is without \*consideration is as follows:

Full input tax credit × Extent of creditable purpose

where:

*extent of creditable purpose* is the extent to which the creditable acquisition is for a \*creditable purpose, expressed as a percentage of the total purpose of the acquisition.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

**full input tax credit** is what would have been the amount of the input tax credit for the acquisition if it had been made solely for a creditable purpose and you had provided, or had been liable to provide, all of the consideration for the acquisition.

- (1A) However, if:
- (a) an \*annual apportionment election that you have made has effect at the end of the tax period to which the input tax credit is attributable; and
  - (b) the acquisition is not an acquisition of a kind specified in the regulations made for the purposes of paragraph 131-40(1)(b);
- the amount of the input tax credit on the acquisition is worked out under section 131-40 as if you had provided, or had been liable to provide, all of the \*consideration for the acquisition.
- (2) This section has effect despite subsection 11-30(3) (which is about the amount of input tax credits on partly creditable acquisitions).

### **72-50 Attributing the input tax credit to tax periods**

- (1) The tax period to which the input tax credit for a \*creditable acquisition from your \*associate without \*consideration is attributable is the tax period in which the supply to which the acquisition relates first becomes a supply that is \*connected with the indirect tax zone.
- (2) This section has effect despite section 29-10 (which is about attributing input tax credits for creditable acquisitions).

### **Subdivision 72-C—Supplies for inadequate consideration**

#### **72-70 The value of taxable supplies for inadequate consideration**

- (1) If a supply to your \*associate for \*consideration that is *less* than the \*GST inclusive market value is a \*taxable supply, its **value** is the \*GST exclusive market value of the supply.
- (2) Subsection (1) does not apply if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (a) your associate is \*registered or \*required to be registered; and
  - (b) your associate acquires the thing supplied *solely* for a \*creditable purpose.
- (3) This section has effect despite section 9-75 (which is about the value of taxable supplies).
- (4) This section does not apply to a supply that is a \*taxable supply because of section 84-5 (which is about offshore supplies).

**Subdivision 72-D—Application of this Division to certain sub-entities**

**72-90 GST branches**

This Division applies to a \*GST branch of an entity as if the GST branch were an \*associate of:

- (a) that entity; and
- (b) every other GST branch of that entity; and
- (c) any other associate of that entity.

**72-92 Non-profit sub-entities**

This Division applies to a \*non-profit sub-entity of an entity as if the non-profit sub-entity were an \*associate of:

- (a) that entity; and
- (b) every other non-profit sub-entity of that entity; and
- (c) any other associate of that entity.

**72-95 Commonwealth government entities**

- (1) This Division applies to a \*government entity that is:
- (a) a Department of State of the Commonwealth; or
  - (b) a Department of the Parliament established under the *Parliamentary Service Act 1999*; or
  - (c) an Executive Agency, or Statutory Agency, within the meaning of the *Public Service Act 1999*; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (d) an organisation, established by the Commonwealth, of a kind referred to in paragraph (e) of the definition of **government entity** in section 41 of the *A New Tax System (Australian Business Number) Act 1999*;  
as if the government entity were an \*associate of the Commonwealth, of every other government entity of a kind referred to in paragraph (a), (b), (c) or (d) and of any other associate of the Commonwealth.
- (2) However, this Division does not apply to a supply or acquisition if a payment for the supply or acquisition is covered by subsection 9-17(3) or (4).

### **72-100 State or Territory government entities**

- (1) This Division applies to a \*government entity that is:
- (a) a Department of State of a State or Territory; or
  - (b) an organisation, established by a State or Territory, of a kind referred to in paragraph (e) of the definition of **government entity** in section 41 of the *A New Tax System (Australian Business Number) Act 1999*;  
as if the government entity were an \*associate of:
    - (c) that State or Territory; and
    - (d) every other Department of State of that State or Territory, or organisation, established by that State or Territory, of a kind referred to in paragraph (e) of that definition; and
    - (e) any other associate of that State or Territory.
- (2) However, this Division does not apply to a supply or acquisition if a payment for the supply or acquisition is covered by subsection 9-17(3) or (4).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Section 75-1

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## Division 75—Sale of freehold interests etc.

### 75-1 What this Division is about

This Division allows you to use a margin scheme to bring within the GST system your taxable supplies of freehold interests in land, of stratum units and of long-term leases.

### 75-5 Applying the margin scheme

- (1) The \*margin scheme applies in working out the amount of GST on a \*taxable supply of \*real property that you make by:
- (a) selling a freehold interest in land; or
  - (b) selling a \*stratum unit; or
  - (c) granting or selling a \*long-term lease;
- if you and the \*recipient of the supply have agreed in writing that the margin scheme is to apply.

- (1A) The agreement must be made:
- (a) on or before the making of the supply; or
  - (b) within such further period as the Commissioner allows.

Note: Refusing to allow, or allowing, a further period within which to make an agreement is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the *Taxation Administration Act 1953*).

- (1B) A supply that you make to your \*associate is taken for the purposes of subsection (1) to be a sale to your associate whether or not the supply is for \*consideration.

- (2) However, the \*margin scheme does not apply if you acquired the entire freehold interest, \*stratum unit or \*long-term lease through a supply that was \*ineligible for the margin scheme.

Note: If you acquired part of the interest, unit or lease through a supply that was ineligible for the margin scheme, you may have an increasing adjustment: see section 75-22.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (3) A supply is *ineligible for the margin scheme* if:
- (a) it is a \*taxable supply on which the GST was worked out without applying the \*margin scheme; or
  - (b) it is a supply of a thing you acquired by \*inheriting it from a deceased person, and the deceased person had acquired all of it through a supply that was ineligible for the margin scheme; or
  - (c) it is a supply in relation to which all of the following apply:
    - (i) you were a \*member of a \*GST group at the time you acquired the interest, unit or lease in question;
    - (ii) the entity from whom you acquired it was a member of the GST group at that time;
    - (iii) the last supply of the interest, unit or lease by an entity who was not (at the time of that supply) a member of the GST group to an entity who was (at that time) such a member was a supply that was ineligible for the margin scheme; or
  - (d) it is a supply in relation to which both of the following apply:
    - (i) you acquired the interest, unit or lease from the \*joint venture operator of a \*GST joint venture at a time when you were a \*participant in the joint venture;
    - (ii) the joint venture operator had acquired the interest, unit or lease through a supply that was ineligible for the margin scheme; or
  - (e) it is a supply in relation to which all of the following apply:
    - (i) you acquired the interest, unit or lease from an entity as, or as part of, a \*supply of a going concern to you that was \*GST-free under Subdivision 38-J;
    - (ii) the entity was \*registered or \*required to be registered, at the time of the acquisition;
    - (iii) the entity had acquired the entire interest, unit or lease through a taxable supply on which the GST was worked out without applying the margin scheme; or
  - (f) it is a supply in relation to which all of the following apply:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Division 75** Sale of freehold interests etc.

**Section 75-5**

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- (i) you acquired the interest, unit or lease from an entity as, or as part of, a supply to you that was GST-free under Subdivision 38-O;
  - (ii) the entity was registered or required to be registered, at the time of the acquisition;
  - (iii) the entity had acquired the entire interest, unit or lease through a taxable supply on which the GST was worked out without applying the margin scheme; or
- (g) it is a supply in relation to which all of the following apply:
- (i) you acquired the interest, unit or lease from an entity who was your \*associate, and who was registered or required to be registered, at the time of the acquisition;
  - (ii) the acquisition from your associate was without \*consideration;
  - (iii) the supply by your associate was not a taxable supply;
  - (iv) your associate made the supply in the course or furtherance of an \*enterprise that your associate \*carried on;
  - (v) your associate had acquired the entire interest, unit or lease through a taxable supply on which the GST was worked out without applying the margin scheme.
- (3A) Subparagraphs (3)(g)(iii) and (iv) do not apply if the acquisition from your \*associate was not by means of a supply by your associate.
- (4) A reference in paragraph (3)(b), (c) or (d) to a supply that was ineligible for the margin scheme is a reference to a supply:
- (a) that was ineligible for the margin scheme because of one or more previous applications of subsection (3); or
  - (b) that would have been ineligible for the margin scheme for that reason if subsection (3) had been in force at all relevant times.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**75-10 The amount of GST on taxable supplies**

- (1) If a \*taxable supply of \*real property is under the \*margin scheme, the amount of GST on the supply is  $\frac{1}{11}$  of the \*margin for the supply.
- (2) Subject to subsection (3) and section 75-11, the *margin* for the supply is the amount by which the \*consideration for the supply exceeds the consideration for your acquisition of the interest, unit or lease in question.
- (3) Subject to section 75-11, if:
  - (a) the circumstances specified in an item in the second column of the table in this subsection apply to the supply; and
  - (b) an \*approved valuation of the freehold interest, \*stratum unit or \*long-term lease, as at the day specified in the corresponding item in the third column of the table, has been made;
the *margin* for the supply is the amount by which the \*consideration for the supply exceeds that valuation of the interest, unit or lease.

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**Use of valuations to work out margins**

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Item	When valuations may be used	Days when valuations are to be made
1	The supplier acquired the interest, unit or lease before 1 July 2000, and items 2, 3 and 4 do not apply.	1 July 2000
2	The supplier acquired the interest, unit or lease before 1 July 2000, but does not become *registered or *required to be registered until after 1 July 2000.	The date of effect of your registration, or the day on which you applied for registration (if it is earlier)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Section 75-10**

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<b>Use of valuations to work out margins</b>		
<b>Item</b>	<b>When valuations may be used</b>	<b>Days when valuations are to be made</b>
2A	The supplier acquired the interest, unit or lease on or after 1 July 2000, but the supply to the supplier: (a) was *GST-free under subsection 38-445(1A); and (b) related to a supply before 1 July 2000, by way of lease, that would have been GST-free under section 38-450 had it been made on or after 1 July 2000.	1 July 2000
3	The supplier is *registered or *required to be registered and has held the interest, unit or lease since before 1 July 2000, and there were improvements on the land or premises in question as at 1 July 2000.	1 July 2000
4	The supplier is the Commonwealth, a State or a Territory and has held the interest, unit or lease since before 1 July 2000, and there were no improvements on the land or premises in question as at 1 July 2000.	The day on which the *taxable supply takes place

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(3A) If:

- (a) the circumstances specified in item 4 in the second column of the table in subsection (3) apply to the supply; and
  - (b) there are improvements on the land or premises in question on the day on which the \*taxable supply takes place;
- the valuation is to be made as if there are no improvements on the land or premises on that day.
- (4) This section has effect despite section 9-70 (which is about the amount of GST on taxable supplies).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Note: Section 9-90 (rounding of amounts of GST) can apply to amounts of GST worked out using this section.

### **75-11 Margins for supplies of real property in particular circumstances**

*Margin for supply of real property acquired from fellow member of GST group*

(1) If:

- (a) you acquired the interest, unit or lease in question at a time when both you and the entity from whom you acquired it were \*members of the same \*GST group; and
- (b) on or after 1 July 2000, there has been a supply (an **earlier supply**) of the interest, unit or lease that occurred at a time when the supplier was not a member of the GST group; and
- (ba) the \*recipient was at that time, or subsequently became, a member of the GST group;

the **margin** for the supply you make is the amount by which the \*consideration for the supply exceeds:

- (c) the consideration for the last such earlier supply, if the supplier and the recipient were not \*associates at that time; or
- (d) the \*GST inclusive market value of the interest, unit or lease at that time, if the 2 entities were associates at that time.

(2) If:

- (a) you acquired the interest, unit or lease in question at a time when both you and the entity from whom you acquired it were \*members of the same \*GST group; and
- (b) subsection (1) does not apply;

the **margin** for the supply you make is the amount by which the \*consideration for the supply exceeds an \*approved valuation of the interest, unit or lease as at 1 July 2000.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Section 75-11

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*Margin for supply of real property acquired from joint venture operator of a GST joint venture*

(2A) If:

- (a) you acquired the interest, unit or lease in question at a time when you were a \*participant in a \*GST joint venture and the entity from whom you acquired it was the \*joint venture operator of the joint venture; and
- (b) you acquired the interest, unit or lease for consumption, use or supply in the course of activities for which the joint venture was entered into; and
- (c) on or after 1 July 2000, there has been a supply (an **earlier supply**) of the interest, unit or lease to the entity from whom you acquired it (whether or not that entity was the joint venture operator of the joint venture at the time of that acquisition);

the **margin** for the supply you make is the amount by which the \*consideration for the supply exceeds:

- (d) the consideration for the last such earlier supply, if the supplier and the \*recipient were not \*associates at the time of the earlier supply; or
- (e) the \*GST inclusive market value of the interest, unit or lease at that time, if the 2 entities were associates at that time.

(2B) If:

- (a) you acquired the interest, unit or lease in question at a time when you were a \*participant in a \*GST joint venture and the entity from whom you acquired it was the \*joint venture operator of the joint venture; and
- (b) you acquired the interest, unit or lease for consumption, use or supply in the course of activities for which the joint venture was entered into; and
- (c) subsection (2A) does not apply;

the **margin** for the supply you make is the amount by which the \*consideration for the supply exceeds an \*approved valuation of the interest, unit or lease as at 1 July 2000.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

*Margin for supply of real property acquired from deceased estate*

- (3) If:
- (a) you acquired the interest, unit or lease in question by \*inheriting it; and
  - (b) none of subsections (1) to (2B) applies; and
  - (c) the entity from whom you inherited the interest, unit or lease (the *deceased*) acquired it before 1 July 2000;
- the *margin* for the supply you make is the amount by which the \*consideration for the supply exceeds:
- (ca) if you know what was the consideration for the supply of the interest, unit or lease to the deceased and you choose to use that consideration to work out the margin for the supply—that consideration; or
  - (d) if paragraph (ca) does not apply and, immediately before the time at which you inherited the interest, unit or lease, the deceased was neither \*registered nor \*required to be registered—an \*approved valuation of the interest, unit or lease as at the latest of:
    - (i) 1 July 2000; or
    - (ii) the day on which you inherited the interest, unit or lease; or
    - (iii) the first day on which you registered or were required to be registered; or
  - (e) if paragraph (ca) does not apply and, immediately before the time at which you inherited the interest, unit or lease, the deceased was registered or required to be registered—an approved valuation of the interest, unit or lease as at the later of:
    - (i) 1 July 2000; or
    - (ii) the first day on which the deceased registered or was required to be registered.
- (4) If:
- (a) you acquired the interest, unit or lease in question by \*inheriting it; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (b) none of subsections (1) to (2B) applies; and
  - (c) the entity from whom you inherited the interest, unit or lease (the *deceased*) acquired it on or after 1 July 2000;
- the *margin* for the supply you make is the amount by which the \*consideration for the supply exceeds:
- (d) if you know what was the consideration for the supply of the interest, unit or lease to the deceased and you choose to use that consideration to work out the margin for the supply—that consideration; or
  - (e) if paragraph (d) does not apply—an \*approved valuation of the interest, unit or lease as at the day on which the deceased acquired it.

*Margin for supply of real property acquired as a GST-free going concern or as GST-free farm land*

(5) If:

- (a) you acquired the interest, unit or lease in question from an entity as, or as part of:
    - (i) a \*supply of a going concern to you that was \*GST-free under Subdivision 38-J; or
    - (ii) a supply to you that was GST-free under Subdivision 38-O; and
  - (b) the entity was \*registered or \*required to be registered, at the time of the acquisition; and
  - (c) none of subsections (1) to (4) applies;
- the *margin* for the supply you make is the amount by which the \*consideration for the supply exceeds:
- (d) if that entity had acquired the interest, unit or lease before 1 July 2000 and on that day was registered or required to be registered:
    - (i) if you choose to apply an \*approved valuation to work out the margin for the supply—an approved valuation of the interest, unit or lease as at 1 July 2000; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (ii) if subparagraph (i) does not apply—the \*GST inclusive market value of the interest, unit or lease as at 1 July 2000; or
- (e) if that entity had acquired the interest, unit or lease on or after 1 July 2000 and had been registered or required to be registered at the time of the acquisition:
  - (i) if the entity's acquisition was for consideration and you choose to apply an approved valuation to work out the margin for the supply—an approved valuation of the interest, unit or lease as at the day on which the entity had acquired it; or
  - (ii) if the entity's acquisition was for consideration and subparagraph (i) does not apply—that consideration; or
  - (iii) if the entity's acquisition was without consideration—the GST inclusive market value of the interest, unit or lease as at the time of the acquisition; or
- (f) if that entity had not been registered or required to be registered at the time of the entity's acquisition of the interest, unit or lease (and paragraph (d) does not apply):
  - (i) if you choose to apply an approved valuation to work out the margin for the supply—an approved valuation of the interest, unit or lease as at the first day on which the entity was registered or required to be registered; or
  - (ii) if subparagraph (i) does not apply—the GST inclusive market value of the interest, unit or lease as at that day.

*Margin for supply of real property acquired from associate*

- (6) If:
  - (a) you acquired the interest, unit or lease in question from an entity who was your \*associate, and who was \*registered or \*required to be registered, at the time of the acquisition; and
  - (b) the acquisition from your associate was without \*consideration; and
  - (c) the supply by your associate was not a \*taxable supply; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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(d) your associate made the supply in the course or furtherance of an \*enterprise that your associate \*carried on; and

(e) none of subsections (1) to (5) applies;

the *margin* for the supply you make is the amount by which the consideration for the supply exceeds:

(f) if your associate had acquired the interest, unit or lease before 1 July 2000 and on that day was registered or required to be registered:

(i) if you choose to apply an \*approved valuation to work out the margin for the supply—an approved valuation of the interest, unit or lease as at 1 July 2000; or

(ii) if subparagraph (i) does not apply—the \*GST inclusive market value of the interest, unit or lease as at 1 July 2000; or

(g) if your associate had acquired the interest, unit or lease on or after 1 July 2000 and had been registered or required to be registered at the time of the acquisition:

(i) if your associate's acquisition was for consideration and you choose to apply an approved valuation to work out the margin for the supply—an approved valuation of the interest, unit or lease as at the day on which your associate had acquired it; or

(ii) if your associate's acquisition was for consideration and subparagraph (i) does not apply—that consideration; or

(iii) if your associate's acquisition was without consideration—the GST inclusive market value of the interest, unit or lease at the time of the acquisition; or

(h) if your associate had not been registered or required to be registered at the time of your associate's acquisition of the interest, unit or lease (and paragraph (f) does not apply):

(i) if you choose to apply an approved valuation to work out the margin for the supply—an approved valuation of the interest, unit or lease as at the first day on which the entity was registered or required to be registered; or

(ii) if subparagraph (i) does not apply—the GST inclusive market value of the interest, unit or lease as at that day.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (6A) Paragraphs (6)(c) and (d) do not apply if the acquisition from your \*associate was not by means of a supply by your associate.
- (6B) To avoid doubt, you cannot be taken, for the purposes of paragraph (5)(f) or (6)(h), to be \*registered or \*required to be registered on a day earlier than 1 July 2000.
- (7) If:
- (a) you acquired the interest, unit or lease in question from an entity who was your \*associate at the time of the acquisition; and
  - (b) none of the other subsections of this section apply;
- the **margin** for the supply you make is the amount by which the \*consideration for the supply exceeds:
- (c) if your acquisition was made before 1 July 2000—an \*approved valuation of the interest, unit or lease as at 1 July 2000; or
  - (d) if your acquisition was made on or after 1 July 2000—the \*GST inclusive market value of the interest, unit or lease at the time of the acquisition.
- (8) Subsection (6) or (7) applies to an acquisition through a supply made by:
- (a) a \*GST branch; or
  - (b) a \*non-profit sub-entity; or
  - (c) a \*government entity of a kind referred to in section 72-95 or 72-100;
- as if Subdivision 72-D affected the operation of that subsection in the same way that it affects the operation of Division 72.

### **75-12 Working out margins to take into account failure to pay full consideration**

In working out the \*margin for a \*taxable supply of \*real property you make (the **later supply**), if:

- (a) you had acquired the interest, unit or lease in question through a supply (the **earlier supply**); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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(b) the \*consideration for:

- (i) if your acquisition was not an acquisition from a \*member of a \*GST group of which you were also a member at the time of the acquisition—the earlier supply; or
- (ii) if your acquisition was such an acquisition—the last supply of the interest, unit or lease at a time when the supplier of that last supply was not, but the \*recipient of that last supply was, a member of the GST group; had not been paid in full at the time of the later supply;

treat the amount of the consideration as having been reduced by the amount of unpaid consideration referred to in paragraph (b).

Note: If you subsequently pay more of the consideration for the earlier supply, you may have a decreasing adjustment: see section 75-27.

**75-13 Working out margins to take into account supplies to associates**

In working out the \*margin for a \*taxable supply of \*real property you make to an entity who is your \*associate at the time of the supply, treat the \*consideration for the supply (whether or not the supply was for consideration) as if it were the same as the \*GST inclusive market value of the interest, unit or lease at the time of the supply.

**75-14 Consideration for acquisition of real property not to include cost of improvements etc.**

- (1) To avoid doubt, in working out the \*consideration for an acquisition for the purposes of applying the \*margin scheme to a \*taxable supply of \*real property, disregard:
  - (a) the cost or value of any other acquisitions that have been made by you, or any work that has been performed, in relation to the real property; and
  - (b) the cost or value of any other acquisitions that are intended to be made by you, or any work that is intended to be

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

performed, in relation to the real property after its acquisition;  
including acquisitions or work connected with bringing into existence the interest, unit or lease supplied.

- (2) This section does not affect what constitutes \*consideration for a purpose not connected with applying the \*margin scheme.

### **75-15 Subdivided real property**

- (1) This section applies if you make a \*taxable supply of \*real property that relates only to part of the land or premises in which you acquired an interest, unit or lease.
- (2) In applying any of sections 75-10 to 75-14 in working out the \*margin for the \*taxable supply, use only the corresponding proportion of the following (as applicable):
- (a) the \*consideration for the acquisition or supply referred to in that section of that interest, unit or lease;
  - (b) an \*approved valuation of that interest, unit or lease as at the day referred to in that section;
  - (c) the \*GST inclusive market value of that interest, unit or lease as at the day or time referred to in that section.

Example 1: If subsection 75-11(2) applies, use only the corresponding proportion of an approved valuation of your interest, unit or lease in the unsubdivided property as at 1 July 2000.

Example 2: If subparagraph 75-11(5)(e)(ii) applies, use only the corresponding proportion of the consideration for the acquisition of the interest, unit or lease in the unsubdivided property by the entity that supplied it to you.

### **75-16 Margins for supplies of real property acquired through several acquisitions**

- (1) If:
- (a) you make a \*taxable supply of \*real property under the \*margin scheme; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (b) the interest, unit or lease in question is one that you acquired through 2 or more acquisitions (*partial acquisitions*); and
- (c) one of the following provisions (a *margin provision*) applies in relation to such a partial acquisition, or would so apply if the partial acquisition had been an acquisition of the whole of the interest, unit or lease:
  - (i) section 75-10;
  - (ii) subsection 75-11(1), (2), (2A), (2B), (3), (4), (5), (6) or (7);

the margin provision applies, in working out the margin for the supply you make, only to the extent that the supply is connected to the partial acquisition.

- (2) The application of a margin provision in relation to one of the partial acquisitions does not prevent that margin provision or a different margin provision applying in relation to another of the partial acquisitions.

**75-20 Supplies under a margin scheme do not give rise to creditable acquisitions**

- (1) An acquisition of a freehold interest in land, a \*stratum unit or a \*long-term lease is not a \*creditable acquisition if the supply of the interest, unit or lease was a \*taxable supply under the \*margin scheme.
- (2) This section has effect despite section 11-5 (which is about what is a creditable acquisition).

**75-22 Increasing adjustment relating to input tax credit entitlement**

- (1) You have an *increasing adjustment* if:
  - (a) you make a \*taxable supply of \*real property under the \*margin scheme; and
  - (b) an acquisition that you made of part of the interest, unit or lease in question was made through a supply that was \*ineligible for the margin scheme; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (c) you were, or are, entitled to an input tax credit for the acquisition.

The amount of the increasing adjustment is an amount equal to the \*previously attributed input tax credit amount for the acquisition.

- (2) You have an **increasing adjustment** if:

- (a) you make a \*taxable supply of \*real property under the \*margin scheme; and
- (b) you acquired all or part of the interest, unit or lease in question by inheriting it; and
- (c) the entity from whom you inherited (the **deceased**) had acquired part of the interest, unit or lease that you inherited through a supply that was \*ineligible for the margin scheme; and
- (d) the deceased was entitled to an input tax credit for that acquisition.

The amount of the increasing adjustment is an amount equal to the \*previously attributed input tax credit amount for the acquisition.

- (3) You have an **increasing adjustment** if:

- (a) you make a \*taxable supply of \*real property under the \*margin scheme; and
- (b) an acquisition that you made of part of the interest, unit or lease in question was made through a supply that was \*ineligible for the margin scheme because of paragraph 75-5(3)(e), (f) or (g); and
- (c) the entity from whom you made the acquisition had been entitled to an input tax credit for its acquisition.

- (4) You have an **increasing adjustment** if:

- (a) you make a \*taxable supply of \*real property under the \*margin scheme; and
- (b) the acquisition that you made of the interest, unit or lease in question:
  - (i) was made through a supply that was \*GST-free under Subdivision 38-J or Subdivision 38-O; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (ii) was made through a supply (other than a taxable supply) from your \*associate without \*consideration and in the course or furtherance of an \*enterprise that your associate \*carried on; or
- (iii) was made from your associate but not by means of a supply from your associate; and
- (c) the entity from whom you acquired the interest, unit or lease:
  - (i) acquired part of the interest, unit or lease through a supply that would have been \*ineligible for the margin scheme if it had been a supply of the whole of the interest, unit or lease; and
  - (ii) had been entitled to an input tax credit for its acquisition; and
  - (iii) was \*registered or \*required to be registered, at the time of your acquisition of the interest, unit or lease.
- (5) The amount of the \*increasing adjustment under subsection (3) or (4) is an amount equal to  $\frac{1}{11}$  of:
  - (a) if you choose to apply an \*approved valuation to work out the amount—an approved valuation of the part of the interest, unit or lease referred to in paragraph (3)(b) or subparagraph (4)(c)(i) as at the day on which the entity had acquired it; or
  - (b) otherwise—the \*consideration for the entity's acquisition of that part of the interest, unit or lease.

**75-25 Adjustments relating to bad debts**

- (1) If:
  - (a) you have an \*adjustment under Division 21 relating to a supply that you made that is a \*taxable supply of \*real property under the \*margin scheme; and
  - (b) the amount of the adjustment would (apart from this section) exceed  $\frac{1}{11}$  of the \*margin for the supply;the amount of the adjustment is  $\frac{1}{11}$  of the margin for the supply.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (2) This section has effect despite sections 21-5 and 21-10 (which are about adjustments for writing off and recovering suppliers' bad debts).

### **75-27 Decreasing adjustment for later payment of consideration**

- (1) You have a *decreasing adjustment* if:
- (a) section 75-12 applied to working out the \*margin for a \*taxable supply of \*real property that you made; and
  - (b) after you made the supply, a further amount of the \*consideration was paid for the earlier supply referred to in that section.
- (2) The amount of the decreasing adjustment is an amount equal to  $\frac{1}{11}$  of the further amount of the \*consideration paid.

### **75-30 Tax invoices not required for supplies of real property under the margin scheme**

- (1) You are not required to issue a \*tax invoice for a \*taxable supply that you make that is solely a supply of \*real property under the \*margin scheme.
- (2) This section has effect despite section 29-70 (which is about the requirement to issue tax invoices).

### **75-35 Approved valuations**

- (1) The Commissioner may, by legislative instrument, determine in writing requirements for making valuations for the purposes of this Division.
- (2) A valuation made in accordance with those requirements is an *approved valuation*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## **Division 78—Insurance**

### **78-1 What this Division is about**

Stamp duty is not included in working out the GST on insurance premiums. Insurers have decreasing adjustments which enable the net GST on insurance to reflect correctly their margins after settlements of claims are taken into account.

Note: Payments and supplies under compulsory third party schemes are dealt with in some cases under this Division and in others under Division 79 or 80.

### **Table of Subdivisions**

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78-B	Insured entities etc.
78-C	Third parties
78-D	Insured entities that are not registered etc.
78-E	Statutory compensation schemes
78-F	Miscellaneous

### **Subdivision 78-A—Insurers**

#### **78-5 GST on insurance premiums is exclusive of stamp duty**

- (1) The \*value of a \*taxable supply of an \*insurance policy is worked out as if the \*price of the supply were reduced by the amount of any stamp duty payable under a \*State law or \*Territory law in respect of the supply.
- (2) This section has effect despite section 9-75 (which is about the value of taxable supplies).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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### 78-10 Decreasing adjustments for settlements of insurance claims

- (1) An insurer has a **decreasing adjustment** if, in settlement of a claim under an \*insurance policy, the insurer makes one or more of the following:
  - (a) a payment of \*money;
  - (b) a payment of \*digital currency;
  - (c) a supply.
- (2) However, this section only applies if:
  - (a) the supply of the \*insurance policy by the insurer was solely or partly a \*taxable supply; and
  - (b) either:
    - (i) there was no entitlement to an input tax credit for the premium paid in relation to the period during which the event giving rise to the claim happened; or
    - (ii) there was an entitlement to such an input tax credit, but the amount of the input tax credit was less than the GST payable by the insurer for the taxable supply; and
  - (c) the insurer settles the claim for a \*creditable purpose; and
  - (d) the insurer is \*registered, or \*required to be registered; and
  - (e) the settlement does not relate solely to one or more \*non-creditable insurance events.
- (2A) In working out the amount of an input tax credit for the purposes of subparagraph (2)(b)(ii), disregard sections 131-40 and 131-50 (which are about amounts of input tax credits under the annual apportionment rules).
- (3) An event is a **non-creditable insurance event** if the supply of an \*insurance policy would not be a \*taxable supply if it were only an insurance policy against loss, damage, injury or risk that relates to that event happening.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**78-15 How to work out the decreasing adjustments**

*No input tax credit for the premium*

- (1) If there was no entitlement to an input tax credit for the premium paid in relation to the period during which the event giving rise to the claim happened, the amount of the decreasing adjustment is  $\frac{1}{11}$  of the \*settlement amount.

*Partial input tax credit for the premium*

- (2) If there was an entitlement to such an input tax credit, the amount of the decreasing adjustment is as follows:

$$\frac{1}{11} \times \text{*Settlement amount} \times \left( 1 - \text{Extent of input tax credit} \right)$$

where:

**extent of input tax credit** is the amount of the input tax credit expressed as a fraction of the GST payable for the supply of the \*insurance policy for the period to which the premium relates.

Note: There is no decreasing adjustment if there is a full input tax credit for the premium paid: see paragraph 78-10(2)(b).

*Non-creditable insurance events*

- (3) The amount of the decreasing adjustment under subsection (1) or (2) is reduced to the extent (if any) that the settlement relates to one or more \*non-creditable insurance events.

*Settlement amounts*

- (4) The **settlement amount** is worked out using this method statement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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*Method statement*

Step 1. Add together:

- (a) the sum of the payments of \*money, or \*digital currency, (if any) made in settlement of the claim; and
- (b) the \*GST inclusive market value of the supplies (if any) made by the insurer in settlement of the claim (other than supplies that would have been \*taxable supplies but for section 78-25).

Step 2. If any payments of excess were made to the insurer under the \*insurance policy in question, subtract from the step 1 amount the sum of all those payments (except to the extent that they are payments of excess to which section 78-18 applies).

Step 3. Multiply the step 1 amount, or (if step 2 applies) the step 2 amount, by the following:

$$\frac{11}{11 - \text{Extent of input tax credit}}$$

where:

*extent of input tax credit* has the meaning given by subsection (2).

**78-18 Increasing adjustments for payments of excess under insurance policies**

- (1) An insurer has an *increasing adjustment* if:
  - (a) there is a payment of an excess to the insurer under an \*insurance policy; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (b) the insurer makes, or has made, payments or supplies in settlement of a claim under the policy; and
  - (c) the insurer makes, or has made, \*creditable acquisitions or \*creditable importations directly for the purpose of settling the claim.
- (2) The amount of the increasing adjustment is  $\frac{1}{11}$  of the amount that represents the extent to which the payment of excess relates to \*creditable acquisitions and \*creditable importations made by the insurer directly for the purpose of settling the claim.
- (3) An insurer has an *increasing adjustment* if:
- (a) there is a payment of an excess to the insurer under an \*insurance policy; and
  - (b) the insurer makes, or has made, \*creditable acquisitions or \*creditable importations directly for the purpose of settling the claim; and
  - (c) the insurer has not made any payments or supplies in settlement of the claim.

The amount of the increasing adjustment is  $\frac{1}{11}$  of the amount of the payment of the excess.

**78-20 Settlements of insurance claims do not give rise to creditable acquisitions**

- (1) If, in settlement of a claim under an \*insurance policy, an insurer makes one or more of the following:
- (a) a payment of \*money;
  - (b) a payment of \*digital currency;
  - (c) a supply;
- the payment or supply is *not* treated as \*consideration for an acquisition made by the insurer.
- (2) This section has effect despite section 11-5 (which is about what is a creditable acquisition).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**78-25 Supplies in settlement of claims are not taxable supplies**

- (1) A supply that an insurer makes in settlement of a claim under an \*insurance policy is not a \*taxable supply.
- (2) This section has effect despite section 9-5 (which is about what are taxable supplies).

**78-30 Acquisitions by insurers in the course of settling claims under non-taxable policies**

- (1) An acquisition is not a \*creditable acquisition if:
  - (a) the insurer makes the acquisition:
    - (i) to the extent that the acquisition is an acquisition of goods—solely for the purpose of supplying the goods in the course of settling a claim under an \*insurance policy; or
    - (ii) otherwise—solely for a purpose directly related to settling a particular claim under an \*insurance policy; and
  - (b) the supply of the insurance policy by the insurer was \*GST-free.
- (2) This section has effect despite section 11-5 (which is about what is a creditable acquisition).

**78-35 Taxable supplies relating to rights of subrogation**

- (1) If, in settlement of a claim made by an insurer in the insurer's exercising of rights of subrogation in respect of an \*insurance policy, an entity that is not insured under the policy makes one or more of the following:
  - (a) a payment of \*money;
  - (b) a payment of \*digital currency;
  - (c) a supply;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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the payment or supply is *not* treated as \*consideration for a supply made by the insurer (whether or not the payment or supply is made to the insurer) or by the entity insured.

- (2) This section has effect despite section 9-15 (which is about consideration).

**78-40 Adjustment events relating to decreasing adjustments under this Division**

- (1) Division 19 applies in relation to a \*decreasing adjustment that an insurer has under this Division as if:
- (a) the adjustment were an input tax credit; and
  - (b) the settlement of the claim to which the adjustment relates were a \*creditable acquisition that the insurer made; and
  - (c) any payment or supply made by another entity, in settlement of a claim made by an insurer in the insurer's exercising of rights of subrogation in respect of the \*insurance policy in question, were a reduction in the \*consideration for the acquisition.
- (2) Paragraph (1)(c) does not apply to a payment by another entity in relation to which an \*increasing adjustment arises under section 80-30 or 80-70 (which are about settlement sharing arrangements).

**78-42 Adjustment events relating to increasing adjustments under section 78-18**

Division 19 applies in relation to an \*increasing adjustment that an insurer has under section 78-18 as if:

- (a) payments of excess under an \*insurance policy to which the adjustment relates were \*consideration for a \*taxable supply that the insurer made; and
- (b) the adjustment were the GST payable on the taxable supply; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (c) any refund of that payment of excess made by the insurer were a reduction in the consideration for the supply.

**Subdivision 78-B—Insured entities etc.**

**78-45 Settlements of insurance claims do not give rise to taxable supplies**

- (1) If, in settlement of a claim under an \*insurance policy, an insurer makes one or more of the following:
  - (a) a payment of \*money;
  - (b) a payment of \*digital currency;
  - (c) a supply;the payment or supply is *not* treated as \*consideration for a supply made by the entity insured, or by any entity (other than the entity insured) that was entitled to an input tax credit for the premium paid for the insurance policy.
- (2) This section has effect despite section 9-15 (which is about consideration).

**78-50 Settlements of insurance claims give rise to taxable supplies if entitlement to input tax credits is not disclosed**

- (1) However, the payment or supply *is* treated as \*consideration for a supply made by an entity if:
  - (a) the entity paid all or a part of the premium, for the \*insurance policy, relating to the period during which the event giving rise to the claim happened; and
  - (b) the entity, or the \*representative member of the \*GST group of which the entity is a \*member, was entitled to an input tax credit for the premium it paid; and
  - (c) the entity:
    - (i) did not, at or before the time a claim was first made under the insurance policy since the last payment of a premium, inform the insurer of the entitlement to an input tax credit for the premium it paid; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

**Section 78-55**

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(ii) in informing the insurer of the entitlement at or before that time, understated its extent; and

(d) the insurance policy was not issued under a \*compulsory third party scheme.

It does not matter whether that entity is the entity insured, or whether the payment or supply is made to that entity or any other entity.

- (2) The extent to which the payment or supply is treated as \*consideration is the extent of the entitlement, or the extent to which the entitlement was understated, as the case requires.
- (2A) In working out, for the purposes of subparagraph (1)(c)(ii) or subsection (2), whether an entitlement to an input tax credit has been understated, or the extent of the understatement, disregard sections 131-40 and 131-50 (which are about amounts of input tax credits under the annual apportionment rules).
- (3) The supply made by the entity is a **taxable supply** whether or not the entity is \*registered, or \*required to be registered, at the time of the settlement or at the time of the payment or supply by the insurer.

Note: Subdivision 78-D deals with how GST applies to the taxable supply if the insured entity is not registered, or required to be registered.

- (4) This section has effect despite section 9-5 (which is about what are taxable supplies) and section 9-17 (which is about consideration).

**78-55 Payments of excess under insurance policies are not consideration for supplies**

- (1) The making of any payment by an entity is not treated as \*consideration for a supply, to the entity or any other entity, to the extent that the payment is the payment of an excess to the insurer under an \*insurance policy.
- (2) This section has effect despite section 9-15 (which is about consideration).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## **78-60 Supplies of goods to insurers in the course of settling claims**

- (1) A supply of goods is not a \*taxable supply if it is *solely* a supply made under an \*insurance policy to an insurer in the course of settling a claim under the policy.
- (2) In working out the *value* of a \*taxable supply that is *partly* a supply of goods made under an \*insurance policy to an insurer in the course of settling a claim under the policy, disregard the \*consideration to the extent that it relates to the supply of those goods.
- (3) This section has effect despite section 9-5 (which is about what are taxable supplies) and section 9-75 (which is about the value of taxable supplies).

## **Subdivision 78-C—Third parties**

### **78-65 Payments etc. to third parties by insurers**

- (1) The making of any payment by an insurer to an entity is not treated as \*consideration for a supply to the insurer by the entity, to the extent that:
  - (a) the payment is made in settlement of a claim under an \*insurance policy under which the entity is not insured; and
  - (b) the payment is to discharge a liability owed to that entity by the entity insured.
- (2) The making of any supply by an insurer to an entity:
  - (a) is not to be treated as a \*taxable supply by the insurer; and
  - (b) is not to be treated as \*consideration for a supply to the insurer by the entity, or any other entity;to the extent that:
  - (c) the supply is made in settlement of a claim under an \*insurance policy under which the entity is not insured; and
  - (d) the supply is to discharge a liability owed to that entity by the entity insured.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (3) This section has effect despite section 9-5 (which is about what are taxable supplies) and section 9-15 (which is about consideration).

**78-70 Payments etc. to third parties by insured entities**

- (1) The making of any payment by an entity to another entity is not to be treated as \*consideration for a supply to the entity by that other entity, to the extent that:
- (a) the payment is to discharge a liability of the entity to that other entity; and
  - (b) the payment is covered by a settlement of a claim under an \*insurance policy under which the entity was insured against that liability.
- (2) The making of any supply by an entity to another entity:
- (a) is not to be treated as a \*taxable supply by the entity; and
  - (b) is not to be treated as \*consideration for a supply to the entity by that other, or any other, entity;
- to the extent that:
- (c) the supply is to discharge a liability of the entity to that other entity; and
  - (d) the supply is covered by a settlement of a claim under an \*insurance policy under which the entity was insured against that liability.
- (3) This section has effect despite section 9-5 (which is about what are taxable supplies) and section 9-15 (which is about consideration).

**78-75 Creditable acquisitions relating to rights of subrogation**

- (1) If, in settlement of a claim made by an insurer in the insurer's exercising of rights of subrogation in respect of an \*insurance policy, an entity that is not insured under the policy makes one or more of the following:
- (a) a payment of \*money;
  - (b) a payment of \*digital currency;
  - (c) a supply;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

the payment or supply is *not* treated as \*consideration for an acquisition made by the entity.

- (2) This section has effect despite section 11-5 (which is about what is a creditable acquisition).

### **Subdivision 78-D—Insured entities that are not registered etc.**

#### **78-80 Net amounts**

- (1) If an entity insured under an \*insurance policy is not \*registered or \*required to be registered, it does not have a \*net amount under Part 2-4 merely because it makes a \*taxable supply under section 78-50.
- (2) This section does not prevent an \*adjustment arising that relates to such a supply, but the entity cannot have a \*decreasing adjustment unless it is \*registered or \*required to be registered.
- (3) This section has effect despite Division 17 (which is about net amounts and adjustments).

#### **78-85 GST returns**

- (1) If, during a month:
- (a) an entity makes any \*taxable supplies under section 78-50; or
  - (b) an entity has any \*increasing adjustments that arise in relation to any such supplies (whether made in that month or a previous month);
- and the entity is not \*registered or \*required to be registered during that month, it must give to the Commissioner a \*GST return, within 21 days after the end of the month, relating to those supplies it made in that month and those adjustments.
- (3) This section has effect despite sections 31-5 and 31-10 (which are about giving GST returns).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Section 78-90

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**78-90 Payments of GST**

- (1) An entity that is not \*registered or \*required to be registered during a particular month must pay to the Commissioner:
  - (a) amounts of \*assessed GST on \*taxable supplies under section 78-50 that it makes during that month; and
  - (b) \*assessed amounts of \*increasing adjustments that it has that arise, during that month, in relation to supplies that are taxable supplies under section 78-50.
- (1A) The entity must pay each amount:
  - (a) on or before the later of:
    - (i) the 21st day after the end of the month; and
    - (ii) the day the Commissioner gives notice of the relevant \*assessment to the entity under section 155-10 in Schedule 1 to the *Taxation Administration Act 1953*; and
  - (b) at the place and in the manner specified by the Commissioner.
- (2) This section has effect despite Division 33 (which is about payments of GST).

**Subdivision 78-E—Statutory compensation schemes**

**78-95 GST on premiums etc. under statutory compensation schemes is exclusive of stamp duty**

- (1) The \*value of a \*taxable supply of membership of, or participation in, a \*statutory compensation scheme is worked out as if the \*price of the supply were reduced by the amount of any stamp duty payable under a \*State law or \*Territory law in respect of the supply.
- (2) This section has effect despite section 9-75 (which is about the value of taxable supplies).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**78-100 Settlements of claims for compensation under statutory compensation schemes**

- (1) Subsection 38-60(1) and this Division apply in relation to a payment or supply made in settlement of a claim for compensation under a \*statutory compensation scheme in the same way that they apply to a payment or supply made in settlement of a claim under an \*insurance policy.

Note: Subsection 38-60(1) provides that certain supplies to insurers are GST-free.

- (2) For the purposes of the application of subsection 38-60(1) and this Division in relation to such a payment or supply:
- (a) the claim for compensation under the scheme is treated as a claim under an \*insurance policy; and
  - (b) the entity operating the scheme is treated as the insurer; and
  - (c) an entity is treated as the entity insured if:
    - (i) the entity's payment of premiums, contributions or similar payments under the scheme, or payment of levy in connection with the scheme; or
    - (ii) the entity's liability to pay premiums, contributions or similar payments under the scheme, or liability to pay levy in connection with the scheme;enabled the claim for compensation to arise; and
  - (ca) those payments that that entity makes or is liable to make are treated as a premium it has paid; and
  - (d) the supply of membership of, or participation in, the scheme is treated as the supply of an \*insurance policy.
- (3) However, if the entity treated as the entity insured:
- (a) is liable to make payments referred to in paragraph (2)(c); and
  - (b) has not made all those payments;
- for the purposes of sections 78-10 and 78-15, the entity's entitlement to an input tax credit for the premium paid is taken to

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Section 78-105

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be what its entitlement would have been if it had made all those payments.

**78-105 Meaning of *statutory compensation scheme***

A *statutory compensation scheme* is a scheme or arrangement:

- (a) that is established by an \*Australian law; and
- (b) under which compensation is payable for particular kinds of injury, loss or damage; and
- (c) that is specified in the regulations, or that is of a kind specified in the regulations;

but does not include a \*compulsory third party scheme.

Note: Divisions 79 and 80 deal with compulsory third party schemes.

**Subdivision 78-F—Miscellaneous**

**78-110 Effect of judgments and court orders**

If:

- (a) an entity makes one or more of the following:
  - (i) a payment of \*money;
  - (ii) a payment of \*digital currency;
  - (iii) a supply;

in compliance with a judgment or order of a court relating to:

- (iv) a claim under an \*insurance policy; or
- (v) a claim by an insurer in exercising rights of subrogation in respect of an insurance policy; or
- (vi) a claim for compensation under a \*statutory compensation scheme; and

- (b) had the payment or supply been made in the absence of such a judgment or order, it would have been a payment or supply made in settlement of the claim;

the payment or supply is treated as having been made in settlement of the claim.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

### **78-115 Exclusion of certain Commonwealth, State or Territory insurance schemes**

This Division (other than sections 78-5 and 78-95) does not apply to an \*insurance policy, or to a payment or supply made in settlement of a claim made under an insurance policy, if:

- (a) the policy was supplied under a scheme for insurance, or a \*statutory compensation scheme, established by an \*Australian law; and
- (b) that scheme is of a kind specified in the regulations.

### **78-118 Portfolio transfers**

- (1) If an insurer (the *first insurer*) enters into an arrangement, in the nature of a portfolio transfer, with another insurer for the other insurer:

- (a) to act as the insurer in relation to an \*insurance policy; or
- (b) to meet the first insurer's liabilities arising under an insurance policy;

subsection 38-60(1) and this Division apply, from the time the arrangement takes effect, as if the other insurer were an insurer in relation to the policy.

Note: Subsection 38-60(1) provides that certain supplies to insurers are GST-free.

- (2) Without limiting subsection (1):
- (a) anything done after that time by the other insurer that, if it had been done by the first insurer, would have been done under the policy is taken, for the purposes of subsection 38-60(1) and this Division, to have been done by the other insurer under the policy; and
  - (b) sections 78-10 and 78-30 apply as if the other insurer were the insurer that supplied the policy; and
  - (c) section 78-18 applies as if the insurer that settles the claim referred to in paragraph 78-18(1)(b) or (3)(b) (as the case requires) has the \*increasing adjustment under that section,

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Section 78-120**

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regardless of which insurer was paid the excess to which the adjustment relates.

**78-120 HII rescue package**

- (1) If a payment of \*money, a supply or both a payment of money and a supply are received by an entity from an \*HII rescue entity as \*consideration for:
- (a) the entity transferring or surrendering rights under an \*insurance policy held with an \*HII company; or
  - (b) the entity transferring or surrendering rights against another entity that is insured under an insurance policy held with an HII company; or
  - (c) the entity transferring or surrendering rights against another entity in relation to a matter in relation to which the entity also has or had rights under an insurance policy held with an HII company;

this Division (other than sections 78-10, 78-15 and 78-40) applies to the payment or supply as if the HII rescue entity made the payment or supply as the insurer in settlement of a claim under the insurance policy.

- (2) In particular:
- (a) this Division (other than sections 78-10, 78-15 and 78-40, subsection 78-50(1) and this section) applies as if:
    - (i) references to an insurer were references to the \*HII rescue entity; and
    - (ii) references to a claim under an \*insurance policy were references to a request or claim to the HII rescue entity for such a payment or supply; and
    - (iii) references to a settlement of such a claim were references to the agreement to make such a payment or supply as consideration for the transfer or surrender; and
  - (b) sections 78-18, 78-42 and 78-55 apply as if references in those sections to payments of excess to the insurer under the policy were references to payments to the HII rescue entity corresponding to such payments of excess; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (c) section 78-30 applies as if references in that section to settling a claim were references to providing the consideration for the transfer or surrender; and
  - (d) section 78-100 applies as if references in that section to a claim for compensation under a \*statutory compensation scheme were references to a claim made to the HHH rescue entity corresponding to a claim for compensation under the scheme.
- (3) This section does not affect the operation of sections 78-10, 78-15 and 78-40.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## **Division 79—Compulsory third party schemes**

### **79-1 What this Division is about**

Operators of compulsory third party schemes have adjustments which enable the net GST on the schemes to reflect correctly their margins after settlements of claims and other payments and supplies under the schemes are taken into account.

The normal application of Division 78 to some insurance policy payments and supplies under the schemes is modified (see Subdivision 79-A). That Division is also extended so that it applies in a modified form to payments and supplies connected with, but not under, insurance policies (see Subdivision 79-B). For other settlements, and payments, provisions similar to Division 78 apply (see Subdivision 79-C). Certain adjustments are worked out using an “applicable average input tax credit fraction” (see Subdivision 79-D).

Note: Division 80 deals with use of settlement sharing arrangements by the operators of compulsory third party schemes.

### **Table of Subdivisions**

79-A	Modified application of Division 78 to certain compulsory third party scheme payments and supplies under insurance policies
79-B	Extension of Division 78 to cover certain compulsory third party scheme payments and supplies connected with, but not under, insurance policies
79-C	Other payments and supplies under compulsory third party schemes
79-D	Compulsory third party scheme decreasing adjustments worked out using applicable average input tax credit fraction

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Subdivision 79-A—Modified application of Division 78 to certain compulsory third party scheme payments and supplies under insurance policies**

**79-5 Application of sections 78-10 and 78-15 (about decreasing adjustments) where premium selection test is satisfied**

- (1) This section applies to a payment or supply if:
  - (a) it is a payment or supply made under a \*compulsory third party scheme; and
  - (b) the payment or supply is made in settlement of a claim under an \*insurance policy; and
  - (c) the \*premium selection test is satisfied; and
  - (d) the payment or supply is not a payment or supply to which section 79-15 (about sole operator elections) applies.

*Premium selection test*

- (2) The ***premium selection test is satisfied*** if the amount of the premium or premiums for the policy resulted from:
  - (a) an \*operator of the \*compulsory third party scheme offering a number of different premium amounts to the entity liable to pay the premium or premiums; and
  - (b) that entity selecting a premium amount:
    - (i) that was offered on the basis that there would be an entitlement to an input tax credit for some or all of the amount; or
    - (ii) that was offered on the basis that there would be no entitlement to an input tax credit for any of the amount.

*Input tax credit entitlement*

- (3) If subparagraph (2)(b)(i) applies, then, for the purposes of sections 78-10 and 78-15:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

Section 79-10

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- (a) there is taken to be an entitlement to an input tax credit for the premium paid in relation to the period during which the event giving rise to the claim happened; and
- (b) if the supply of the insurance policy was solely or partly a \*taxable supply—the amount of the input tax credit is taken to equal the GST payable by the \*operator for the taxable supply.

*No input tax credit entitlement*

- (4) If subparagraph (2)(b)(ii) applies, then, for the purposes of sections 78-10 and 78-15, there is taken to be no entitlement to an input tax credit for the premium paid in relation to the period during which the event giving rise to the claim happened.

**79-10 Adjustment where operator becomes aware that correct input tax credit situation differs from basis on which premium selection test was satisfied**

*Decreasing adjustment*

- (1) If:
  - (a) subsection 79-5(3) applies to a payment or supply; and
  - (b) after the \*premium selection test was satisfied, the \*operator became or becomes aware that there was actually no entitlement to an input tax credit for any of the amount of the premium or premiums paid in relation to the period during which the event giving rise to the claim happened; and
  - (c) if subsection 79-5(4) had applied, the operator would have been entitled to a \*decreasing adjustment (the ***notional decreasing adjustment***);then:
  - (d) the operator has a ***decreasing adjustment*** whose amount is, subject to paragraph (e), equal to the notional decreasing adjustment; and
  - (e) if one or more \*increasing adjustments (each being a ***notional section 78-40 increasing adjustment***) would have arisen,

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

before the decreasing adjustment under paragraph (d) arose, under Division 19 because of section 78-40 applying in relation to the notional decreasing adjustment, the amount of the decreasing adjustment under paragraph (d) is reduced by the sum of the notional section 78-40 increasing adjustments; and

- (f) for the purposes of applying section 78-40 after the decreasing adjustment arises under this subsection, that decreasing adjustment is taken to arise under Division 78.

*Increasing adjustment*

(2) If:

- (a) subsection 79-5(4) applies to a payment or supply; and  
(b) as a result, the \*operator has a \*decreasing adjustment (the original decreasing adjustment); and  
(c) after the \*premium selection test was satisfied, the operator became or becomes aware that there actually was an entitlement to an input tax credit for some or all of the amount of the premium or premiums paid in relation to the period during which the event giving rise to the claim happened;

then:

- (d) the operator has an **increasing adjustment** whose amount is, subject to paragraph (e), equal to the original decreasing adjustment; and  
(e) if one or more \*increasing adjustments (each being a **section 78-40 increasing adjustment**) arose, before the increasing adjustment under paragraph (d) arose, under Division 19 because of section 78-40 applying in relation to the original decreasing adjustment, the amount of the increasing adjustment under paragraph (d) is reduced by the sum of the section 78-40 increasing adjustments; and  
(f) after the increasing adjustment arises under paragraph (d), no adjustment arises under Division 19 because of section 78-40 applying in relation to the original decreasing adjustment.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Section 79-15

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**79-15 Application of sections 78-10 and 78-15 (about decreasing adjustments) where sole operator election to use average input tax credit entitlement**

- (1) This section applies to a payment or supply if:
  - (a) it is a payment or supply made under a \*compulsory third party scheme; and
  - (b) the payment or supply is made in settlement of a claim under an \*insurance policy; and
  - (c) there is only one \*operator who issues insurance policies under the scheme; and
  - (d) assuming the requirements of paragraph 78-10(2)(b) were satisfied, the operator would have a \*decreasing adjustment under section 78-10 in respect of the payment or supply; and
  - (e) an election under subsection (4) is in force during the \*financial year in which the payment or supply is made.
- (2) For the purposes of section 78-10, the \*operator has a \*decreasing adjustment under that section in relation to the payment or supply.
- (3) Section 78-15 does not apply to the \*decreasing adjustment, but its amount is instead worked out using the applicable \*average input tax credit fraction (see section 79-95).
- (4) The \*operator may, in writing, elect that, from the start of a specified \*financial year, any \*decreasing adjustment in relation to all payments or supplies:
  - (a) that are made during the financial year; and
  - (b) to which paragraphs (1)(a), (b), (c) and (d) apply;are to be worked out using the applicable \*average input tax credit fraction.
- (5) Subject to subsection (6), the election must be made before the start of the specified \*financial year.
- (6) Subsection (5) does not apply if the election specifies the \*financial year beginning on 1 July 2003 and is made before the end of 30 days after the day on which this section commences.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (7) The election is in force during the specified \*financial year and every later financial year, other than one that begins after a financial year in which the election is revoked.

**79-20 Extension of various references in Division 78 to rights of subrogation to cover other rights of recovery**

*Payments or supplies in settlement of claims*

- (1) For the purposes of sections 78-35, 78-40 and 78-75, a reference in those sections to a payment or supply made by an entity in settlement of a claim by an insurer in exercising the insurer's rights of subrogation in respect of an \*insurance policy includes a reference to a payment or supply that satisfies the following requirements:
- (a) the payment or supply is made by an entity in settlement of a claim by an \*operator of a \*compulsory third party scheme;
  - (b) the claim was made by the operator in exercise of the operator's rights to recover in respect of a payment or supply made under the compulsory third party scheme;
  - (c) the claim was not made under an \*insurance policy that is a policy of reinsurance.

*Payments or supplies in compliance with court judgments etc. relating to claims*

- (2) For the purposes of section 78-110, a reference in that section to a payment or supply made by an entity in compliance with a judgment or order of a court relating to a claim made by an insurer in exercising the insurer's rights of subrogation in respect of an \*insurance policy includes a reference to a payment or supply that satisfies the following requirements:
- (a) the payment or supply is made by an entity in compliance with a judgment or order of a court relating to a claim made by an \*operator of a \*compulsory third party scheme;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

Section 79-25

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- (b) the claim was made by the \*operator in exercise of the operator's rights to recover a payment or supply made under the \*compulsory third party scheme;
- (c) the claim was not made under an insurance policy that is a policy of reinsurance.

**Subdivision 79-B—Extension of Division 78 to cover certain compulsory third party scheme payments and supplies connected with, but not under, insurance policies**

**79-25 Meaning of *CTP hybrid payment or supply***

- (1) Subject to this section, a payment or supply is a ***CTP hybrid payment or supply*** if:
  - (a) it is made in settlement of a claim for compensation under a \*compulsory third party scheme; and
  - (b) the claim would not have been made but for an \*insurance policy issued under the scheme; and
  - (c) the claim was not made under the insurance policy.
- (2) A payment or supply is not a ***CTP hybrid payment or supply*** if:
  - (a) when the payment or supply is made, the entity that paid the premium for the \*insurance policy cannot be located; and
  - (b) that entity did not, at or before the time the \*operator making the payment or supply was first made aware of the circumstances to which the payment or supply relates, inform the operator of the entitlement to an input tax credit for the CTP premium it paid; and
  - (c) the \*premium selection test was not satisfied in relation to the insurance policy.
- (2A) Subsection (2) does not apply if the cover under the \*insurance policy commenced before 1 July 2003 (whether or not all or part of the premium on the policy was paid before that day).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (3) A payment or supply is not a **CTP hybrid payment or supply** if the \*operator making the payment or supply was required to do so by law because of the bankruptcy or insolvency of another operator who is an insurer.

### **79-30 Application of Division 78**

- (1) Division 78 (other than section 78-100), as modified by Subdivision 79-A, applies in relation to a \*CTP hybrid payment or supply as if it were a payment or supply made in settlement of a claim under the \*insurance policy mentioned in paragraph 79-25(1)(b).
- (2) This section does not prevent Division 78 applying to a payment or supply under a \*compulsory third party scheme if the payment or supply is made in settlement of a claim under an \*insurance policy.

### **Subdivision 79-C—Other payments and supplies under compulsory third party schemes**

#### **79-35 Meaning of *CTP compensation or ancillary payment or supply* etc.**

##### *Meaning of CTP compensation or ancillary payment or supply*

- (1) A payment or supply is a **CTP compensation or ancillary payment or supply** if it is a \*CTP compensation payment or supply or a \*CTP ancillary payment or supply.

##### *Meaning of CTP compensation payment or supply*

- (2) A payment or supply is a **CTP compensation payment or supply** if
- (a) it is a payment or supply made under a \*compulsory third party scheme; and
  - (b) it is a payment or supply made in settlement of a claim for compensation under the scheme; and
  - (c) it is not the case that the \*operator making the payment or supply was required to do so by law because of the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Part 4-2** Special rules mainly about supplies and acquisitions

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bankruptcy or insolvency of another operator who is an insurer; and

- (d) Division 78 does not apply in relation to the payment or supply; and
- (e) the payment or supply is not a \*CTP dual premium or election payment or supply or a \*CTP hybrid payment or supply.

*Meaning of CTP ancillary payment or supply*

- (3) A payment or supply is a **CTP ancillary payment or supply** if:
  - (a) the payment or supply is made under a \*compulsory third party scheme; and
  - (b) the payment or supply is of a kind specified in the regulations; and
  - (c) it is not the case that the \*operator making the payment or supply was required to do so by law because of the bankruptcy or insolvency of another operator who is an insurer; and
  - (d) Division 78 does not apply in relation to the payment or supply; and
  - (e) the payment or supply is not a \*CTP dual premium or election payment or supply or a \*CTP hybrid payment or supply; and
  - (f) the payment or supply is not made in settlement of a claim for compensation under the scheme; and
  - (g) the payment or supply is not \*consideration for a \*creditable acquisition.

**79-40 GST on CTP premiums is exclusive of stamp duty**

- (1) The \*value of a \*taxable supply for which the \*consideration includes an amount of \*CTP premium is worked out as if the \*price of the supply were reduced by the amount of any stamp duty payable under a \*State law or \*Territory law in respect of the supply.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (2) This section has effect despite section 9-75 (which is about the value of taxable supplies).

#### **79-45 Exclusion of certain compulsory third party schemes**

This Subdivision (other than section 79-40) does not apply to a \*compulsory third party scheme under which \*CTP compensation or ancillary payments or supplies are made, or to a \*CTP compensation or ancillary payment or supply, if the compulsory third party scheme is of a kind specified in the regulations.

#### **79-50 Decreasing adjustments for CTP compensation or ancillary payments or supplies**

- (1) An \*operator of a \*compulsory third party scheme has a **decreasing adjustment** if the operator makes a \*CTP compensation or ancillary payment or supply under the scheme.
- (2) However, this section only applies if:
- (a) the payments of \*CTP premium to the \*operator that have been or are required to be made under the scheme are, or would be, \*consideration for a \*taxable supply; and
  - (b) the \*operator is \*registered or \*required to be registered.
- (3) The \*decreasing adjustment in relation to the payment or supply is worked out using the applicable \*average input tax credit fraction (see section 79-95).

#### **79-55 Increasing adjustments for payments of excess etc. under compulsory third party schemes**

- (1) An \*operator of a \*compulsory third party scheme has an **increasing adjustment** if:
- (a) there is a payment of an excess to the operator under the scheme; and
  - (b) the payment relates to a \*CTP compensation payment or supply that the operator makes or has made; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

Section 79-60

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- (c) the operator makes, or has made, \*creditable acquisitions or \*creditable importations directly for the purpose of making the CTP compensation payment or supply.
- (2) The amount of the increasing adjustment is  $\frac{1}{11}$  of the amount that represents the extent to which the payment of excess relates to \*creditable acquisitions or \*creditable importations made by the \*operator directly for the purpose of making the \*CTP compensation payment or supply.
- (3) An \*operator of a \*compulsory third party scheme has an **increasing adjustment** if:
  - (a) there is a payment of an excess to the operator under the scheme; and
  - (b) the operator makes, or has made, \*creditable acquisitions or \*creditable importations directly for the purpose of making a \*CTP compensation payment or supply to which the payment of excess would relate; and
  - (c) the operator has not made any CTP compensation payment or supply to which the payment of excess relates.

The amount of the increasing adjustment is  $\frac{1}{11}$  of the amount of the payment of excess.

**79-60 Effect of settlements and payments under compulsory third party schemes**

- (1) If an \*operator of a \*compulsory third party scheme makes a payment under the scheme, it is *not* treated as \*consideration:
  - (a) for an acquisition made by the operator; or
  - (b) for a supply made to the operator by the entity to whom the payment was made;to the extent that the payment is a \*CTP compensation or ancillary payment or supply.
- (2) If an \*operator of a \*compulsory third party scheme makes a supply under the scheme:
  - (a) it is not a \*taxable supply; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (b) it is *not* treated as \*consideration for an acquisition made by the operator; and
  - (c) it is *not* treated as \*consideration for a supply made to the operator by the entity to whom the supply was made; to the extent that the supply is a \*CTP compensation or ancillary payment or supply.
- (3) This section has effect despite section 9-5 (which is about what are taxable supplies), section 9-15 (which is about consideration) and section 11-5 (which is about what is a creditable acquisition).

### **79-65 Taxable supplies relating to recovery by operators of compulsory third party schemes**

- (1) If:
- (a) an \*operator of a \*compulsory third party scheme has made a claim in relation to a \*CTP compensation or ancillary payment or supply; and
  - (b) the operator's claim is made in exercising rights to recover in respect of that payment or supply; and
  - (c) an entity makes one or more of the following in settlement of the operator's claim:
    - (i) a payment of \*money;
    - (ii) a payment of \*digital currency;
    - (iii) a supply;
- the payment or supply mentioned in paragraph (c) is *not* treated as \*consideration for a supply made by the operator (whether or not the payment or supply is made to the operator), or for an acquisition made by the entity making the payment or supply (or payment and supply).
- (2) This section has effect despite section 9-15 (which is about consideration) and section 11-5 (which is about what is a creditable acquisition).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Section 79-70

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**79-70 Adjustment events relating to decreasing adjustments for operators of compulsory third party schemes**

- (1) Division 19 applies in relation to a \*decreasing adjustment that an \*operator of a \*compulsory third party scheme has under section 79-50 as if:
  - (a) the adjustment were an input tax credit; and
  - (b) either:
    - (i) if the adjustment relates to a \*CTP compensation payment or supply—the settlement of the claim to which the adjustment relates were a \*creditable acquisition that the operator made; or
    - (ii) if the adjustment relates to a \*CTP ancillary payment or supply—the operator had made a creditable acquisition for which the payment or supply was the \*consideration; and
  - (c) any payment or supply made by another entity, in settlement of a claim made by the operator in exercising rights to recover from the other entity in respect of the settlement mentioned in subparagraph (b)(i) or the payment or supply mentioned in subparagraph (b)(ii), were a reduction in the consideration for the acquisition.
- (2) Paragraph (1)(c) does not apply to a payment by another entity in relation to which an \*increasing adjustment arises under section 80-30 or 80-70 (which are about settlement sharing arrangements).
- (3) This section does not apply in relation to a payment or supply that the operator receives in settlement of a claim under an \*insurance policy that the operator entered into, as the entity insured, in relation to any liability to make a \*CTP compensation or ancillary payment or supply.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**79-75 Adjustment events relating to increasing adjustments under section 79-55**

Division 19 applies in relation to an \*increasing adjustment that an \*operator of a \*compulsory third party scheme has under section 79-55 as if:

- (a) payments of excess to which the adjustment relates were \*consideration for a \*taxable supply that the operator made; and
- (b) the adjustment were the GST payable on the taxable supply; and
- (c) any refunds made by the operator of any of those payments of excess were reductions in the consideration for the supply.

**79-80 Payments of excess under compulsory third party schemes are not consideration for supplies**

- (1) The making of any payment by an entity is *not* treated as \*consideration for a supply, to the entity or any other entity, to the extent that the payment is the payment of an excess to an \*operator of a \*compulsory third party scheme.
- (2) This section has effect despite section 9-15 (which is about consideration).

**79-85 Supplies of goods to operators in the course of settling claims**

- (1) A supply of goods is not a \*taxable supply if it is *solely* a supply made under a \*compulsory third party scheme to an \*operator of the scheme in the course of settling a claim for compensation made under the scheme.
- (2) In working out the *value* of a \*taxable supply that is *partly* a supply of goods made under a \*compulsory third party scheme to an \*operator of the scheme in the course of settling a claim for compensation made under the scheme, disregard the \*consideration to the extent that it relates to the supply of those goods.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

**Chapter 4** The special rules

**Part 4-2** Special rules mainly about supplies and acquisitions

**Division 79** Compulsory third party schemes

**Section 79-90**

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- (3) This section has effect despite section 9-5 (which is about what are taxable supplies) and section 9-75 (which is about the value of taxable supplies).

**79-90 Effect of judgments and court orders**

(1) If:

- (a) a judgment or order of a court relates to a claim for compensation under a \*compulsory third party scheme; and
- (aa) an entity makes one or more of the following in compliance with the judgment or order:
  - (i) a payment of \*money;
  - (ii) a payment of \*digital currency;
  - (iii) a supply; and
- (b) had the payment or supply been made in the absence of such a judgment or order, it would have been a \*CTP compensation payment or supply or a CTP ancillary payment or supply;

the payment or supply is treated as having been a CTP compensation payment or supply or a CTP ancillary payment or supply.

(2) If:

- (a) a judgment or order of a court relates to a claim by an \*operator of a compulsory third party scheme exercising rights to recover from an entity in respect of a settlement made under the scheme; and
- (aa) an entity makes one or more of the following in compliance with the judgment or order:
  - (i) a payment of \*money;
  - (ii) a payment of \*digital currency;
  - (iii) a supply; and
- (b) had the payment or supply been made in the absence of such a judgment or order, it would have been a settlement of a claim made in exercising rights to recover from an entity in respect of a settlement made under the scheme;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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the payment or supply is treated as having been made in settlement of the operator's claim made in exercising those rights.

**Subdivision 79-D—Compulsory third party scheme decreasing adjustments worked out using applicable average input tax credit fraction**

**79-95 How to work out decreasing adjustments using the applicable average input tax credit fraction**

- (1) If an \*operator of a \*compulsory third party scheme has a \*decreasing adjustment in relation to a payment or supply that is to be worked out using the applicable \*average input tax credit fraction, the amount of the \*decreasing adjustment is as follows.
- (2) The amount is worked out using the formula:

$$\frac{1}{11} \times \text{Payment or supply amount} \times \left( 1 - \frac{\text{Applicable average input tax credit fraction}}{\text{Applicable average input tax credit fraction}} \right)$$

where:

**applicable average input tax credit fraction** is the \*average input tax credit fraction for the \*compulsory third party scheme concerned for the \*financial year in which:

- (a) if the payment or supply is a \*CTP compensation payment or supply—the accident or other incident to which the claim relates happened; or
- (b) if the payment or supply is a \*CTP ancillary payment or supply—the payment or supply was made; or
- (c) if the payment or supply is a payment or supply to which section 79-15 applies—the accident or other incident to which the claim relates happened.

**payment or supply amount** is the amount worked out in accordance with subsection (3).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

**Section 79-95**

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*Payment or supply amount*

- (3) The payment or supply amount mentioned in subsection (2) is worked out using this method statement.

*Method statement*

Step 1. Add together:

- (a) the sum of the payments of \*money, or \*digital currency, (if any) that are included in the payment or supply; and
- (b) the \*GST inclusive market value of the supplies (if any) made by the \*operator that are included in the payment or supply (other than supplies that would have been \*taxable supplies but for section 78-25 or 79-60).

Step 2. If, in relation to the payment or supply, any payments of an excess were made to the \*operator, subtract from the step 1 amount the sum of all those payments (except to the extent that they are payments of excess to which section 78-18 or 79-55 applies).

Step 3. Except where the payment or supply is a \*CTP ancillary payment or supply, multiply the step 1 amount, or (if step 2 applies) the step 2 amount, by the following:

$$\frac{11}{11 - \text{Applicable average input tax credit fraction}}$$

where:

***applicable average input tax credit fraction*** has the meaning given by subsection (2).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

*Reduction for non-creditable insurance events*

- (4) The amount of the \*decreasing adjustment under subsection (1) is reduced to the extent (if any) that the payment or supply relates to one or more \*non-creditable insurance events.

**79-100 Meaning of average input tax credit fraction**

- (1) Except where subsection (7) applies, the **average input tax credit fraction** for a \*compulsory third party scheme for a \*financial year is:
- (a) if paragraph (b) does not apply—the same fraction as the average input tax credit fraction for the scheme for the preceding financial year; or
  - (b) if, under subsection (3), the Minister determines the average input tax credit fraction for the scheme for the financial year—that fraction.

Note: The average input tax credit fraction for financial years beginning on or before 1 July 2006 was worked out under this section as in force before the commencement of item 146 of Schedule 3 to the *Treasury Laws Amendment (2019 Measures No. 3) Act 2020*.

*Minister to use statistical information to determine whether average input tax credit fraction is to be varied*

- (3) As soon as practicable after the beginning of each of the following \*financial years (a **determination year**):
- (a) the financial year that begins on 1 July 2006;
  - (b) the financial years that begin on each 1 July that occurs 3 years, or a multiple of 3 years, after 1 July 2006;
- the Minister must, for each \*compulsory third party scheme:
- (c) work out business vehicle use fractions (see subsection (4)) using each set of statistical information, relating to business and total use of vehicles in the State or Territory in which the scheme operates, published by the Australian Bureau of Statistics during the 3 financial years before the determination year; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

Section 79-100

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- (d) work out the average of those fractions (the ***new fraction***); and
- (e) if the Minister considers the new fraction is significantly different from the average input tax credit fraction that would, disregarding this subsection, apply under paragraph (1)(a) for the scheme for the financial year (the ***operative year***) following the determination year—by legislative instrument, determine that the new fraction is to be the average input tax credit fraction for the scheme for the operative year.

*Business vehicle use fraction*

- (4) The business vehicle use fraction is the fraction of total vehicle use, in the State or Territory in which the \*compulsory third party scheme operates, represented by business vehicle use.

*Publication of revised statistical information*

- (5) To avoid doubt, if, after publishing statistical information relating to business and total use of vehicles in a State or Territory, the Australian Bureau of Statistics publishes a revised or replacement version of that statistical information, that revision or replacement is to be disregarded for the purposes of this section.

*Exception*

- (7) If:
  - (a) this section is being applied in working out the amount of a \*decreasing adjustment that arises under section 79-15 (about sole operator elections); and
  - (b) the cover under the \*insurance policy concerned commenced before 1 July 2003;the ***average input tax credit fraction*** for the \*compulsory third party scheme concerned is nil for all \*financial years beginning on or after 1 July 2000.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## Division 80—Settlement sharing arrangements

### 80-1 What this Division is about

A series of adjustments arise if, under an arrangement, an operator of a compulsory third party scheme settles a claim, arising from one or more accidents or other incidents, covered by the arrangement and other operators are obliged to contribute payments to that operator in respect of the settlement.

### Table of Subdivisions

- 80-A Insurance policy settlement sharing arrangements
- 80-B Nominal defendant settlement sharing arrangements
- 80-C Hybrid settlement sharing arrangements

### Subdivision 80-A—Insurance policy settlement sharing arrangements

#### 80-5 Meaning of *insurance policy settlement sharing arrangement* etc.

##### *Meaning of insurance policy settlement sharing arrangement*

- (1) An *insurance policy settlement sharing arrangement* is an arrangement:
  - (a) that relates to an accident or other incident or 2 or more related accidents or other incidents; and
  - (b) to which the parties are the \*operators of a \*compulsory third party scheme or schemes who have issued \*insurance policies to persons involved in the accidents or incidents; and
  - (c) under which:
    - (i) one party (the *managing operator*) is to make one or more payments or supplies in settlement of a claim, under the compulsory third party scheme or one of the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

Section 80-10

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compulsory third party schemes, relating to the accidents or incidents; and

- (ii) each other party (a *contributing operator*) is to make a payment to the \*managing operator in respect of that operator settling the claim.

*Meaning of managing operator's payment or supply*

- (2) If a payment or supply mentioned in subparagraph (1)(c)(i) is not a \*CTP ancillary payment or supply, it is a *managing operator's payment or supply*.

*Meaning of contributing operator's payment*

- (3) A payment mentioned in subparagraph (1)(c)(ii), to the extent that it is not a fee to the \*managing operator for managing the process of making settlements under the arrangement, is a *contributing operator's payment*.

**80-10 Effect of becoming parties to industry deeds or entering into settlement sharing arrangements**

- (1) An \*operator of a \*compulsory third party scheme does not make a \*taxable supply by:
  - (a) entering into, or becoming a party to, an \*insurance policy settlement sharing arrangement; or
  - (b) becoming a party to a deed created by or under a \*State law or a \*Territory law establishing a \*compulsory third party scheme, that provides for an insurance policy settlement sharing arrangement.
- (2) This section has effect despite section 9-5 (which is about what are taxable supplies).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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### **80-15 Effect of contributing operator's payment**

- (1) A \*contributing operator's payment is *not* treated as \*consideration for a supply by the \*managing operator, or for an acquisition by the \*contributing operator.
- (2) This section has effect despite section 9-15 (which is about consideration) and section 11-5 (which is about what is a creditable acquisition).

### **80-20 Managing operator's payments or supplies**

- (1) For the purposes of Divisions 78 and 79, a \*managing operator's payment or supply is treated as follows.
- (2) If the \*managing operator is a party to the \*insurance policy settlement sharing arrangement because it issued only one \*insurance policy, the \*managing operator's payment or supply is treated as a payment or supply, made by the managing operator, in settlement of a claim relating to the accidents or incidents, under that insurance policy.
- (3) If the \*managing operator is a party to the \*insurance policy settlement sharing arrangement because it issued 2 or more \*insurance policies, the \*managing operator's payment or supply is treated as a payment or supply made by the managing operator, in settlement of a claim relating to the accidents or incidents, under the insurance policies, and for that purpose is divided among the policies in equal proportions.

Example: 3 vehicles are involved in an accident, 2 of which are covered by insurance policies issued by the managing operator and the other by a policy issued by a contributing operator. The managing operator makes a payment in settlement of a claim by an insured person in respect of the accident.

For the purposes of Division 78 or 79, half of the payment will be treated as being made under each of the policies issued by the managing operator.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Section 80-25

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**80-25 Contributing operator's payment**

- (1) For the purposes of Divisions 78 and 79, a \*contributing operator's payment is treated as follows.
- (2) If the \*contributing operator is a party to the \*insurance policy settlement sharing arrangement because it issued only one \*insurance policy, the \*contributing operator's payment is treated as a payment or supply, made by the contributing operator, in settlement of a claim relating to the accidents or incidents, under that insurance policy.

Example: Assume the same facts as in the example in section 80-20. The contributing operator who issued 1 of the 3 policies covering the vehicles in the accident makes a payment to the managing operator.

For the purposes of Division 78 or 79, the payment (except to the extent that it represents a managing operator's fee) will be treated as being made by the contributing operator under the insurance policy that it issued.

- (3) If the \*contributing operator is a party to the \*insurance policy settlement sharing arrangement because it issued 2 or more \*insurance policies, the \*contributing operator's payment is treated as a payment or supply, made by the contributing operator, in settlement of a claim relating to the accidents or incidents, under the insurance policies, and for that purpose is divided among the policies in equal proportions.

**80-30 Managing operator's increasing adjustment where contributing operator's payment**

- (1) If:
  - (a) a \*contributing operator's payment is made; and
  - (b) as a result of section 80-20, there was a \*decreasing adjustment for the \*managing operator under Division 78 or 79 in relation to the \*managing operator's payment or supply;there is an **increasing adjustment** for the managing operator of the following amount:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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$$\frac{\text{*Contributing operator's payment}}{\text{Managing operator's settlement amount (see subsection (2))}} \times \text{*Decreasing adjustment}$$

*Managing operator's settlement amount*

- (2) The **managing operator's settlement amount** mentioned in subsection (1) is worked out using this method statement.

*Method statement*

Step 1. Add together:

- (a) the sum of the payments of \*money, or \*digital currency, (if any) that are included in the \*managing operator's payment or supply; and
- (b) the \*GST inclusive market value of the supplies (if any) that are included in the \*managing operator's payment or supply (other than supplies that would have been \*taxable supplies but for section 78-25 or 79-60).

Step 2. If, in relation to the \*managing operator's payment or supply, any payments of an excess were made to the \*managing operator, subtract from the step 1 amount the sum of all those payments (except to the extent that they are payments of excess to which section 78-18 or 79-55 applies).

Example: Assume the same facts as in the examples in sections 80-20 and 80-25. Assume also that, as a result of section 80-20, there was a decreasing adjustment under Division 78 or 79 for the managing operator's payment or supply.

The managing operator has an increasing adjustment. It equals the part of the decreasing adjustment that is attributable to the managing operator's payment or supply that was repaid by the contributing operator's contribution.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

Section 80-35

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**80-35 Adjustment events relating to managing operator's payment or supply**

Division 19 applies in relation to an \*increasing adjustment that the \*managing operator has under section 80-30 as a result of the making of a \*managing operator's payment or supply as if:

- (a) the \*contributing operator's payment were \*consideration for a \*taxable supply made by the managing operator; and
- (b) the adjustment were the GST payable on the taxable supply; and
- (c) any changes made to those payments were a change in the consideration for the supply.

**Subdivision 80-B—Nominal defendant settlement sharing arrangements**

**80-40 Meaning of *nominal defendant settlement sharing arrangement* etc.**

*Meaning of nominal defendant settlement sharing arrangement*

- (1) A ***nominal defendant settlement sharing arrangement*** is an arrangement:
  - (a) that relates to an accident or other incident or 2 or more related accidents or other incidents; and
  - (b) to which the parties are \*operators of a \*compulsory third party scheme, where they are parties because the person involved in the accidents or incidents was not covered under an \*insurance policy; and
  - (c) under which:
    - (i) one party (the ***managing operator***) is to make one or more payments or supplies in settlement of a claim, under the compulsory third party scheme, relating to the accidents or incidents; and
    - (ii) the other party, or one or more of the other parties, (each being a ***contributing operator***) is to make a

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

payment to the \*managing operator in respect of that operator settling the claim.

*Meaning of managing operator's payment or supply*

- (2) If a payment or supply mentioned in subparagraph (1)(c)(i) is not a \*CTP ancillary payment or supply, it is a *managing operator's payment or supply*.

*Meaning of contributing operator's payment*

- (3) A payment mentioned in subparagraph (1)(c)(ii), to the extent that it is not a fee to the \*managing operator for managing the process of making settlements under the arrangement, is a *contributing operator's payment*.

**80-45 Nominal defendant settlement sharing arrangements to which this Subdivision applies**

This Subdivision applies to a \*nominal defendant settlement sharing arrangement if its \*managing operator is not a party to a \*hybrid settlement sharing arrangement relating to the same accidents or incidents.

**80-50 Effect of becoming parties to industry deeds or entering into nominal defendant settlement sharing arrangements**

- (1) An \*operator of a \*compulsory third party scheme does not make a \*taxable supply by:
- (a) entering into, or becoming a party to, a \*nominal defendant settlement sharing arrangement to which this Subdivision applies; or
  - (b) becoming a party to a deed created by or under a \*State law or a \*Territory law establishing a compulsory third party scheme, that provides for a nominal defendant settlement sharing arrangement to which this Subdivision applies.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Section 80-55

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- (2) This section has effect despite section 9-5 (which is about what are taxable supplies).

**80-55 Effect of contributing operator's payment**

- (1) A \*contributing operator's payment is *not* treated as \*consideration for a supply by the \*managing operator, or for an acquisition by the \*contributing operator.
- (2) This section has effect despite section 9-15 (which is about consideration) and section 11-5 (which is about what is a creditable acquisition).

**80-60 Managing operator's payment or supply**

For the purposes of Division 79, a \*managing operator's payment or supply is treated as a \*CTP compensation payment or supply.

**80-65 Contributing operator's payment**

For the purposes of Division 79, a \*contributing operator's payment is treated as a \*CTP compensation payment or supply.

**80-70 Managing operator's increasing adjustment where contributing operator's payment**

- (1) If:
- (a) a \*contributing operator's payment is made; and
- (b) as a result of section 80-60, there was a \*decreasing adjustment for the \*managing operator under Division 79 in relation to the \*managing operator's payment or supply;
- there is an *increasing adjustment* for the managing operator of the following amount:

$$\frac{\text{*Contributing operator's payment}}{\text{Managing operator's settlement amount (see subsection (2))}} \times \text{*Decreasing adjustment}$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

*Managing operator's settlement amount*

- (2) The **managing operator's settlement amount** mentioned in subsection (1) is worked out using this method statement.

*Method statement*

Step 1. Add together:

- (a) the sum of the payments of \*money, or \*digital currency, (if any) that are included in the \*managing operator's payment or supply; and
- (b) the \*GST inclusive market value of the supplies (if any) that are included in the \*managing operator's payment or supply (other than supplies that would have been \*taxable supplies but for section 78-25 or 79-60).

Step 2. If, in relation to the \*managing operator's payment or supply, any payments of an excess were made to the \*managing operator, subtract from the step 1 amount the sum of all those payments (except to the extent that they are payments of excess to which section 78-18 or 79-55 applies).

**80-75 Adjustment events relating to managing operator's payment or supply**

Division 19 applies in relation to an \*increasing adjustment that the \*managing operator has under section 80-70 as a result of the making of a \*managing operator's payment or supply as if:

- (a) the \*contributing operator's payment were \*consideration for a \*taxable supply made by the managing operator; and
- (b) the adjustment were the GST payable on the taxable supply; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

Section 80-80

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- (c) any changes made to those payments were a change in the consideration for the supply.

**Subdivision 80-C—Hybrid settlement sharing arrangements**

**80-80 Meaning of *hybrid settlement sharing arrangement* etc.**

*Meaning of hybrid settlement sharing arrangement*

- (1) A *hybrid settlement sharing arrangement* is an arrangement:
  - (a) that relates to an accident or other incident or 2 or more related accidents or other incidents; and
  - (b) to which the parties are:
    - (i) an entity that is the \*managing operator of a \*nominal defendant settlement sharing arrangement, or entities that are managing operators of nominal defendant settlement sharing arrangements, that relate to the accidents or incidents; and
    - (ii) an \*operator or operators of a \*compulsory third party scheme or schemes who have issued \*insurance policies to persons involved in the accidents or incidents; and
  - (c) under which:
    - (i) one party (the *managing operator*) is to make one or more payments or supplies in settlement of a claim, under the compulsory third party scheme or one of the compulsory third party schemes involved, relating to the accidents or incidents; and
    - (ii) each other party (a *contributing operator*) is to make a payment to the \*managing operator in respect of that operator settling the claim.

*Meaning of managing operator's payment or supply*

- (2) If a payment or supply mentioned in subparagraph (1)(c)(i) is not a \*CTP ancillary payment or supply, it is a *managing operator's payment or supply*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

*Meaning of contributing operator's payment*

- (3) A payment mentioned in subparagraph (1)(c)(ii), to the extent that it is not a fee to the \*managing operator for managing the process of making settlements under the arrangement, is a **contributing operator's payment**.

**80-85 Subdivision 80-A to apply to hybrid settlement sharing arrangement, subject to exceptions**

In addition to its operation apart from this Subdivision, Subdivision 80-A has effect, subject to sections 80-90 and 80-95, as if a \*hybrid settlement sharing arrangement were an \*insurance policy settlement sharing arrangement.

**80-90 Subdivision 80-B to apply to payments or supplies by managing operator of hybrid settlement sharing arrangement who is also managing operator of nominal defendant settlement sharing arrangement**

If:

- (a) the entity that is the \*managing operator of the \*hybrid settlement sharing arrangement is a party to that arrangement because it is also the managing operator of a \*nominal defendant settlement sharing arrangement; and
- (b) the entity makes a payment or supply that, as a result of section 80-85, is a \*managing operator's payment or supply under the hybrid settlement sharing arrangement;

then:

- (c) Subdivision 80-A does not have any other effect in relation to the payment or supply in accordance with section 80-85; but
- (d) Subdivision 80-B (other than section 80-45) applies in relation to the payment or supply as if it were a managing operator's payment or supply under the nominal defendant settlement sharing arrangement and the entity were not party to the hybrid settlement sharing arrangement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Section 80-95

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**80-95 Subdivision 80-B to apply to payments or supplies by contributing operator of hybrid settlement sharing arrangement who is also managing operator of nominal defendant settlement sharing arrangement**

If:

- (a) an entity that is a \*contributing operator of the \*hybrid settlement sharing arrangement is a party to that arrangement because it is also the \*managing operator of a \*nominal defendant settlement sharing arrangement; and
- (b) the entity makes a payment that, as a result of section 80-85, is a \*contributing operator's payment under the hybrid settlement sharing arrangement;

then:

- (c) Subdivision 80-A does not have any other effect in relation to the payment or supply in accordance with section 80-85; but
- (d) Subdivision 80-B (other than section 80-45) applies in relation to the payment as if it were a \*managing operator's payment or supply under the nominal defendant settlement sharing arrangement and the entity were not party to the hybrid settlement sharing arrangement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## **Division 81—Payments of taxes, fees and charges**

### **81-1 What this Division is about**

GST does not apply to payments of taxes, fees and charges that are excluded from the GST by this Division or by regulations.

GST applies to certain taxes, fees and charges prescribed by regulations.

### **81-5 Effect of payment of tax**

#### *Australian tax not consideration*

- (1) A payment, or the discharging of a liability to make a payment, is not the provision of \*consideration to the extent the payment is an \*Australian tax.

#### *Regulations may provide for exceptions*

- (2) However, a payment you make, or a discharging of your liability to make a payment, is treated as the provision of \*consideration to the extent the payment is an \*Australian tax that is, or is of a kind, prescribed by the regulations.
- (3) For the purposes of subsection (2), the \*consideration is taken to be provided to the entity to which the tax is payable, for a supply that the entity makes to you.

### **81-10 Effect of payment of certain fees and charges**

#### *Certain fees and charges not consideration*

- (1) A payment, or the discharging of a liability to make a payment, is not the provision of \*consideration to the extent the payment is an

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

**Chapter 4** The special rules

**Part 4-2** Special rules mainly about supplies and acquisitions

**Division 81** Payments of taxes, fees and charges

**Section 81-10**

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\*Australian fee or charge that is of a kind covered by subsection (4) or (5).

*Prescribed fees and charges treated as consideration*

- (2) However, a payment you make, or a discharging of your liability to make a payment, is treated as the provision of \*consideration to the extent the payment is an \*Australian fee or charge that is, or is of a kind, prescribed by the regulations.
- (3) For the purposes of subsection (2), the \*consideration is taken to be provided to the entity to which the fee or charge is payable, for a supply that the entity makes to you.

*Fees or charges paid for permissions etc.*

- (4) This subsection covers a fee or charge if the fee or charge:
- (a) relates to; or
  - (b) relates to an application for;
- the provision, retention, or amendment, under an \*Australian law, of a permission, exemption, authority or licence (however described).

*Fees or charges relating to information and record-keeping etc.*

- (5) This subsection covers a fee or charge paid to an \*Australian government agency if the fee or charge relates to the agency doing any of the following:
- (a) recording information;
  - (b) copying information;
  - (c) modifying information;
  - (d) allowing access to information;
  - (e) receiving information;
  - (f) processing information;
  - (g) searching for information.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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### **81-15 Other fees and charges that do not constitute consideration**

The regulations may provide that the payment of a prescribed \*Australian fee or charge, or of an Australian fee or charge of a prescribed kind, or the discharging of a liability to make such a payment, is not the provision of \*consideration.

### **81-20 Division has effect despite sections 9-15 and 9-17**

This Division has effect despite sections 9-15 and 9-17 (which are about consideration).

### **81-25 Retrospective application of regulations**

Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply in relation to regulations made for the purposes of subsection 81-5(2) or 81-10(2) or section 81-15.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## **Division 82—Supplies in return for rights to develop land**

### **82-1 What this Division is about**

GST does not apply to transactions for making supplies (commonly referred to as in kind developer contributions) in return for the supply by an Australian government agency of a right to develop land.

### **82-5 Supplies of rights to develop land do not constitute consideration in certain cases**

- (1) The supply, by an \*Australian government agency, of a right to develop land is not treated as \*consideration for another supply if the other supply complies with requirements imposed by or under an \*Australian law.
- (2) It does not matter whether the other supply is made to the \*Australian government agency.
- (3) This section has effect despite section 9-15 (which is about consideration).

### **82-10 Supplies by Australian government agencies of rights to develop land are not for consideration**

- (1) The supply, by an \*Australian government agency, of a right to develop land is treated as a supply that is not made for \*consideration to the extent that it is made in return for another supply that complies with requirements imposed by or under an \*Australian law.
- (2) It does not matter whether the other supply is made to the \*Australian government agency.
- (3) If the other supply constitutes the payment of:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (a) an \*Australian tax prescribed by regulations made for the purposes of subsection 81-5(2); or
  - (b) an \*Australian fee or charge prescribed by regulations made for the purposes of subsection 81-10(2);
- this section overrides those regulations in relation to the payment.
- (4) This section has effect despite section 9-15 (which is about consideration).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Section 83-1

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## Division 83—Non-residents making supplies connected with the indirect tax zone

### 83-1 What this Division is about

The GST on taxable supplies made by non-residents can, with the agreement of the recipients, be “reverse charged” to the recipients.

### 83-5 “Reverse charge” on supplies made by non-residents

- (1) The GST on a \*taxable supply is payable by the \*recipient of the supply, and is not payable by the supplier, if:
  - (a) the supplier is a \*non-resident; and
  - (b) the supplier does not make the supply through an \*enterprise that the supplier \*carries on in the indirect tax zone; and
  - (c) the recipient is \*registered or \*required to be registered; and
  - (d) the supplier and the recipient agree that the GST on the supply be payable by the recipient.
- (2) However, this section does not apply to:
  - (a) a supply that is a \*taxable supply under section 84-5 (which is about offshore supplies); or
  - (b) a taxable supply made by a \*non-resident through a \*resident agent; or
  - (c) a supply that is disregarded under paragraph 188-15(3)(b) or 188-20(3)(b) (which are about supplies of rights or options offshore).

Note: GST on these taxable supplies is payable by the resident agent: see section 57-5.
- (3) This section has effect despite section 9-40 (which is about liability for the GST).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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### **83-10 Recipients who are members of GST groups**

- (1) If section 83-5 applies to a \*taxable supply but the \*recipient of the supply is a \*member of a \*GST group, the GST on the supply:
  - (a) is payable by the \*representative member; and
  - (b) is not payable by the member (unless the member is the representative member).
- (2) This section has effect despite section 83-5.

### **83-15 Recipients who are participants in GST joint ventures**

- (1) If section 83-5 applies to a \*taxable supply but the \*recipient of the supply is a \*participant in a \*GST joint venture and the supply is made, on the recipient's behalf, by the \*joint venture operator of the GST joint venture in the course of activities for which the joint venture was entered into, the GST on the supply:
  - (a) is payable by the joint venture operator; and
  - (b) is not payable by the participant.
- (2) This section has effect despite section 83-5.

### **83-20 The amount of GST on “reverse charged” supplies made by non-residents**

- (1) The amount of GST on a supply to which section 83-5, 83-10 or 83-15 applies is 10% of the \*price of the supply.
- (2) This section has effect despite section 9-70 (which is about the amount of GST on taxable supplies).

### **83-25 When non-residents must apply for registration**

- (1) A \*non-resident need not apply to be \*registered under this Act if the non-resident's \*GST turnover would not meet the \*registration turnover threshold but for the \*taxable supplies of the non-resident that are taxable supplies to which section 83-5 applies.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Chapter 4** The special rules

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**Division 83** Non-residents making supplies connected with the indirect tax zone

**Section 83-30**

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- (2) It does not matter whether the \*non-resident is \*required to be registered.
- (3) This section has effect despite section 25-1 (which is about when entities must apply for registration).

**83-30 When the Commissioner must register non-residents**

- (1) The Commissioner need not \*register a \*non-resident if the Commissioner is satisfied that the non-resident's \*GST turnover would not meet the \*registration turnover threshold but for the \*taxable supplies of the non-resident that are taxable supplies to which section 83-5 applies.
- (2) It does not matter whether the \*non-resident is \*required to be registered.
- (3) This section has effect despite section 25-5 (which is about when the Commissioner must register an entity).

**83-35 Tax invoices not required for “reverse charged” supplies made by non-residents**

- (1) A \*non-resident is not required to issue a \*tax invoice for a \*taxable supply of the non-resident that is a taxable supply to which section 83-5 applies.
- (2) Subsection (1) has effect despite section 29-70 (which is about the requirement to issue tax invoices).
- (3) Subsection 29-10(3) does not apply in relation to a \*creditable acquisition made by an entity as a result of being the \*recipient of a \*taxable supply to which section 83-5 applies.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## Division 84—Offshore supplies

### Subdivision 84-A—Offshore supplies that are taxable supplies, and “reverse charged”, under this Subdivision

#### 84-1 What this Subdivision is about

This Subdivision deals with certain supplies taking place outside the indirect tax zone. The GST on a supply that is a taxable supply under this Subdivision is “reverse charged” to the recipient of the supply.

#### 84-5 Offshore supplies that are taxable supplies under this Subdivision

- (1) A supply is a *taxable supply* (except to the extent that it is \*GST-free or \*input taxed) if:
- (a) the supply is for \*consideration; and
  - (b) the \*recipient of the supply is \*registered, or \*required to be registered; and
  - (c) the supply is covered by the third column of this table.

#### Offshore supplies that are taxable supplies under this Subdivision

Item	Topic	These supplies are covered ...
1	Intangible supply—general	a supply of anything other than goods or *real property if: <ol style="list-style-type: none"> <li>(a) the supply is <i>not</i> *connected with the indirect tax zone; and</li> <li>(b) the *recipient of the supply satisfies the purpose test in subsection (1A).</li> </ol>
2	Intangible supply—right or option	a supply of anything other than goods or *real property if: <ol style="list-style-type: none"> <li>(a) the supply is *connected with the indirect tax zone because of paragraph 9-25(5)(c); and</li> </ol>

\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

Section 84-5

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**Offshore supplies that are taxable supplies under this Subdivision**

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Item	Topic	These supplies are covered ...
		(b) the *recipient of the supply satisfies the purpose test in subsection (1A).
3	Intangible supply—supplier believed recipient was not a consumer	<p>a supply of anything other than goods or *real property if:</p> <p>(a) the supply is *connected with the indirect tax zone because of paragraph 9-25(5)(d); and</p> <p>(b) under section 84-100, the *GST law applies in relation to the supplier as if the *recipient was not an *Australian consumer of the supply; and</p> <p>(c) the *ABN of the recipient, or the other identifying information prescribed under subsection 84-100(4) relating to the recipient, has been disclosed to the supplier; and</p> <p>(d) the recipient has provided to the supplier a declaration or information that indicates that the recipient is *registered.</p>
4	Low value goods—general	<p>an *offshore supply of low value goods if:</p> <p>(a) the supply is <i>not</i> *connected with the indirect tax zone; and</p> <p>(b) the *recipient of the supply satisfies the purpose test in subsection (1A); and</p> <p>(c) the importation of the goods is not a *taxable importation on which the recipient is liable to pay GST.</p>
5	Low value goods—supplier believed recipient was not a consumer	<p>an *offshore supply of low value goods if:</p> <p>(a) the supply is *connected with the indirect tax zone solely because of Subdivision 84-C; and</p> <p>(b) under section 84-105, the *GST law applies in relation to the supplier as if the *recipient was not a *consumer of the supply; and</p> <p>(c) the importation of the goods is not a *taxable importation on which the recipient is liable to pay GST.</p>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (1A) The purpose test referred to in items 1, 2 and 4 of the table in subsection (1) is that:
- (a) the \*recipient of the supply acquires the thing supplied solely or partly for the purpose of an \*enterprise that the recipient \*carries on in the indirect tax zone; and
  - (b) the recipient does not acquire the thing supplied solely for a \*creditable purpose.
- (1B) However, items 3 and 5 of the table in subsection (1) only cover a supply to the extent that it is \*connected with the indirect tax zone solely because of:
- (a) for item 3—paragraph 9-25(5)(d); or
  - (b) for item 5—Subdivision 84-C.
- (2) For the purposes of this section, in determining whether the \*recipient is \*required to be registered, what would be the \*value of such supplies (if they were \*taxable supplies) is to be counted towards the recipient's \*GST turnover.
- (3) This section has effect despite section 9-5 (which is about what is a taxable supply).

#### **84-10 “Reverse charge” on offshore supplies**

- (1) The GST on a supply that is a \*taxable supply because of section 84-5:
- (a) is payable by the \*recipient of the supply; and
  - (b) is not payable by the supplier.
- (2) This section has effect despite section 9-40 (which is about liability for the GST).
- (3) If a supply is a taxable supply under both sections 9-5 and 84-5, GST is only payable under this section (instead of section 9-40).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Section 84-12

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**84-12 The amount of GST on offshore supplies that are “reverse charged”**

- (1) The amount of GST on a supply that is a \*taxable supply because of section 84-5 is 10% of the \*price of the supply.
- (2) This section has effect despite section 9-70 (which is about the amount of GST on taxable supplies).

Note: Section 9-90 (rounding of amounts of GST) can apply to amounts of GST worked out using this section.

**84-13 The amount of input tax credits relating to offshore supplies**

- (1) The amount of the input tax credit for a \*creditable acquisition that relates to a supply that is a \*taxable supply because of section 84-5 is as follows:

$$\text{Full input tax credit} \times \frac{\text{Extent of creditable purpose}}{\text{Extent of consideration}}$$

where:

*extent of consideration* is:

- (a) if the \*recipient is the supplier's \*associate and the supply is without \*consideration—100%; or
- (b) in any other case—the extent to which you provide, or are liable to provide, the consideration for the acquisition, expressed as a percentage of the total consideration for the acquisition.

*extent of creditable purpose* is the extent to which the \*creditable acquisition is for a \*creditable purpose, expressed as a percentage of the total purpose of the acquisition.

*full input tax credit* is  $\frac{11}{10}$  of what would have been the amount of the input tax credit for the acquisition if:

- (a) the supply had been or is a \*taxable supply otherwise than because of section 84-5; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (b) the acquisition had been made solely for a creditable purpose; and
  - (c) you had provided, or had been liable to provide, all of the consideration for the acquisition.
- (1A) However, if:
- (a) an \*annual apportionment election that you have made has effect at the end of the tax period to which the input tax credit is attributable; and
  - (b) the acquisition is not an acquisition of a kind specified in the regulations made for the purposes of paragraph 131-40(1)(b); the amount of the input tax credit on the acquisition is worked out under section 131-40 as if **full input tax credit** had the same meaning in subsection 131-40(2) as it has in subsection (1) of this section.
- (2) This section has effect despite:
- (a) sections 11-25 and 11-30 (which are about the amount of input tax credits for creditable acquisitions); and
  - (b) section 72-45 (which is about the amount of input tax credits on an acquisition from an associate without consideration).

#### **84-14 Supplies relating to employee share ownership schemes**

This Subdivision does not apply to a supply, to the extent that it is a supply relating to an \*employee share scheme, if:

- (a) the \*recipient of the supply is not an entity that has acquired, or may in the future acquire, an ESS interest (within the meaning of the \*ITAA 1997) under the scheme; and
- (b) Subdivision 83A-B or 83A-C of the ITAA 1997 applies to any ESS interest (within the meaning of that Act) acquired under the scheme; and
- (c) either:
  - (i) the \*recipient of the supply is a \*100% subsidiary of the supplier; or
  - (ii) the supply is a transfer that is taken to be a supply because of section 84-15.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

Section 84-15

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**84-15 Transfers etc. between branches of the same entity**

- (1) For the purposes of section 84-5, if an entity:
- (a) \*carries on an \*enterprise in the indirect tax zone; and
  - (b) also carries on that or another enterprise outside the indirect tax zone;
- then:
- (c) the transfer of anything to the enterprise in the indirect tax zone from the enterprise outside the indirect tax zone; or
  - (d) the doing of anything for the enterprise in the indirect tax zone by the enterprise outside the indirect tax zone;
- is taken to be a supply that is not \*connected with the indirect tax zone.

Example: An entity acquires, through a place of business it has overseas, the right to exploit a particular copyright in the indirect tax zone. That right is then transferred to a place of business that the entity has in the indirect tax zone.

Under this section, the transfer is taken to be a supply that is not connected with the indirect tax zone and, if the other requirements of section 84-5 are satisfied, the transfer is a taxable supply.

- (2) If the transfer is a transfer of the services of an employee, this section does not apply to the transfer to the extent that any payments that:
- (a) are made from the \*enterprise in the indirect tax zone to the enterprise outside the indirect tax zone; and
  - (b) relate to the transfer;
- would be \*withholding payments if they were payments from the enterprise in the indirect tax zone to the employee.

**84-20 The price of taxable supplies of offshore intangibles without, or for inadequate, consideration**

- (1) The *price* of a supply that is a \*taxable supply because of section 84-5 is the \*GST inclusive market value of the supply, if:
- (a) the supply is from the \*recipient's \*associate; and
  - (b) the supply is:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (i) without \*consideration; or
- (ii) for consideration that is *less* than the GST inclusive market value.

Note: A supply to an associate without consideration may be a taxable supply, see section 72-5.

- (2) This section has effect despite section 9-75 (which is about the price of taxable supplies).

### **84-25 Tax periods for supplies from associates that are not connected with the indirect tax zone**

- (1) This section applies if a supply that is a \*taxable supply because of section 84-5 is:
  - (a) a supply from the \*recipient's \*associate without \*consideration; and
  - (b) not \*connected with the indirect tax zone.

Note: If the supply is connected with the indirect tax zone, see sections 72-15 and 72-50 for the tax periods.

- (2) The tax period to which the GST on the supply, and the input tax credit on the acquisition, is attributable is the tax period in which the thing supplied starts to be done.
- (3) This section has effect despite:
  - (a) sections 29-5 and 72-15 (about attributing GST to tax periods); and
  - (b) sections 29-10 and 72-50 (about attributing input tax credits to tax periods).

### **84-30 Adjustments for acquisitions made solely for a creditable purpose**

- (1) This section applies to an acquisition that relates to a supply if the supply would be a \*taxable supply under section 84-5 if paragraph 84-5(1A)(b) were disregarded.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Section 84-45

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- (2) For the purpose of working out whether there is an \*adjustment for the acquisition, and the amount of that adjustment, disregard paragraph 84-5(1A)(b).

Note: As a result, the adjustment (including the full input tax credit referred to in sections 129-70 and 129-75) is worked out assuming the supply is taxable and the acquisition fully creditable.

**Subdivision 84-B—Inbound intangible consumer supplies**

**84-45 What this Subdivision is about**

Tax invoices and adjustment notes are not required for offshore supplies to Australian consumers.

The operator of an electronic distribution platform is treated as having made electronic supplies that are made through the platform:

- (a) from offshore to Australian consumers; or
- (b) in some cases, under an agreement with the supplier.

The result is that the operator, instead of the suppliers, counts the supplies towards its GST turnover and pays GST on the supplies.

**84-50 No tax invoices or adjustment notes for inbound intangible consumer supplies**

- (1) You are not required to issue a \*tax invoice for a \*taxable supply that you make if the supply is solely an \*inbound intangible consumer supply.
- (2) You are not required to issue an \*adjustment note for an \*adjustment event relating to a \*taxable supply that you make if the supply is solely an \*inbound intangible consumer supply.
- (3) This section has effect despite sections 29-70 and 29-75 (which are about tax invoices and adjustment notes).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

### **84-55 Operator of electronic distribution platform treated as supplier**

- (1) If an \*inbound intangible consumer supply is made through an \*electronic distribution platform, the operator of the platform, instead of the supplier, is treated, for the purposes of the \*GST law:
- (a) as being the supplier of, and as making, the supply; and
  - (b) as having made the supply for the \*consideration for which it was made; and
  - (c) as having made the supply in the course or furtherance of an \*enterprise that the operator \*carries on.

Note: As a consequence, GST on the supply is payable by the operator of the electronic distribution platform.

- (2) Despite subsection (1), if an \*inbound intangible consumer supply is made through more than one \*electronic distribution platform, that subsection only applies to the operator of any of those platforms who is:
- (a) \*registered and a party to a written agreement, where:
    - (i) the agreement is between the operator and at least one of the other operators of the platforms; and
    - (ii) the operator is to be treated as the supplier under the agreement; or
  - (b) if paragraph (a) does not apply—the operator determined in accordance with an instrument made under subsection (3); or
  - (c) if paragraph (a) does not apply and no instrument has been made under subsection (3):
    - (i) the first of the operators of those platforms to receive, or to authorise the charging of, any \*consideration for the supply; or
    - (ii) if subparagraph (i) does not apply—the first of the operators of those platforms to authorise the delivery of the supply.
- (3) The Commissioner may, by legislative instrument, specify how an operator is to be determined for the purposes of paragraph (2)(b).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Section 84-60**

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- (4) Despite subsections (1) and (2), this section does not apply to an operator of an \*electronic distribution platform in relation to an \*inbound intangible consumer supply made through the platform if:
- (a) a document, relating to the supply, issued to the \*recipient of the supply identifies:
    - (i) the supply; and
    - (ii) the supplier as the supplier of the supply; and
  - (b) the supplier and the operator of the electronic distribution platform have agreed in writing that the supplier is the entity responsible for paying GST for:
    - (i) the supply; or
    - (ii) a class of supplies that includes the supply; and
  - (c) the operator of the electronic distribution platform:
    - (i) does not authorise the charge to the recipient for the supply; and
    - (ii) does not authorise the delivery of the supply; and
    - (iii) does not (whether directly or indirectly) set any of the terms and conditions under which the supply is made.

**84-60 Extension of section 84-55 to certain other supplies through an electronic distribution platform**

- (1) Section 84-55 applies to a supply that is to be made by means of \*electronic communication as if it were an \*inbound intangible consumer supply if:
- (a) the supply is made through an \*electronic distribution platform; and
  - (b) the supply is covered by a written agreement entered into between the supplier and the operator of the platform before the supply is made; and
  - (c) the operator is \*registered; and
  - (d) under the agreement, the supply is to be treated as if it were an inbound intangible consumer supply made through the platform.
- (2) However, subsection (1) does not apply to the supply if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (a) the supply is GST-free or input taxed; or
  - (b) the operator would not be treated under section 84-55 as being the supplier of, and as making, the supply if it were an \*inbound intangible consumer supply.
- (3) If subsection (1) applies to the supply, the supply is treated as having been made in the course or furtherance of the carrying on of the \*enterprise through which the operator operates the platform.

#### **84-65 Meaning of *inbound intangible consumer supply***

- (1) A supply of anything other than goods or \*real property is an ***inbound intangible consumer supply*** if the \*recipient is an \*Australian consumer, unless:
- (a) the thing is done wholly in the indirect tax zone; or
  - (b) the supplier makes the supply wholly through an \*enterprise that the supplier \*carries on in the indirect tax zone.
- (2) Disregard section 84-55 in determining whether paragraph (1)(b) applies.

#### **84-70 Meaning of *electronic distribution platform***

- (1) A service (including a website, internet portal, gateway, store or marketplace) is an ***electronic distribution platform*** if:
- (a) the service allows entities to make supplies available to end-users; and
  - (b) the service is delivered by means of \*electronic communication; and
  - (c) any of the supplies that are \*inbound intangible consumer supplies are to be made by means of electronic communication.
- (2) However, a service is not an ***electronic distribution platform*** solely because it is:
- (a) a carriage service (within the meaning of the *Telecommunications Act 1997*); or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Section 84-73**

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- (b) a service consisting of one or more of the following:
  - (i) providing access to a payment system;
  - (ii) processing payments;
  - (iii) providing \*vouchers the supply of which are not  
\*taxable supplies because of section 100-5.

**Subdivision 84-C—Offshore supplies of low value goods**

**84-73 What this Subdivision is about**

Supplies of low value goods involving goods being brought to the indirect tax zone may be connected with the indirect tax zone.

An entity may be treated as the supplier of an offshore supply of low value goods, if the entity is the operator of an electronic distribution platform through which the supply is made, or the entity is a redeliverer of the goods.

The result is that the operator or redeliverer, instead of the supplier, counts the supplies towards its GST turnover and pays GST on the supplies.

Suppliers of offshore supplies of low value goods are not required to issue tax invoices and adjustment notes, but they must ensure relevant information is included in customs documents.

Note 1: The supplies will need to meet other requirements in order to be taxable supplies: see section 9-5.

Note 2: Offshore supplies of low value goods that are not connected with the indirect tax zone under this Subdivision may be taxable supplies, and “reverse-charged”, under Subdivision 84-A.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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### **84-75 Supplies of low value goods that are *connected with the indirect tax zone***

- (1) An \*offshore supply of low value goods is ***connected with the indirect tax zone*** if the \*recipient of the supply is a \*consumer of the supply.

Note: There is an exception to this rule if the supplier reasonably believes there will be a taxable importation of the goods: see section 84-83.

- (2) An entity is a ***consumer*** of a supply made to the entity if:
- (a) the entity is not \*registered; or
  - (b) if the entity is registered—the entity does not acquire the thing supplied solely or partly for the purpose of an \*enterprise that the entity \*carries on in the indirect tax zone.

Note: A supplier may treat a recipient as not being a consumer if the supplier reasonably believes (based on certain information) that to be the case: see section 84-105.

- (3) This section has effect in addition to section 9-25 (which is about when supplies are connected with the indirect tax zone).

### **84-77 Meaning of *offshore supply of low value goods***

*Supplies of low value goods delivered etc. into the indirect tax zone by suppliers*

- (1) A \*supply of low value goods is an ***offshore supply of low value goods*** if:
- (a) the supply involves the goods being brought to the indirect tax zone; and
  - (b) the supplier delivers the goods into the indirect tax zone, or procures, arranges or facilitates the delivery of the goods into the indirect tax zone.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Section 84-77

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*Supplies of low value goods made through an electronic distribution platform*

- (2) Without limiting subsection (1), a \*supply of low value goods is an **offshore supply of low value goods** if:
- (a) the supply involves the goods being brought to the indirect tax zone; and
  - (b) the supply is made through an \*electronic distribution platform; and
  - (c) the operator of the platform delivers the goods into the indirect tax zone, or procures, arranges or facilitates the delivery of the goods into the indirect tax zone.

*Supplies of low value goods delivered etc. into the indirect tax zone by redeliverers*

- (3) A \*supply of low value goods is an **offshore supply of low value goods** if:
- (a) the supply involves the goods being delivered to a place outside the indirect tax zone; and
  - (b) a \*redeliverer delivers the goods into the indirect tax zone, or procures, arranges or facilitates the delivery of the goods into the indirect tax zone.
- (4) An entity is a **redeliverer** in relation to a \*supply of low value goods if, as a result of an arrangement with the \*recipient of the supply (or another entity acting on the recipient's behalf), the entity, in the course of \*carrying on an enterprise:
- (a) delivers the goods into the indirect tax zone, or procures, arranges or facilitates the delivery of the goods into the indirect tax zone; and
  - (b) does one or more of the following:
    - (i) provides use of an address outside the indirect tax zone to which the goods are delivered;
    - (ii) procures, arranges or facilitates use of an address outside the indirect tax zone to which the goods are delivered;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (iii) purchases the goods;
  - (iv) procures, arranges or facilitates purchase of the goods.
- (5) Disregard section 84-81 in applying this section.

### **84-79 Meaning of *supply of low value goods***

- (1) A supply of goods is a ***supply of low value goods*** if:
- (a) the goods supplied are covered by subsection (3); or
  - (b) the goods supplied include goods covered by subsection (3).
- (2) However, if the goods supplied include goods that are *not* covered by subsection (3), then the supply of goods (the ***actual supply***) is to be treated as if it were 2 separate supplies in the following way:
- (a) the part of the actual supply consisting of goods covered by subsection (3) is to be treated as if it were a separate supply that is a ***supply of low value goods*** (regardless of the total \*customs value of the goods to which those supplies relate); and
  - (b) the remainder of the actual supply is to be treated as if it were a separate supply that is not a ***supply of low value goods***.

#### *Low value goods*

- (3) This subsection covers goods if:
- (a) the \*customs value of the goods is \$1,000 or less; and
  - (b) the goods are not tobacco, tobacco products or alcoholic beverages.
- (4) Work out the \*customs value of goods for the purposes of this section at the time when the \*consideration for the supply was first agreed, and as if:
- (a) the goods were exported from the country from which they were brought to the indirect tax zone; and
  - (b) the goods were imported into Australia; and
  - (c) the agreement for the supply was an agreement for the importation and for the exportation; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (d) to the extent that working out the value involves an assumption about the way in which the Collector (within the meaning of the *Customs Act 1901*) will exercise a discretion—the Collector exercised that discretion in a reasonable manner in accordance with law; and
  - (e) if an amount to be taken into account in working out that value is not an amount in Australian currency, the amount so taken into account is the equivalent in Australian currency of that amount, ascertained in any of the following ways:
    - (i) in the way provided in section 161J of the *Customs Act 1901*;
    - (ii) in the manner determined by the Commissioner under subsection (5) of this section.
- (5) The Commissioner may, by legislative instrument, determine a manner of ascertaining an amount in Australian currency for the purposes of paragraph (4)(e).
- (6) Disregard section 84-81 in applying this section.

**84-81 Who makes an offshore supply of low value goods**

- (1) This section does not apply to a supply to the extent it is \*connected with the indirect tax zone because of a provision of this Act other than this Subdivision.
- (2) This section applies in relation to an \*offshore supply of low value goods, regardless of whether the \*recipient of the supply is a \*consumer.

Note: If the recipient is not a consumer, the entity treated as a supplier by this section must still ensure information is included in customs documents: see section 84-91.

*Operator of electronic distribution platform—extension of section 84-55*

- (3) Section 84-55 applies to a supply as if it were an \*inbound intangible consumer supply if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (a) the supply is made through an \*electronic distribution platform; and
- (b) the supply is an \*offshore supply of low value goods.

Note: Section 84-55 treats the operator of an electronic distribution platform as the supplier of supplies made through the platform.

*Redeliverer*

- (4) If a supply of goods is an \*offshore supply of low value goods solely because of subsection 84-77(3), the \*redeliverer is taken, for the purposes of this Act:
  - (a) as being the supplier of, and as making, the supply; and
  - (b) as having made the supply for the \*consideration for which it was made; and
  - (c) as having made the supply in the course or furtherance of an \*enterprise that the redeliverer \*carries on.
- (5) Despite subsection (4), if there is more than one \*redeliverer in relation to the supply, that subsection only applies to the redeliverer who is:
  - (a) the first of the redeliverers to enter into an arrangement, with the \*recipient, relating to the supply; or
  - (b) if paragraph (a) does not apply—the first of the redeliverers to enter into an arrangement, with an \*associate of the recipient, relating to the supply; or
  - (c) if paragraphs (a) and (b) do not apply—the first of the redeliverers to enter into an arrangement, of a kind referred to in subsection 84-77(4), relating to the supply; or
  - (d) if paragraphs (a), (b) and (c) do not apply—the redeliverer determined in accordance with an instrument made under subsection (6).
- (6) The Commissioner may, by legislative instrument, make a determination specifying how a \*redeliverer of \*offshore supplies of low value goods is to be determined for the purposes of paragraph (5)(d).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Section 84-83

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- (7) Division 57 (resident agents acting for non-residents) does not apply in relation to a supply to which subsection (4) applies.

**84-83 Exception—when supplier reasonably believes there will be a taxable importation**

- (1) This section does not apply to a supply to the extent it is \*connected with the indirect tax zone because of a provision of this Act other than this Subdivision.
- (2) An \*offshore supply of low value goods is *not connected with the indirect tax zone* to the extent that:
- (a) the supplier takes reasonable steps to obtain information about whether or not the goods would be imported into the indirect tax zone as a \*taxable importation; and
  - (b) after taking those steps, the supplier reasonably believed that the goods would be imported into the indirect tax zone as a taxable importation.
- (3) Without limiting subsection (2), paragraph (2)(a) is taken to be satisfied if the supplier's usual business systems and processes provide the supplier with a reasonable basis for forming a reasonable belief about whether or not goods to be imported into the indirect tax zone would be imported as a \*taxable importation.
- (4) For the purposes of paragraph (2)(b), the time at which the supplier must have the reasonable belief is:
- (a) if subsection 84-81(4) (about redeliverers treated as suppliers) does not apply—at the most recent time before export that the \*consideration for the supply was agreed; or
  - (b) if subsection 84-81(4) applies—at the time of delivering the goods into the indirect tax zone, or procuring, arranging or facilitating the delivery of the goods into the indirect tax zone.
- (5) This section has effect despite section 84-75.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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### **84-85 Exception—when there is also a taxable importation**

- (1) Subsection (2) applies to an \*offshore supply of low value goods you made to the extent that:
  - (a) the supply is, apart from this section, a \*supplier-taxed offshore supply of low value goods; and
  - (b) an importation of the goods was a \*taxable importation.

Note: This section applies if section 42-15 has not applied to treat the importation as a non-taxable importation.

- (2) The supply is treated as if it were not a \*taxable supply if:
  - (a) to the extent (if any) that you have \*passed on the GST on the supply to another entity—you reimburse the other entity for the passed on GST; and
  - (b) an entity provides to you a declaration or information that indicates that GST has been paid on the \*taxable importation.
- (3) A supply of goods is a **supplier-taxed offshore supply of low value goods** if the supply is:
  - (a) an \*offshore supply of low value goods; and
  - (b) a taxable supply solely under section 9-5; and
  - (c) \*connected with the indirect tax zone solely because of this Subdivision.

### **84-87 No tax invoices or adjustment notes for offshore supplies of low value goods**

- (1) You are not required to issue a \*tax invoice for a \*taxable supply that you make if the supply is a \*supplier-taxed offshore supply of low value goods.
- (2) You are not required to issue an \*adjustment note for an \*adjustment event relating to a \*taxable supply that you make if the supply is a \*supplier-taxed offshore supply of low value goods.
- (3) This section has effect despite sections 29-70 and 29-75 (which are about tax invoices and adjustment notes).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Section 84-89

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**84-89 Notifying amounts of GST to recipients of offshore supplies of low value goods**

- (1) You must give the \*recipient of a supply a notice of the amount of GST (if any) payable in relation to the supply if the supply is a \*supplier-taxed offshore supply of low value goods.
- (2) You must give the notice in the \*approved form, and at the time the \*consideration for the supply is first agreed.
- (3) If:
  - (a) you make a \*supplier-taxed offshore supply of low value goods; and
  - (b) you did not give a notice under subsection (1); and
  - (c) the \*recipient of the supply requests you to notify the recipient of the amount of GST (if any) payable in relation to the supply;

you must, within 5 \*business days after the request is made, give the recipient a notice of that amount in the \*approved form.

Note: If you do not give the notice as required by this subsection, you are liable to an administrative penalty under subsection 288-45(2A) in Schedule 1 to the *Taxation Administration Act 1953*.

**84-91 The amount of GST on offshore supplies of low value goods made by redeliverers**

- (1) If a \*supplier-taxed offshore supply of low value goods is an \*offshore supply of low value goods solely because of subsection 84-77(3), the amount of GST on the supply is 10% of the \*price of the supply.
- (2) This section has effect despite section 9-70 (which is about the amount of GST on taxable supplies).

Note: Section 9-90 (rounding of amounts of GST) can apply to amounts of GST worked out using this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**84-93 Suppliers of offshore supplies of low value goods to ensure tax information is included in customs documents**

- (1) If:
- (a) you make an \*offshore supply of low value goods; and
  - (b) you are \*registered, or \*required to be registered;
- you must ensure that the information set out in subsection (2) is included in one or more of the documents referred to in subsection (3) (regardless of whether or not the supply is \*connected with the indirect tax zone).
- Note: If you do not ensure the information is included, you are liable to an administrative penalty under section 288-46 in Schedule 1 to the *Taxation Administration Act 1953*.
- (2) For the purposes of subsection (1), the information is as follows:
- (a) your registration number;
  - (b) if the \*recipient's \*ABN has been disclosed to you—that ABN;
  - (c) the extent (if any) to which you are treating the supply as a \*taxable supply.
- (3) For the purposes of subsection (1), the documents are as follows:
- (a) an import declaration (within the meaning of the *Customs Act 1901*);
  - (b) an import declaration advice (within the meaning of that Act);
  - (c) a self-assessed clearance declaration (within the meaning of that Act);
  - (d) a self-assessed clearance declaration advice (within the meaning of that Act);
  - (e) a document of a kind specified in an instrument made under subsection (4).
- (4) The Commissioner may, by legislative instrument, make a determination specifying kinds of documents for the purposes of paragraph (3)(e).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## **Subdivision 84-D—Consumers of offshore supplies**

### **84-95 What this Subdivision is about**

A supplier is treated in some situations to be making a supply to an entity that is not a consumer, or not an Australian consumer.

- Note 1: Whether the recipient of a supply of an intangible is an Australian consumer is one of the tests for whether the supply is connected with the indirect tax zone: see subsection 9-25(5).
- Note 2: Whether the recipient of an offshore supply of low value goods is a consumer is one of the tests for whether the supply is connected with the indirect tax zone: see subsection 84-75(1).
- Note 3: Supplies affected by this Subdivision may be supplies that are taxable supplies, and reverse charged, under Subdivision 84-A.

### **84-100 When entities are treated as not being Australian consumers**

- (1) The \*GST law applies in relation to you as if another entity was not an \*Australian consumer of a supply if:
  - (a) you take reasonable steps to obtain information about whether or not the other entity is an Australian consumer of the supply; and
  - (b) after taking those steps, you reasonably believe that the other entity is not an Australian consumer of the supply.
- (2) Without limiting subsection (1), the \*GST law applies in relation to you as if another entity was not an \*Australian consumer of a supply if:
  - (a) your usual business systems and processes provide you with a reasonable basis for forming a reasonable belief about whether the other entity is an Australian consumer of the supply; and
  - (b) you reasonably believe that the other entity is not an Australian consumer of the supply.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (3) For the purposes of subsections (1) and (2), to the extent that your belief that the other entity is not an \*Australian consumer of the supply is based on the other entity being \*registered, your belief is reasonable only if:
  - (a) the other entity's \*ABN, or the other identifying information prescribed under subsection (4) relating to the other entity, has been disclosed to you; and
  - (b) the other entity has provided to you a declaration or information that indicates that the other entity is registered.
- (4) The Commissioner may, by legislative instrument, prescribe identifying information for the purposes of paragraph (3)(a).

### **84-105 When entities are treated as not being consumers**

- (1) The \*GST law applies in relation to you as if another entity was not a \*consumer of a supply if you reasonably believe that the other entity is not a consumer of the supply.
- (2) For the purposes of subsection (1), your belief is reasonable only if:
  - (a) the other entity's \*ABN, or the other identifying information prescribed under subsection (3) relating to the other entity, has been disclosed to you; and
  - (b) the other entity has provided to you a declaration or information that indicates that the other entity is \*registered.
- (3) The Commissioner may, by legislative instrument, make a determination prescribing identifying information for the purposes of paragraph (2)(a).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## Division 85—Telecommunication supplies

### 85-1 What this Division is about

Telecommunication supplies that are effectively used or enjoyed in the indirect tax zone are included in the GST system (regardless of where the supplier has a physical presence).

### 85-5 When telecommunication supplies are connected with the indirect tax zone

- (1) A \*telecommunication supply is ***connected with the indirect tax zone*** if the \*recipient of the supply will effectively use or enjoy the supply in the indirect tax zone.
- (2) However, subsection (1) does not apply to a \*telecommunication supply, or a telecommunication supply included in a class of telecommunication supplies, if:
  - (a) the supplier makes the supply through an \*enterprise that is not \*carried on in the indirect tax zone; and
  - (b) the Commissioner determines that collection of GST on that supply or class of supplies would not be administratively feasible.
- (3) This section has effect in addition to section 9-25 (which is about when supplies are connected with the indirect tax zone), but is subject to section 9-26 (which is about when supplies are not connected with the indirect tax zone).

### 85-10 Meaning of *telecommunication supply*

A ***telecommunication supply*** is a supply relating to the transmission, emission or reception of signals, writing, images, sounds or information of any kind by wire, radio, optical or other electromagnetic systems. It includes:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (a) the related transfer or assignment of the right to use capacity for such transmission, emission or reception; and
- (b) provision of access to global information networks.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## **Division 86—Valuable metals**

### **86-1 What this Division is about**

The GST on taxable supplies of goods consisting wholly or partly of valuable metal can be “reverse charged” to the recipients.

### **86-5 “Reverse charge” on supplies of goods consisting of valuable metal**

- (1) The GST on a \*taxable supply of goods is payable by the \*recipient of the supply, and is not payable by the supplier, if:
  - (a) the goods consist wholly or partly of \*valuable metal; and
  - (b) the recipient is \*registered or \*required to be registered; and
  - (c) either:
    - (i) at the time of the supply, the market value of the goods does not exceed the \*valuable metal threshold; or
    - (ii) the supplier and the recipient agree, in writing, that the GST on the supply be payable by the recipient.
- (2) Subsection (1) does not apply to a \*taxable supply of goods if the supply is in a class of supplies determined under subsection (3).

#### *Determination*

- (3) For the purposes of subsection (2), the Commissioner may, by legislative instrument, determine that subsection (1) does not apply to a specified class of supplies.
- (4) In making a determination under subsection (3), the Commissioner may have regard to the following:
  - (a) the likelihood that \*recipients and suppliers of that class of supply will otherwise comply with their obligations under the \*GST law, and the risk of GST not being paid on \*taxable supplies in that class if recipients do not pay the GST;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (b) the costs for recipients and suppliers of that class of supplies to comply with subsection (1);
- (c) any other relevant matters.

*Effect of this section on other sections*

- (5) This section has effect despite sections 9-40 (which is about liability for the GST), 48-40, 51-30 and 83-5 (which are about who is liable for GST).

### **86-10 The valuable metal threshold**

- (1) The market value of goods consisting wholly or partly of \*valuable metal exceeds the **valuable metal threshold** at a time if, at that time:
  - (a) unless paragraph (b) applies—the market value of the goods exceeds the market value of the valuable metal in the goods by at least the specified percentage (see subsection (4)); or
  - (b) if the goods consist of goods (**separate goods**), each of which:
    - (i) consist wholly or partly of valuable metal; and
    - (ii) can be separately supplied;the market value of each of the separate goods exceeds the market value of the valuable metal in those particular separate goods by at least the specified percentage.

*Market value of goods and valuable metal*

- (2) For the purposes of subsection (1), the market value of goods or \*valuable metal in goods:
  - (a) is to be worked out disregarding any amount of GST:
    - (i) that is payable on the supply of the goods or metal; or
    - (ii) if there is no supply of valuable metal—that would be payable if there were a supply of valuable metal; and
  - (b) either:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (i) unless subparagraph (ii) applies—is the market value of the goods or metal within the ordinary meaning of the expression; or
  - (ii) if the Commissioner has determined under subsection (3) one or more methods for working out the market value of goods or metal—the market value of the goods or metal worked out using any one of those methods.
- (3) The Commissioner may, by legislative instrument, determine one or more methods of working out the market value of goods or \*valuable metal for the purposes of subparagraph (2)(b)(ii).

*Specified percentage*

- (4) For the purposes of subsection (1), the specified percentage is:
- (a) if the Minister determines a percentage under subsection (5)—that percentage; or
  - (b) otherwise—10%.
- (5) The Minister may, by legislative instrument, determine a percentage for the purposes of paragraph (4)(a).

*Effect of section*

- (6) To avoid doubt, this section does not affect how goods that consist of goods that can be separately supplied are otherwise treated for the purposes of this Act.

**86-15 Recipients who are members of GST groups**

- (1) If section 86-5 applies to a \*taxable supply but the \*recipient of the supply is a \*member of a \*GST group, the GST on the supply:
- (a) is payable by the \*representative member; and
  - (b) is not payable by the member (unless the member is the representative member).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (2) This section has effect despite sections 48-40, 51-30 and 86-5 (which are about who is liable for GST).

**86-20 Recipients who are participants in GST joint ventures**

- (1) If section 86-5 applies to a \*taxable supply but the \*recipient of the supply is a \*participant in a \*GST joint venture and the supply is made, on the recipient's behalf, by the \*joint venture operator of the GST joint venture in the course of activities for which the joint venture was entered into, the GST on the supply:
- (a) is payable by the joint venture operator; and
  - (b) is not payable by the participant.
- (2) This section has effect despite sections 48-40, 51-30 and 86-5 (which are about who is liable for GST).

**86-25 The amount of GST on “reverse charged” supplies of goods consisting of valuable metal**

- (1) The amount of GST on a supply to which section 86-5, 86-15 or 86-20 applies is 10% of the \*price of the supply.
- (2) This section has effect despite section 9-70 (which is about the amount of GST on taxable supplies).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## Division 87—Long-term accommodation in commercial residential premises

### 87-1 What this Division is about

Long-term stays in commercial residential premises are given a lower value than would otherwise apply, reducing the amount of GST payable.

### 87-5 Commercial residential premises that are predominantly for long-term accommodation

- (1) The *value* of a \*taxable supply of \*commercial accommodation that:
  - (a) is provided in \*commercial residential premises that are \*predominantly for long-term accommodation; and
  - (b) is provided to an individual as \*long-term accommodation; is 50%, or such other percentage as is specified in the regulations, of what would be the \*price of the supply if this Division did not apply.
- (2) This section has effect despite section 9-75 (which is about the value of taxable supplies).

### 87-10 Commercial residential premises that are not predominantly for long-term accommodation

- (1) The *value* of a \*taxable supply of \*commercial accommodation that:
  - (a) is provided in \*commercial residential premises that are not \*predominantly for long-term accommodation; and
  - (b) is provided to an individual as \*long-term accommodation; is the sum of:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (c) the value, worked out in the way set out in section 9-75, of that part of the supply that relates to provision of the commercial accommodation *during* the first 27 days; and
  - (d) 50%, or such other percentage as is specified in the regulations, of what would be the \*price (if this Division did not apply) of that part of the supply that relates to provision of the commercial accommodation *after* the first 27 days.
- (2) This section has effect despite section 9-75 (which is about the value of taxable supplies).

### **87-15 Meaning of *commercial accommodation***

***Commercial accommodation*** means the right to occupy the whole or any part of \*commercial residential premises, including, if it is provided as part of the right so to occupy, the supply of:

- (a) cleaning and maintenance; or
- (b) electricity, gas, air-conditioning or heating; or
- (c) telephone, television, radio or any other similar thing.

### **87-20 Meaning of *long-term accommodation etc.***

- (1) ***Long-term accommodation*** is provided to an individual if \*commercial accommodation is provided, for a continuous period of 28 days or more, in the same premises:
- (a) to that individual alone; or
  - (b) to that individual, together with one or more other individuals who:
    - (i) are also provided with that commercial accommodation; and
    - (ii) are not provided with it at their own expense (whether incurred directly or indirectly).
- (2) For the purpose of working out the number of days in the period for which an individual is provided with \*commercial accommodation:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Part 4-2** Special rules mainly about supplies and acquisitions

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- (a) count the day on which he or she is first provided with the commercial accommodation; and
  - (b) disregard the day on which he or she ceases to be provided with commercial accommodation.
- (3) \*Commercial residential premises are ***predominantly for long-term accommodation*** if at least 70% of the individuals who are provided with \*commercial accommodation in the premises are provided with commercial accommodation as \*long-term accommodation.

**87-25 Suppliers may choose not to apply this Division**

- (1) This Division does not apply to a supply of \*commercial accommodation if the supplier chooses not to apply this Division to any supplies of commercial accommodation that the supplier makes.
- (2) The choice applies to all supplies of \*commercial accommodation that the supplier makes after the choice is made and before the choice is revoked.
- (3) However, the supplier:
  - (a) cannot revoke the choice within 12 months after the day on which the supplier made the choice; and
  - (b) cannot make a further choice within 12 months after the day on which the supplier revoked a previous choice.

Note: If you choose not to apply this Division, your supplies (other than GST-free supplies) of long-term accommodation in commercial residential premises are input taxed under section 40-35.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## Division 90—Company amalgamations

### 90-1 What this Division is about

This Division ensures proper account is taken of liabilities and entitlements under the GST system when companies amalgamate.

### 90-5 Supplies not taxable—amalgamated company registered or required to be registered

- (1) A supply made by an \*amalgamating company to an \*amalgamated company in the course of \*amalgamation is not a \*taxable supply if, immediately after the amalgamation, the amalgamated company is \*registered or \*required to be registered.
- (2) This section has effect despite section 9-5 (which is about what is a taxable supply).

### 90-10 Value of taxable supplies—amalgamated company not registered or required to be registered

- (1) If:
  - (a) an \*amalgamating company makes a \*taxable supply to an \*amalgamated company in the course of \*amalgamation; and
  - (b) immediately after the amalgamation, the amalgamated company is neither \*registered nor \*required to be registered;the *value* of the taxable supply is the \*GST exclusive market value of the supply.
- (2) This section has effect despite section 9-75 (which is about the value of taxable supplies).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Section 90-15

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**90-15 Acquisitions not creditable—amalgamated company registered or required to be registered**

- (1) An acquisition made by an \*amalgamated company from an \*amalgamating company in the course of \*amalgamation is not a \*creditable acquisition if, immediately after the amalgamation, the amalgamated company is \*registered or \*required to be registered.
- (2) This section has effect despite section 11-5 (which is about what is a creditable acquisition).

**90-20 Liability after amalgamation for GST on amalgamating company's supplies**

- (1) An \*amalgamated company must pay the GST payable on a \*taxable supply if:
  - (a) apart from the \*amalgamation, the GST would have been payable by any of the \*amalgamating companies; and
  - (b) the GST was not attributable, before the amalgamation, to a tax period applying to the amalgamating company.
- (2) This section has effect despite section 9-40 (which is about liability for GST).

**90-25 Entitlement after amalgamation to input tax credits for amalgamating company's acquisitions**

- (1) An \*amalgamated company is entitled to the input tax credit for a \*creditable acquisition if:
  - (a) apart from the \*amalgamation, any of the \*amalgamating companies would have been entitled to the input tax credit; and
  - (b) the input tax credit was not attributable, before the amalgamation, to a tax period applying to the amalgamating company.
- (2) This section has effect despite section 11-20 (which is about who is entitled to input tax credits).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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### 90-30 Adjustments

- (1) An \*amalgamated company has an \*adjustment if:
  - (a) apart from the \*amalgamation, any of the \*amalgamating companies would have had the adjustment; and
  - (b) the adjustment was not attributable, before the amalgamation, to a tax period applying to the amalgamating company.
- (2) This section has effect despite section 17-10 (which is about the effect of adjustments on net amounts).

### 90-35 Amalgamating companies accounting on a cash basis

- (1) If:
  - (a) immediately before \*amalgamation, an \*amalgamating company \*accounted on a cash basis; and
  - (b) GST payable by the company on a \*taxable supply, an input tax credit to which the company was entitled for a \*creditable acquisition, or an \*adjustment that the company had, was not attributable, before the amalgamation, to any of the tax periods applying to the company; and
  - (c) the GST, input tax credit or adjustment would have been attributable to such a tax period if the company had not accounted on a cash basis during that period; and
  - (d) immediately after the amalgamation, the \*amalgamated company does not account on a cash basis;the GST, input tax credit or adjustment (as the case requires) is attributable to the first tax period applying to the amalgamated company that ends after the amalgamation.
- (2) If:
  - (a) immediately before \*amalgamation, an \*amalgamating company \*accounted on a cash basis; and
  - (b) GST payable by the company on a \*taxable supply, an input tax credit to which the company was entitled for a \*creditable acquisition, or an \*adjustment that the company had, was

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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only to some extent attributable, before the amalgamation, to any of the tax periods applying to the company; and

- (c) the GST, input tax credit or adjustment would have been solely attributable to such a tax period if the company had not accounted on a cash basis during that period; and
- (d) immediately after the amalgamation, the \*amalgamated company does not account on a cash basis;

the GST, input tax credit or adjustment (as the case requires) is attributable to the first tax period applying to the amalgamated company that ends after the amalgamation, but only to the extent that it was not attributable to any of the tax periods applying to the amalgamating company.

- (3) This section has effect despite sections 29-5, 29-10 and 29-20 (which are about attributing GST on supplies, input tax credits for acquisitions, and adjustments).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## **Division 93—Time limit on entitlements to input tax credits**

### **93-1 What this Division is about**

Your entitlements to input tax credits for creditable acquisitions cease unless they are included in your assessed net amounts within a limited period (generally 4 years).

### **93-5 Time limit on entitlements to input tax credits**

- (1) You cease to be entitled to an input tax credit for a \*creditable acquisition to the extent that the input tax credit has not been taken into account, in an \*assessment of a \*net amount of yours, during the period of 4 years after the day on which you were required to give to the Commissioner a \*GST return for the tax period to which the input tax credit would be attributable under subsection 29-10(1) or (2).

Note: Section 93-10 sets out circumstances in which your entitlement to the input tax credit does not cease under this section.

- (2) This section has effect despite section 11-20 (which is about entitlement to input tax credits).

Note: You must hold a valid tax invoice relating to a creditable acquisition to be entitled to have an input tax credit for that acquisition taken into account in working out your assessed net amount for a tax period: see subsection 29-10(3).

### **93-10 Exceptions to time limit on entitlements to input tax credits**

#### *Amendment of assessments in relation to supplies*

- (4) You do not cease under section 93-5 to be entitled to an input tax credit if:
  - (a) the input tax credit is for a \*creditable acquisition that relates to making a supply; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (b) during the period of 4 years mentioned in subsection 93-5(1), a \*net amount of yours is \*assessed on the basis that the supply is \*input taxed; and
- (c) after the end of that 4-year period, the Commissioner amends the assessment of your net amount for the tax period to which the supply is attributable under section 155-35, 155-45 or 155-50, or paragraph 155-60(a) or (b), in Schedule 1 to the *Taxation Administration Act 1953* on the basis that the supply is not input taxed; and
- (d) the input tax credit is taken into account in an assessment of a net amount of yours (the **credit assessment**):
  - (i) after the end of that 4-year period; and
  - (ii) at a time when the Commissioner may amend the assessment of your net amount for the tax period mentioned in subsection 93-5(1) of this Act (whether the credit assessment or another assessment) under Subdivision 155-B in Schedule 1 to the *Taxation Administration Act 1953* on the basis that you are entitled to the input tax credit.

*Request to treat document as tax invoice*

- (5) If:
  - (a) you requested the Commissioner to treat a document under subsection 29-70(1B) as a \*tax invoice for the purposes of attributing an input tax credit to a tax period; and
  - (b) you made the request before the end of the 4-year period mentioned in subsection 93-5(1) in relation to the tax period; and
  - (c) the Commissioner agrees to the request after the end of the 4-year period;you do not cease under section 93-5 to be entitled to the input tax credit to the extent that, had the Commissioner agreed to the request before the end of the 4-year period, you would not cease under that section to be entitled to the credit.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

### **93-15 GST no longer able to be taken into account**

You are not entitled to an input tax credit for a \*creditable acquisition to the extent that GST on the related supply has not been taken into account in the \*assessment of the supplier's \*net amount for the tax period to which that GST is attributable if:

- (a) the period of review (within the meaning of section 155-35 in Schedule 1 to the *Taxation Administration Act 1953*) for that assessment has ended; and
- (b) when that period of review ended, you did not hold a \*tax invoice for the creditable acquisition.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## Division 96—Supplies partly connected with the indirect tax zone

### 96-1 What this Division is about

This Division treats a supply that is partly connected with the indirect tax zone as separate supplies, so that only the part of a supply that is connected with the indirect tax zone is included in the GST system.

### 96-5 Supplies that are only partly connected with the indirect tax zone

- (1) If, because a supply (the *actual supply*) is a supply of more than one of these kinds:
  - (a) a supply of goods;
  - (b) a supply of \*real property;
  - (c) a \*telecommunication supply;
  - (d) a supply of anything, other than goods or real property, that is not a telecommunication supply;only part of the actual supply is \*connected with the indirect tax zone, then the actual supply is to be treated as if it were separate supplies in the following way.
- (2) The part of the actual supply that is \*connected with the indirect tax zone is to be treated as if it were a separate supply that is connected with the indirect tax zone.
- (3) The part of the actual supply that is not \*connected with the indirect tax zone is to be treated as if it were a separate supply that is not connected with the indirect tax zone.
- (4) However, if one of the kinds of supply that forms part of the actual supply may reasonably be regarded as incidental to:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (a) the other kind of supply that forms part of the actual supply;  
or
  - (b) one (but not both) of the other kinds of supply that form part of the actual supply;
- and its value (if it were a separate \*taxable supply) would not exceed \$50,000, it is treated as part of that other kind of supply.
- (5) This section has effect despite section 9-25 (which is about when supplies are connected with the indirect tax zone).

**96-10 The value of the taxable components of supplies that are only partly connected with the indirect tax zone**

- (1) If a supply (the *actual supply*):
- (a) is, because of section 96-5, to be treated as separate supplies; and
  - (b) the part of the actual supply that is \*connected with the indirect tax zone is a \*taxable supply, or is partly a \*taxable supply and partly a supply that is \*GST-free or \*input taxed; the *value* of that part of the actual supply is worked out as follows:
    - (c) work out the value of the actual supply, under section 9-75, as if it were solely a taxable supply; and
    - (d) work out the proportion of that value of the actual supply that the taxable supply represents; and
    - (e) multiply that value by the proportion in paragraph (d).
- (2) If that part of the actual supply is partly a \*taxable supply and partly a supply that is \*GST-free or \*input taxed, this section does not affect the operation of section 9-80 in working out the value of so much of that part of the actual supply as is a taxable supply.
- (3) This section has effect despite section 9-75 (which is about the value of taxable supplies).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## **Division 99—Deposits as security**

### **99-1 What this Division is about**

GST does not apply to the taking of a deposit as security for the performance of an obligation (unless the deposit is forfeited or is applied as consideration). GST is not attributable prior to forfeiture.

### **99-5 Giving a deposit as security does not constitute consideration**

- (1) A deposit held as security for the performance of an obligation is not treated as \*consideration for a supply, unless the deposit:
  - (a) is forfeited because of a failure to perform the obligation; or
  - (b) is applied as all or part of the consideration for a supply.
- (2) This section has effect despite section 9-15 (which is about consideration).

### **99-10 Attributing the GST relating to deposits that are forfeited etc.**

- (1) The GST payable by you on a \*taxable supply for which the \*consideration is a deposit that was held as security for the performance of an obligation is attributable to the tax period during which the deposit:
  - (a) is forfeited because of a failure to perform the obligation; or
  - (b) is applied as all or part of the consideration for a supply.
- (2) This section has effect despite section 29-5 (which is about attributing GST for taxable supplies).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## Division 100—Vouchers

### 100-1 What this Division is about

A supply of a voucher for supplies up to a stated monetary value is not subject to GST. GST may still be payable on the supply for which the voucher is redeemed, and there is an increasing adjustment for unredeemed vouchers.

Note: Vouchers that do not have a stated monetary value can be subject to GST when supplied, but the price of the voucher is excluded when working out the GST on the supply for which the voucher is redeemed (see subsection 9-17(1)).

### 100-5 Supplies of vouchers with a stated monetary value

- (1) A supply of a \*voucher is not a \*taxable supply if:
  - (a) on redemption of the voucher, the holder of the voucher is entitled to supplies up to the \*stated monetary value of the voucher; and
  - (b) the \*consideration for supply of the voucher does not exceed the stated monetary value of the voucher.
- (2) If the \*consideration for supply of the voucher exceeds the \*stated monetary value of the voucher, the consideration is treated (except for the purposes of this section) as if it were reduced by that monetary value.
- (2A) The *stated monetary value*, in relation to a \*voucher other than a \*prepaid phone card or facility, means the monetary value stated on the voucher or in documents accompanying the voucher.
- (2B) The *stated monetary value*, in relation to a \*voucher that is a \*prepaid phone card or facility, means the sum of:
  - (a) in any case—the monetary value stated on the voucher or in documents accompanying the voucher; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (b) if the voucher is topped up after it is supplied—the monetary value of the top-up stated on the voucher or in documents accompanying the top-up.

However, disregard the monetary value stated on the voucher (or in documents accompanying the voucher) or top-up (as the case requires), of any bonus supplies covered by the voucher or top-up (as the case requires).

- (3) This section has effect despite section 9-5 (which is about what are taxable supplies) and section 9-15 (which is about consideration).

**100-10 Redemption of vouchers**

- (1) The act of redeeming a \*voucher is not a supply.

Note: A supply for which the voucher is redeemed is still a supply.

- (2) Subsection (1) has effect despite section 9-10 (which is about what is a supply).
- (3) Subsection 9-17(1) (which is about the consideration for exercising rights or options) does not apply to a right or option that is granted by way of a \*voucher if, on redemption of the voucher, the holder of the voucher is entitled to supplies up to the \*stated monetary value of the voucher.

**100-12 Consideration on redemption of vouchers**

- (1) To avoid doubt, the consideration for a \*taxable supply of a thing acquired by fully redeeming a \*voucher is taken to be the sum of:
  - (a) the \*stated monetary value of the voucher, reduced by any amount of that value refunded to the holder of the voucher in respect of the supply; and
  - (b) any additional consideration provided for the supply.
- (2) To avoid doubt, the consideration for a \*taxable supply of a thing acquired by partly redeeming a \*voucher is taken to be the sum of:
  - (a) the amount of the \*stated monetary value of the voucher that the redemption represents; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (b) any additional consideration provided for the supply.
- (3) Subsections (1) and (2) have effect despite section 9-15 (which is about consideration).

### **100-15 Increasing adjustments for unredeemed vouchers**

- (1) You have an *increasing adjustment* if:
  - (a) you supplied a \*voucher for \*consideration; and
  - (b) on redemption of the voucher, the holder of the voucher was entitled to supplies up to the \*stated monetary value of the voucher; and
  - (c) the voucher has not been fully redeemed; and
  - (d) you have, for accounting purposes, written back to current income any reserves for the redemption of the voucher.
- (2) The amount of the increasing adjustment is 1/11 of the \*stated monetary value of the voucher to the extent that it was not redeemed.

### **100-18 Arrangement for supply of voucher**

- (1) An entity (the *supplier*) may, in writing, enter into an arrangement with another entity under which the other entity supplies (whether or not as an agent on the supplier's behalf) a \*voucher to a third party.
- (2) If, under the arrangement, the supplier pays, or is liable to pay, an amount, as a commission or similar payment, to the other entity for the other entity's supply, the supply by the other entity to the supplier, to which the supplier's payment or liability relates, is treated as if it were not a \*taxable supply.
- (3) This section has effect despite section 9-5 (which is about what are taxable supplies).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**100-20 Vouchers supplied to non-residents and redeemed by others in the indirect tax zone**

This Division does not apply to a \*voucher supplied to a \*non-resident if, because of the application of subsection 38-190(3), the supply is not \*GST-free.

**100-25 Meaning of *voucher* etc.**

- (1) A *voucher* is any:
  - (a) voucher, token, stamp, coupon or similar article; or
  - (b) \*prepaid phone card or facility;the redemption of which in accordance with its terms entitles the holder to receive supplies in accordance with its terms. However, a postage stamp is not a voucher.
- (2) A *prepaid phone card or facility* is any article or facility supplied for the primary purpose of enabling the holder:
  - (a) to use, on a prepaid basis, telephone or like services supplied by a supplier of \*telecommunications supplies; or
  - (b) to make, on a prepaid basis, acquisitions that are facilitated by using telephone or like services supplied by such a supplier.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## **Division 102—Cancelled lay-by sales**

### **102-1 What this Division is about**

If a lay-by sale is cancelled, any amount retained or recovered by the supplier is within the GST system.
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### **102-5 Cancelled lay-by sales**

- (1) If a supply by way of lay-by sale is cancelled:
  - (a) any amount already paid by the \*recipient that the supplier retains because of the cancellation; and
  - (b) any amount the supplier recovers from the recipient because of the cancellation;is treated as \*consideration for a supply made by the supplier and as consideration for an acquisition made by the recipient.
- (2) This section has effect despite section 9-15 (which is about what is consideration).

### **102-10 Attributing GST and input tax credits**

- (1) If an amount is retained or recovered in circumstances referred to in section 102-5:
  - (a) the GST payable by you on a \*taxable supply for which the amount is \*consideration; or
  - (b) the input tax credit to which you are entitled for a \*creditable acquisition for which the amount is consideration;is attributable to the tax period during which the amount was retained or recovered, as the case requires.
- (2) This section has effect despite sections 29-5 and 29-10 (which are about attributing GST for taxable supplies and input tax credits for creditable acquisitions).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## Division 105—Supplies in satisfaction of debts

### 105-1 What this Division is about

This Division makes a creditor liable for GST on supplies of a debtor's property where the supply is in satisfaction of a debt owed to the creditor.

Note: This Division overrides Division 58 to the extent that the creditor is a representative of the debtor and the debtor is an incapacitated entity (see section 58-95).

### 105-5 Supplies by creditors in satisfaction of debts may be taxable supplies

- (1) You make a *taxable supply* if:
  - (a) you supply the property of another entity (the *debtor*) to a third entity in or towards the satisfaction of a debt that the debtor owes to you; and
  - (b) had the debtor made the supply, the supply would have been a \*taxable supply.
- (2) It does not matter whether:
  - (a) you made the supply in the course or furtherance of an \*enterprise that you \*carry on; or
  - (b) you are \*registered, or \*required to be registered.
- (3) However, the supply is not a \*taxable supply if:
  - (a) the debtor has given you a written notice stating that the supply would not be a taxable supply if the debtor were to make it, and stating fully the reasons why the supply would not be a taxable supply; or
  - (b) if you cannot obtain such a notice—you believe on the basis of reasonable information that the supply would not be a taxable supply if the debtor were to make it.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (4) This section has effect despite section 9-5 (which is about what is a taxable supply).

### **105-10 Net amounts**

- (1) If you are not \*registered or \*required to be registered, you do not have a \*net amount under Part 2-4 merely because you make a \*taxable supply under section 105-5.
- (2) This section does not prevent an \*adjustment arising that relates to such a supply, but you cannot have a \*decreasing adjustment unless you are \*registered or \*required to be registered.
- (3) This section has effect despite Division 17 (which is about net amounts and adjustments).

### **105-15 GST returns**

- (1) If, during a month:
- (a) you make any \*taxable supplies under section 105-5; or
  - (b) you have any \*increasing adjustments that arise in relation to any such supplies (whether made in that month or a previous month);
- and you are not \*registered or \*required to be registered during that month, you must give to the Commissioner a \*GST return, within 21 days after the end of the month, relating to those supplies you made in that month and those adjustments.
- (3) This section has effect despite sections 31-5 and 31-10 (which are about giving GST returns).

### **105-20 Payments of GST**

- (1) If you are not \*registered or \*required to be registered during a particular month, you must pay to the Commissioner:
- (a) amounts of \*assessed GST on \*taxable supplies under section 105-5 that you make during that month; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (b) \*assessed amounts of \*increasing adjustments that you have that arise, during that month, in relation to supplies that are taxable supplies under section 105-5.
- (1A) You must pay each amount:
- (a) on or before the later of:
    - (i) the 21st day after the end of the month; and
    - (ii) the day the Commissioner gives notice of the relevant \*assessment to you under section 155-10 in Schedule 1 to the *Taxation Administration Act 1953*; and
  - (b) at the place and in the manner specified by the Commissioner.
- (2) This section has effect despite Division 33 (which is about payments of GST).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## **Division 108—Valuation of taxable supplies of goods in bond**

### **108-1 What this Division is about**

Taxable supplies of goods in bond are given a higher value than would otherwise apply, because the price of a supply in bond does not include any excise duty that would be included after entry of the goods for home consumption.

### **108-5 Taxable supplies of goods in bond etc.**

- (1) The *value* of a \*taxable supply of \*excisable goods that are in bond is the sum of:
  - (a) the value of the supply worked out in the way set out in section 9-75; and
  - (b) the amount of \*excise duty to which the goods would have been subject if they had been entered for home consumption under the *Excise Act 1901* at the time the supply first became a supply \*connected with the indirect tax zone.
- (2) However, this section does not apply to a supply of goods to a \*recipient who:
  - (a) is \*registered or \*required to be registered; and
  - (b) acquires the goods solely for a \*creditable purpose.
- (3) This section has effect despite section 9-75 (which is about the value of taxable supplies).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## **Division 110—Tax-related transactions**

### **110-1 What this Division is about**

Some transactions that relate to aspects of income tax and other taxes are outside the GST system.
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### **Subdivision 110-A—Income tax-related transactions**

#### **110-5 Transfers of tax losses and net capital losses**

- (1) A supply is not a \*taxable supply if the supply is:
  - (a) the transfer of a \*tax loss in accordance with Subdivision 170-A of the \*ITAA 1997; or
  - (b) the transfer of a \*net capital loss in accordance with Subdivision 170-B of the ITAA 1997.
- (2) This section has effect despite section 9-5 (which is about what are taxable supplies).

#### **110-15 Supplies under operation of consolidated group regime**

- (1) A supply is not a \*taxable supply to the extent that it occurs because of the operation of these provisions:
  - (a) Part 3-90 of the \*ITAA 1997;
  - (b) Part 3-90 of the *Income Tax (Transitional Provisions) Act 1997*.
- (2) Without limiting the scope of subsection (1), for the purposes of that subsection, the operation mentioned in that subsection includes an operation that results from:
  - (a) a choice made under the provisions mentioned in that subsection; or
  - (b) any other voluntary action provided for by those provisions.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (3) This section has effect despite section 9-5 (which is about what are taxable supplies).

**110-20 Tax sharing agreements—entering into agreement etc.**

- (1) This section applies if:
- (a) an entity makes a supply because it enters into or becomes a party to an agreement; and
  - (b) the agreement satisfies the requirements of subsections 721-25(1) and (2) of the *ITAA 1997* in relation to an existing or future *group liability* of the *head company* of a *consolidated group* or *MEC group*.
- (2) The supply is not a *taxable supply* to the extent that it relates to the fact that the agreement satisfies those requirements.
- (3) This section has effect despite section 9-5 (which is about what are taxable supplies).

**110-25 Tax sharing agreements—leaving group clear of group liability**

- (1) A supply made to a *TSA contributing member* of a *consolidated group* or a *MEC group* is not a *taxable supply* if:
- (a) the supply is a release from an obligation relating to a *contribution amount* in relation to a *group liability* of the *head company* of the group; and
- Example: The obligation could be a contractual obligation created by the agreement under which the contribution amount was determined.
- (b) the *TSA contributing member* has, for the purposes of subsection 721-30(3) of the *ITAA 1997*, left the group clear of the group liability.
- Note: See section 721-35 of the *ITAA 1997* for when a *TSA contributing member* has left a group clear of the group liability.
- (2) This section has effect despite section 9-5 (which is about what are taxable supplies).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**110-30 Tax funding agreements**

- (1) This section applies if:
  - (a) an entity makes a supply because it enters into or becomes a party to a written agreement; and
  - (b) the agreement deals with the distribution of economic burdens and benefits directly related to \*tax-related liabilities mentioned in subsection 721-10(2) of the \*ITAA 1997 of the \*head company of a \*consolidated group or \*MEC group, among \*members and former members of the group; and
  - (c) if the group is not in existence when the entity enters into or becomes a party to the agreement—the agreement contemplates that the parties to the agreement will become members of the group when it does come into existence; and
  - (d) the agreement complies with the requirements (if any) set out in the regulations.
- (2) The supply is not a \*taxable supply to the extent that it relates to the fact that the agreement deals with the distribution mentioned in paragraph (1)(b).
- (3) Without limiting paragraph (1)(b), the agreement deals with the distribution mentioned in that paragraph if it includes one or more of the following kinds of provisions:
  - (a) provisions for \*members or former members of the group to contribute towards payment of \*tax-related liabilities mentioned in subsection 721-10(2) of the \*ITAA 1997 of the \*head company of the group;
  - (b) provisions for payments to be made to a member or former member of the group in recognition of activities or attributes of that member that have the effect of reducing the amount of those liabilities.
- (4) This section has effect despite section 9-5 (which is about what are taxable supplies).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## **Subdivision 110-B—Other tax-related transactions**

### **110-60 Indirect tax sharing agreements—entering into agreement etc.**

- (1) This section applies if:
  - (a) an entity makes a supply because it enters into or becomes a party to an agreement; and
  - (b) the agreement:
    - (i) satisfies the requirements of subsections 444-90(1A) to (1E) in Schedule 1 to the *Taxation Administration Act 1953* in relation to an indirect tax amount referred to in subsection 444-90(1) in that Schedule; or
    - (ii) satisfies the requirements of subsections 444-80(1A) to (1E) in Schedule 1 to the *Taxation Administration Act 1953* in relation to an indirect tax amount referred to in subsection 444-80(1) in that Schedule.
- (2) The supply is not a \*taxable supply to the extent that it relates to the fact that the agreement satisfies those requirements.
- (3) This section has effect despite section 9-5 (which is about what are taxable supplies).

### **110-65 Indirect tax sharing agreements—leaving GST group or GST joint venture clear of liability**

- (1) A supply made to a contributing member (within the meaning of subsection 444-90(1A) in Schedule 1 to the *Taxation Administration Act 1953*) of a \*GST group is not a \*taxable supply if:
  - (a) the supply is a release from an obligation relating to a contribution amount (within the meaning of that subsection) relating to liabilities of the \*representative member of the group that are referred to in that subsection; and

Example: The obligation could be a contractual obligation created by the agreement under which the contribution amount was determined.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (b) the contributing member leaves the group in circumstances in which subsection 444-90(1B) in that Schedule applies to the contributing member.
- (2) A supply made to a contributing participant (within the meaning of subsection 444-80(1A) in Schedule 1 to the *Taxation Administration Act 1953*) of a \*GST joint venture is not a \*taxable supply if:
  - (a) the supply is a release from an obligation relating to a contribution amount (within the meaning of that subsection) relating to liabilities of the \*joint venture operator of the joint venture that are referred to in that subsection; and  

Example: The obligation could be a contractual obligation created by the agreement under which the contribution amount was determined.
  - (b) the contributing participant leaves the joint venture in circumstances in which subsection 444-80(1B) in that Schedule applies to the contributing participant.
- (3) This section has effect despite section 9-5 (which is about what are taxable supplies).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## **Division 111—Reimbursement of employees etc.**

### **111-1 What this Division is about**

You may be entitled to input tax credits for some reimbursements you make to employees (or associates of employees), agents, officers or partners for expenses they incur. The entitlement extends to charitable bodies and government schools reimbursing their volunteers.

### **111-5 Creditable acquisitions relating to reimbursements**

- (1) If one or more of the following applies:
- (a) you reimburse an employee or agent for an expense he or she incurs that is related directly to his or her activities as your employee or agent;
  - (ab) you reimburse an employee (whether or not you are the employee's employer) for an expense that the employee or the employee's \*associate incurs, and the reimbursement constitutes an \*expense payment benefit;
  - (ac) you reimburse an associate of an employee (whether or not you are the employee's employer) for an expense that the associate or employee incurs, and the reimbursement constitutes an expense payment benefit;
  - (b) you are a \*company and you reimburse an \*officer for an expense he or she incurs that is related directly to his or her activities as your officer;
  - (c) you are a \*partnership and you reimburse a partner for an expense he or she incurs that is related directly to his or her activities as a partner in the partnership;
- the reimbursement is treated as \*consideration for an acquisition that you make from the employee, associate, agent, officer or partner.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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Note: This section also applies if you reimburse the recipient of certain withholding payments: see section 111-20.

- (2) The fact that the supply to you is not a \*taxable supply does not stop the acquisition being a \*creditable acquisition.
- (3) However, the acquisition is not a \*creditable acquisition:
  - (a) to the extent (if any) that:
    - (i) the employee, \*associate, agent, \*officer or partner is entitled to an input tax credit for acquiring the thing acquired in incurring the expense; or
    - (ii) the acquisition would not, because of Division 69, be a creditable acquisition if you made it; or
  - (b) unless the supply of the thing acquired, by the employee, associate, agent, officer or partner in incurring the expense, was a taxable supply; or
  - (c) if you would, because of Division 71, not have been entitled to an input tax credit if you had made the acquisition that the employee, associate, agent, officer or partner made.
- (3AA) In working out the extent to which a person is entitled to an input tax credit for the purposes of paragraph (3)(a), disregard sections 131-40 and 131-50 (which are about amounts of input tax credits under the annual apportionment rules).
- (3A) If you are a \*partnership, this section does not apply to your reimbursement of a partner for an expense he or she incurs if, even without this Division applying, you are entitled to an input tax credit arising from the incurring of the expense.
- (4) This section has effect despite section 11-5 (which is about what is a creditable acquisition).

**111-10 Amounts of input tax credits relating to reimbursements**

- (1) The amount of the input tax credit for a \*creditable acquisition the \*consideration for which is a reimbursement to which section 111-5 applies is an amount equal to  $\frac{1}{11}$  of the amount of the reimbursement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

- (2) However, if:
- (a) the person incurring the expense incurs it in the capacity of an agent, \*officer or partner; and
  - (b) the incurring of the expense is only in part related directly to his or her activities as your agent or officer, or as a partner, as the case requires;
- the amount of the input tax credit under subsection (1) is reduced by an extent equivalent to the extent to which the incurring of the expense is not related directly to those activities.
- (3) This section has effect despite section 11-25 (which is about the amount of input tax credits for creditable acquisitions).

### **111-15 Tax invoices relating to reimbursements**

For the purposes of subsection 29-10(3), you are taken to hold a \*tax invoice for a \*creditable acquisition the \*consideration for which is a reimbursement to which section 111-5 applies if you hold a tax invoice for the \*taxable supply referred to in subsection 111-5(3).

### **111-18 Application of Division to volunteers working for charities etc.**

- (1) If:
- (a) an \*endorsed charity, a \*gift-deductible entity or a \*government school reimburses an individual for an expense he or she incurs; and
  - (b) the expense is directly related to his or her activities as a volunteer of the endorsed charity, gift-deductible entity or government school;
- this Division applies to the endorsed charity, gift-deductible entity or government school as if:
- (c) the individual were an employee of the endorsed charity, gift-deductible entity or government school; and
  - (d) his or her activities in connection with incurring the expense were activities as such an employee.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (3) Subsection (1) does not apply in relation to a reimbursement by a \*gift-deductible entity endorsed as a deductible gift recipient (within the meaning of the \*ITAA 1997) under section 30-120 of the ITAA 1997, unless:
- (a) the entity is:
    - (i) an \*endorsed charity; or
    - (ii) a \*government school; or
    - (iii) a fund, authority or institution of a kind referred to in paragraph 30-125(1)(b) of the ITAA 1997; or
  - (b) each purpose to which the expense relates is a \*gift-deductible purpose of the entity.

Note: This subsection excludes from this section reimbursements by certain (but not all) gift-deductible entities that are only endorsed for the operation of a fund, authority or institution. However, reimbursements can be covered by this section if they relate to the principal purpose of the fund, authority or institution.

**111-20 Application of Division to recipients of certain withholding payments**

- (1) If you make, or are liable to make, \*withholding payments covered by subsection (2), this Division applies to you as if:
- (a) an individual to whom you make (or are liable to make) such payments were your employee; and
  - (b) his or her activities in connection with earning such payments were activities as your employee.
- (2) This subsection covers a \*withholding payment covered by any of the provisions in Schedule 1 to the *Taxation Administration Act 1953* listed in the table.

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**Withholding payments covered**

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<b>Item</b>	<b>Provision</b>	<b>Subject matter</b>
1	Section 12-35	Payment to employee
2	Section 12-40	Payment to company director
3	Section 12-45	Payment to office holder

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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**Withholding payments covered**

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<b>Item</b>	<b>Provision</b>	<b>Subject matter</b>
4	Section 12-55	Voluntary agreement to withhold
5	Section 12-60	Payment under labour hire arrangement, or specified by regulations

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**111-25 Employers paying expenses of employees etc.**

If you make, or are liable to make:

- (a) a payment on behalf of your employee for an expense that he or she incurs that is related directly to his or her activities as your employee; or
- (b) a payment:
  - (i) on behalf of an employee (whether or not you are the employee's employer) for an expense that the employee or the employee's \*associate incurs; or
  - (ii) on behalf of an associate of an employee (whether or not you are the employee's employer) for an expense that the associate or employee incurs;that constitutes an \*expense payment benefit;

this Division applies to you as if you reimbursed your employee, or you reimbursed the employee or associate, for the expense.

**111-30 Reimbursements etc. of former or future employees etc.**

This Division applies in relation to:

- (a) reimbursements, of a kind referred to in paragraph 111-5(1)(ab) or (ac), of former employees and future employees, and of the \*associates of former employees and future employees; and
- (b) payments, of a kind referred to in paragraph 111-25(b), that you make or are liable to make on behalf of former employees and future employees, and of the \*associates of former employees and future employees;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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in the same way that this Division applies to such reimbursements of, and such payments that you make or are liable to make to, employees and their associates.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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## Division 113—PAYG voluntary agreements

### 113-1 What this Division is about

A supply is *not* a taxable supply if:

- (a) an amount must be withheld from payment for the supply because of section 12-55 in Schedule 1 to the *Taxation Administration Act 1953* (about voluntary agreements to withhold); and
- (b) the acquisition of the thing supplied would be a creditable acquisition if the supply *were* a taxable supply.

### 113-5 Supply of work or services not a taxable supply

- (1) A supply that you make is not a \*taxable supply to the extent that you make it under an arrangement (within the meaning of the \*ITAA 1997) if:
  - (a) the arrangement the performance of which, in whole or in part, involves the performance of work or services (whether or not by you); and
  - (b) an agreement is in force that:
    - (i) complies with section 12-55 in Schedule 1 to the *Taxation Administration Act 1953* (about voluntary agreements to withhold); and
    - (ii) states that the section covers payments under the arrangement, or payments under a series of arrangements that includes the arrangement; and
  - (c) you, and the entity acquiring what you supply under the arrangement, are parties to that agreement; and
  - (d) you have an \*ABN that is in force and is quoted in the agreement; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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- (e) the acquisition, by that entity, of what you supply under the arrangement would be a \*creditable acquisition (and not \*partly creditable) if the supply were a \*taxable supply.
- (2) This section has effect despite section 9-5 (about what is a taxable supply.)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 195-1.

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