GSTR 2007/D1 - Goods and services tax: when do you acquire anything or import goods solely or partly for a creditable purpose?

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There is an Erratum notice for this document.
This document has been finalised.

Draft Goods and Services Tax Ruling

Goods and services tax: when do you acquire anything or import goods solely or partly for a creditable purpose?

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Preamble

This document is a draft for public comment. As such, it represents the preliminary, though considered, views of the Australian Taxation Office. This draft may not be relied on by taxpayers and practitioners, as it is not a ruling or advice for the purposes of section 105-60 of Schedule 1 to the ***Taxation Administration Act 1953****. The final Ruling will be a public ruling for the purposes of section 105-60 and may be relied upon by any entity to which it applies.*

What this Ruling is about

1. This Ruling explains the principles to be applied in determining whether an acquisition or importation is acquired for a 'creditable purpose'.

2. To claim an input tax credit you must make a creditable acquisition[1] or importation[2]. To make a creditable acquisition or importation you need to make the acquisition or importation solely or partly for a creditable purpose. This Ruling considers the creditable purpose requirement. The meaning of creditable purpose is set out in section 11-15 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) for acquisitions and section 15-10 of the GST Act for importations.

3. Although this Ruling deals primarily with entities carrying on an enterprise that results in the entities making supplies, the principles outlined are also applicable to entities carrying on an enterprise where the entities do not make supplies.

4. This Ruling explains the principles for determining:

- whether the acquisition or importation is made in carrying on an enterprise or whether it is of a private or domestic nature; and
- whether the acquisition relates to making supplies that would be input taxed.

5. The Ruling also explains the Commissioner's approach to acquisitions in particular circumstances.

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[1] Section 11-5.
[2] Section 15-5.

6. The Ruling highlights the interaction of paragraph 11-15(2)(a) with subsections 11-15(3), (4) and (5) of the GST Act, but it does not discuss the operation of those subsections in detail.

7. This Ruling does not explain the operation of Division 129 of the GST Act.[3]

8. The extent of creditable purpose of an acquisition or an importation is the subject of two separate GST Rulings, and is not dealt with in this Ruling.[4]

9. This Ruling does not discuss Division 70 of the GST Act, which is about reduced credit acquisitions. Division 70 contains an extended definition of creditable purpose which is based on the definition of creditable purpose in section 11-15 of the GST Act. Division 70 is discussed in GSTR 2004/1.[5]

10. Unless otherwise stated, all legislative references in this Ruling are to the GST Act.

Date of effect

11. This draft Ruling represents the preliminary, though considered view of the Australian Taxation Office. This draft may not be relied on by taxpayers or practitioners. When the final Ruling is officially released, it will explain our view of the law before and after the date of issue.

12. The final Ruling will be a public ruling for the purposes of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953* and may be relied upon, after it is issued, by any entity to which it applies. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and our view of when you can rely on our interpretation of the law in GST public and private rulings.

13. If the final public ruling conflicts with a previous private ruling that you have obtained, the public ruling prevails. However, if you have relied on a private ruling, you are protected in respect of what you have done up to the date of issue of the final public ruling. This means that if you have underpaid an amount of GST, you are not liable for the shortfall prior to the date of issue of the later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

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[3] See GSTR 2000/24.
[4] See Goods and Services Tax Ruling GSTR 2006/3 Goods and services tax: determining the extent of creditable purpose for providers of financial supplies; and Goods and Services Tax Ruling GSTR 2006/4 Goods and services tax: determining the extent of creditable purpose for claiming input tax credits and for making adjustments for changes in extent of creditable purpose.
[5] Goods and services tax: reduced credit acquisitions.

Background

GST Act

14. The general entitlement to input tax credits arises from the making of creditable acquisitions and creditable importations.[6] Division 11 deals with creditable acquisitions, while Division 15 deals with creditable importations. This Ruling is concerned with the creditable purpose requirement in paragraphs 11-5(a) and 15-10(a), and the meaning of creditable purpose, as set out in sections 11-15 and 15-10 for acquisitions and importations respectively.

15. The term 'creditable acquisition' is defined in section 11-5 as follows:

> 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.

16. 'Creditable purpose' is defined in section 11-15 as follows:

> (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 part of an enterprise, that you carry on outside Australia.
>
> (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.

[6] Subsection 7-1(2).

(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; and

(b) the borrowing relates to you making supplies that are not input taxed.

17. If you have made an importation you will need to establish whether it is a creditable importation. The term 'creditable importation' is defined in section 15-5 as follows:

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.

18. 'Creditable purpose' is defined in section 15-10 as follows:

(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 part of an enterprise, that you carry on outside Australia.

(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.

19. As the creditable purpose tests in Divisions 11 and 15 are similarly structured, using the same words, the Commissioner considers that the tests are intended to be similarly applied. Consequently, where a discussion refers to provisions in Division 11, the discussion is also applicable to Division 15. That is, references to 'acquisitions' can be read as 'acquisitions and importations'.

20. In interpreting Divisions 11 and 15, guidance may be drawn from GST case law, and to the extent it is relevant, income tax case law and overseas GST and VAT judicial decisions. The following paragraphs discuss the relevance of a contextual approach to interpretation and consider to what extent it is appropriate to look for assistance from Australian income tax case law and the case law of the European VAT regime.

Judicial approach to context

21. The High Court has considered the relevance of context both in a broad sense and in relation to the text of specific provisions within an Act. The judgment of Brennan CJ, Dawson, Toohey and Gummow JJ in *CIC Insurance Ltd v. Bankstown Football Club Ltd*[7] indicates it is appropriate to consider the context:

> …in its widest sense to include such things as the existing state of the law and the mischief which…..one may discern the statute intended to remedy.

22. The Court went on to add that:

> …inconvenience or improbability of result may assist the court in preferring to the literal meaning an alternative construction which, by the steps identified above, is reasonably open and more closely conforms to the legislative intent.[8]

23. However, consideration of the context of creditable purpose in the GST Act does not obviate the need for close attention to the text of the provisions under consideration. As the High Court noted in the judgment of Gleeson CJ, Gummow, Hayne and Heydon JJ in *Stevens v. Kabushiki Kaisha Sony Computer Entertainment:*[9]

> No particular theory or 'rule' of statutory interpretation, including that of 'purposive' construction, can obviate the need for close attention to the text and structure of [the relevant part of the legislation].

24. Further, as has been noted by Kirby J in *R v. Lavender*[10] it is important to take a consistent approach to issues of statutory interpretation and not:

> …pluck out considerations of 'context', 'purpose' and 'history' arbitrarily, so as to sustain the outcomes of interpretation … in some, but not other cases.

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[7] (1997) 187 CLR 384 at 408.
[8] (1997) 187 CLR 384 at 488.
[9] (2005) 224 CLR 193 at 206.
[10] (2005) 222 CLR 67 at 89.

25. Ultimately, the task of the courts and the Commissioner is to construe the language of the statute. Following the approach of the courts, the Commissioner prefers an interpretation that gives effect to the purpose of the provisions over one that does not. In some instances, the strict literal meaning of the words of a provision will not achieve the policy intent. However, a contextual interpretation of the words may be open and give the correct policy outcome. In these instances, the contextual interpretation will be adopted.

The context of GST

26. The Australian GST is a multi-stage value added tax, borne at the point of final consumption of goods and services, and calculated with reference to supplies. A fundamental aspect of any value added tax is that tax is charged at every point at which value is added prior to final consumption, with credit available for GST charged at earlier stages. This credit results in each entity that is registered for GST paying a net amount at each stage, being the difference between the GST on their outputs and the GST on their inputs.

27. Hill J, in delivering the main judgment of the Full Federal Court decision of *HP Mercantile Pty Limited v. Commissioner of Taxation*[11] *(HP Mercantile)*, noted the following with respect to the GST:

> The language of the GST Act, as seen in the context of value added taxation generally, makes it clear that the legislative scheme is that a taxpayer will be entitled to an input tax credit where it is necessary that a credit be given to ensure that output tax payable by the taxpayer is not imposed upon an amount which already includes tax payable at some early stage in the commercial cycle. Where possible, GST is not to be found embedded in the price or consideration on which output tax is calculated when taxable supplies are made. However, in the case of a taxpayer which makes input taxed supplies, while that taxpayer will not be liable to output tax on the supplies it makes which satisfy the description of input taxed supplies, that taxpayer will be denied an input tax credit for the tax payable on acquisitions it makes where the necessary relationship exists.[12]

28. In relation to the availability of input tax credits, Hill J said:

> The genius of a system of value added taxation, of which the GST is an example, is that while tax is generally payable at each stage of commercial dealings (supplies) with goods, services or other 'things', there is allowed to an entity which acquires those goods, services or other things as a result of a taxable supply made to it, a credit for the tax borne by that entity by reference to the output tax payable as a result of the taxable supply. That credit, known as an input tax credit, will be available, generally speaking, so long as the acquirer and the supply to it (assuming it was a 'taxable supply') satisfied certain conditions, the most important of which, for present purposes, is that the acquirer make the acquisition in the course of carrying on an

[11] [2005] FCAFC 126.
[12] [2005] FCAFC 126 at paragraph 45.

> enterprise and thus, not as a consumer. The system of input tax credits thus ensures that while GST is a multi-stage tax, there will ordinarily be no cascading of tax. It ensures also that the tax will be payable, by each supplier in a chain, only upon the value added by that supplier.[13]

29. Hill J's comments reinforce the policy intent expressed in the Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998 (Explanatory Memorandum) which describes the scheme of the GST as follows:

> 3.24 Input tax credits are intended to offset the GST included in the price you paid for an acquisition if the acquisition is for use in your enterprise. If you are going to use a thing in your enterprise, for example by selling it on to someone else, GST will be included in that sale. Therefore, to avoid double taxing that thing, you receive a credit for the GST included in the price you paid for the thing. You therefore have a creditable purpose if you acquire a thing for the purpose of your enterprise.
>
> 3.26 However, you are not entitled to an input tax credit for acquiring a thing if your acquisition of the thing relates to an input taxed supply you are going to make. No tax will be charged on that supply. Therefore, you do not have a creditable purpose if your acquisition of a thing relates, either directly or indirectly, to a supply you make that is input taxed.

30. Disallowing an entity's entitlement to input tax credits for an acquisition that relates to input taxed supplies has to be understood in the context of GST as a consumption tax. The design of the GST Act effectively results in the levy of GST on the value paid for final domestic consumption in most cases.

31. Where a supplier makes taxable supplies it is liable for GST on those supplies. The supplier is entitled to claim input tax credits for its acquisitions that relate to making those supplies. This ensures that the price the supplier charges reflects the value of the supply (including the cost of inputs net of GST and the value added by the supplier) and the GST levied upon the value of that supply. That is, the price charged does not reflect any embedded GST.

32. Where a supplier makes input taxed supplies it is not liable for GST on those supplies. The supplier is not, however, entitled to input tax credits for its acquisitions that relate to making those supplies. The price the supplier charges will reflect the cost of its inputs (including any GST it has borne) and the value added by the supplier.[14] The term 'input taxed', rather than the more usual term 'exempt' as used in other jurisdictions[15], reflects that tax is included in the inputs to the supply rather than levied upon the supply.

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[13] [2005] FCAFC 126 at paragraph 13.
[14] See paragraph 5.4 of the Explanatory Memorandum.
[15] See paragraph 5.5 of the Explanatory Memorandum.

33. For taxable and input taxed supplies made from business to consumer the price includes GST. For input taxed supplies the GST is embedded and so the supplies are partially taxed even though there is no explicit charging of GST on such supplies.

34. Where taxable supplies are made in business to business transactions, cascading of tax does not occur. This is because the tax passed on in the price of the taxable supply can give rise to input tax credits for the recipient of the supply where the acquisition is used by the recipient to make taxable supplies (or GST-free supplies).

35. In contrast, cascading can occur when there are business to business input taxed supplies. This is because the embedded tax passed on in the price of the input taxed supply cannot give rise to input tax credits for the recipient of the supply, even if the acquisition is used by the recipient to make taxable supplies.

36. As a general proposition, we consider that Division 11 should be interpreted in a way that will not ordinarily lead to taxable acquisitions being denied input tax credits when these acquisitions are inputs to the making of taxable supplies. However, it is recognised that there are limitations on this as the sole principle for determining creditable purpose. The examples in the ruling explain how creditable purpose is determined.

Relevance of income tax law

37. There is some similarity between section 11-15 of the GST Act and section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997). For instance, under section 8-1 of the ITAA 1997 relevant considerations include whether a loss or outgoing was incurred in carrying on your business and whether it is of a private or domestic nature.

38. Section 8-1 of the ITAA 1997 is as follows:

> 8-1(1) You can ***deduct*** from your assessable income any loss or outgoing to the extent that:
>
> (a) it is incurred in gaining or producing your assessable income; or
>
> (b) it is necessarily incurred in carrying on a *business for the purpose of gaining or producing your assessable income.
>
> 8-1(2) However, you cannot deduct a loss or outgoing under this section to the extent that:
>
> (a) it is a loss or outgoing of capital, or of a capital nature; or
>
> (b) it is a loss or outgoing of a private or domestic nature; or
>
> (c) it is incurred in relation to gaining or producing your exempt income or your non-assessable non-exempt income; or
>
> (d) a provision of this Act prevents you from deducting it.

39. The GST legislation was enacted in an environment in which there is a history of connection tests in income tax. The similarity in the structure and wording of section 11-15 when compared with section 8-1 of the ITAA 1997 and the former provision subsection 51(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) was commented on by Hill J in *HP Mercantile:*[16]

> It is, perhaps, not unremarkable that s 11-15 of the GST Act bears, in its structure, some similarity to the general business deduction provisions of the Australian income tax law, that is, s 51(1) of the *Income Tax Assessment Act 1936* (Cth) (the ITAA 1936) and s 8-1 of the *Income Tax Assessment Act 1997* (Cth). In both the GST provision and the income tax provisions, there is a need to pass first through a positive test. In the case of GST, the positive test is the requirement that the acquisition has been in whole or in part acquired in carrying on an enterprise. In the income tax context, there is the need to find that the loss or outgoing be incurred in gaining or producing assessable income, or in carrying on a business. In both cases apportionment arises where the positive test is only partly satisfied. Next, both require consideration of negative tests which exclude the allowance of a credit in the GST context or the allowance of a deduction in the income tax context. In the GST context the negative tests are those set out in s 11-15(2) of acquisitions relating to supplies that would be input taxed or acquisitions of a private and domestic nature. In the income tax context, the negative tests also involve the case where the loss or outgoing is of a private and domestic nature as well as where it is capital or of a capital nature. In both cases, a question of apportionment arises where the negative tests only partly apply.

40. Essentially, both section 8-1 of the ITAA 1997 and section 11-15 of the GST Act set out nexus/connection tests which must be met to justify deductions or input tax credits, respectively.

41. As the wording of the two provisions is structured in a similar manner, the Commissioner's view is that it is reasonable for the purposes of establishing tests for creditable purpose, to consider judicial decisions on the income tax nexus test.

42. However, because the test for creditable purpose is broader than the test of deductibility for income tax,[17] not all applications of the income tax test will have the same outcome for GST. For example, capital acquisitions are denied a deduction under paragraph 8-1(2)(a) of the ITAA 1997, but there is no similar denial of an input tax credit under section 11-15 of the GST Act for capital acquisitions. Instead, acquisitions of capital are treated under section 11-15 of the GST Act in the same way as other acquisitions.

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[16] [2005] FCAFC 126 at paragraph 21.
[17] See paragraph 3.25 of the Explanatory Memorandum.

43. Another significant difference is that the term 'carrying on' an enterprise for GST purposes includes doing anything in the course of the commencement or termination of the enterprise.[18] Further, for GST purposes, the phrase 'carrying on' is not qualified by the words 'for the purpose of gaining or producing your assessable income'.

Relevance of European VAT case law

44. The drafting of Australian input tax credit provisions differs from that of the European VAT legislation, in that the availability of input tax credits in the Australian law is based upon a broad enterprise connection test, and the further requirement that there is no connection to making supplies that would be input taxed.

45. In contrast, European VAT legislation is primarily based upon an enterprise connection test and requires a sufficient connection with taxable supplies. This distinction imposes a limit on the applicability of overseas case law to Australian situations.

Ruling with explanation

46. Entities that are registered for GST are entitled to claim input tax credits for creditable acquisitions they make.[19] Section 11-5 sets out what is a creditable acquisition. A creditable acquisition is made if an entity makes an acquisition solely or partly for a creditable purpose[20] and the other requirements of section 11-5 are met.[21] This Ruling only deals with the creditable purpose requirement, the meaning of which is set out in section 11-15.

47. Under section 11-15, an entity acquires a thing for a creditable purpose to the extent that the entity acquires the thing in carrying on its enterprise. However, an acquisition is not for a creditable purpose to the extent that the acquisition is of a private or domestic nature.[22]

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[18] Section 195-1.
[19] Section 11-20.
[20] Paragraph 11-5(a).
[21] The other requirements are that the supply to the entity is a taxable supply; the entity provides or is liable to provide consideration for the supply; and the entity is registered or required to be registered for GST.
[22] Paragraph 11-15(2)(b).

48. An acquisition is also not for a creditable purpose to the extent that the acquisition relates to making supplies that would be input taxed,[23] unless either subsection 11-15(3), (4) or (5) applies.[24] If none of these subsections are satisfied, and the acquisition relates to a financial supply, the entity may still have an entitlement to a reduced input tax credit, if the acquisition it makes is a reduced credit acquisition for the purposes of Division 70.[25]

49. An entity is often required to determine the extent an acquisition is for a creditable purpose, based upon the entity's planned use of the acquisition.

50. Where an entity determines the extent of creditable purpose based on planned use, the entity may be required to make adjustments if its actual use of the thing differs to its planned use.[26]

51. Similarly, where an entity acquires goods solely for a creditable purpose and later applies those goods solely to private or domestic use, the entity may have to make an increasing adjustment.[27]

52. This Ruling does not address the adjustment provisions. The need to make adjustments for change in use of an acquisition is explained in GSTR 2000/24. The need to make an adjustment because an acquisition becomes or stops being a creditable acquisition is explained in GSTR 2000/19.[28] You should refer to these Rulings for further information.

Structure of the 'Ruling with explanation' section

53. This section of the Ruling is divided into four parts as follows:

Part	***Content***
Part A (paragraphs 54 to 60)	Determining the 'thing' that is being acquired and the entity that acquires that thing
Part B (paragraphs 61 to 95)	The Commissioner's approach to determining a connection between an acquisition and the enterprise; and between an acquisition and making supplies that would be input taxed
Part C (paragraphs 96 to 211)	Application of the Commissioner's approach to particular acquisitions
Part D (paragraphs 212 to 226)	The interaction of subsections 11-15(3), (4) and (5) with paragraph 11-15(2)(a)

[23] Paragraph 11-15(2)(a).
[24] Subsections 11-15(3), (4) and (5) are discussed at paragraphs 212 to 226 of this Ruling.
[25] See GSTR 2004/1.
[26] See Division 129 (which is about adjustments for change in use of an acquisition).
[27] See Division 130 (which is about goods applied solely to private or domestic use).
[28] Goods and services tax: making adjustments under Division 19 for adjustment events.

Part A – determining the 'thing' that is being acquired and the entity that acquires that thing

54. Paragraph 11-5(a) states that '[y]ou make a creditable acquisition if you acquire anything solely or partly for a creditable purpose'. Section 11-15 then sets out when you acquire a thing for a creditable purpose.

55. In working out whether a thing is acquired by an entity for a creditable purpose, it is first necessary to determine the thing that is being acquired and the entity that acquires the thing.

The 'thing' that is being acquired

56. The thing that is being acquired is determined by the facts and circumstances of the particular case and what it is that is to be supplied. For example, if an entity enters into a contract for the construction of a building, the entity acquires the building and not all the things that go into the construction of the building. However, if an owner/builder is constructing the family home then it is the particular acquisitions of all the goods and services to construct the home that are the 'things' that the owner/builder acquires for the purposes of section 11-15.

The entity that acquires the thing

57. The second matter to consider is the entity that acquires the thing. Paragraph 11-5(a) and section 11-15 respectively refer to 'you acquire anything' and 'you acquire a thing' for a creditable purpose.

58. An entity makes an acquisition for the purposes of paragraph 11-5(a) and section 11-15 if it is the recipient of a supply. That is, the supply is made to that entity. In most transactions concerning GST, the recipient of a supply is also the entity that is provided with that supply. However, some supplies are made to the recipient, but are provided to another entity.[29]

59. Once the thing acquired and the recipient entity are determined it is necessary to consider if the acquisition of the thing by that entity is for a creditable purpose.

60. Parts B and C of this Ruling address the requirements in subsections 11-15(1) and (2) for establishing whether an acquisition is for a creditable purpose.

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[29] See paragraphs 52 to 62 of Goods and Services Tax Ruling GSTR 2006/9 Goods and services tax: supplies, which provide further guidance on when an entity is the recipient of the supply.

Part B – Commissioner's approach to determining a connection between an acquisition and the enterprise; and between an acquisition and making supplies that would be input taxed

61. This section discusses the Commissioner's approach to determining whether you acquire a thing in carrying on your enterprise, including whether the thing you acquire is of a private or domestic nature. This is followed by a discussion of the Commissioner's approach to determining whether an acquisition relates to making supplies that would be input taxed.

Commissioner's approach to determining a connection between an acquisition and carrying on your enterprise

62. Subsection 11-15(1) requires that you acquire a thing in carrying on your enterprise. The term 'carrying on' is defined in section 195-1 to include 'doing anything in the course of the commencement or termination of the enterprise'. The effect of this definition is that you can acquire a thing in carrying on your enterprise if you acquire it in the course of the commencement or termination of the enterprise.[30]

63. Section 9-20 sets out the meaning of enterprise. Subsection 9-20(1) commences by stating that 'an enterprise is an activity, or series of activities'. Consequently, it is necessary to identify the activity or series of activities that constitute the enterprise to determine whether the acquisition is acquired in carrying on that enterprise.

64. As explained at paragraphs 37 to 43 of this Ruling, the Commissioner considers it reasonable to have regard to income tax cases, which consider whether a loss or outgoing is deductible for income tax purposes, to determine the relevant test(s) to be applied in establishing whether an entity acquires a thing in carrying on its enterprise.

65. One income tax case in particular that provides guidance is *Macquarie Finance Ltd v. Commissioner of Taxation*[31] (*Macquarie Finance*). In *Macquarie Finance,* French J explored and summarised the development of the income tax tests from the *Income Tax Assessment Act 1922* to the ITAA 1936 and then to the ITAA 1997. The tests were applied in the income tax context to determine if a loss or outgoing was incurred in gaining or producing assessable income, or in carrying on a business for the purposes of gaining or producing assessable income.

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[30] The discussion in Miscellaneous Taxation Ruling MT 2006/1 The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number – the meaning of enterprise is considered to also apply to the term 'enterprise' in the GST Act.

[31] (2005) 146 FCR 77; 2005 ATC 4829; (2005) 61 ATR 1.

66. From the income tax tests, French J extracted a series of propositions[32] which are useful in determining whether a thing is acquired by an entity in carrying on its enterprise. In applying these propositions to subsection 11-15(1), consideration must be given to:

- the purpose of the entity in making the acquisition;[33] and
- whether the acquisition is 'incidental and relevant',[34] and 'desirable or appropriate',[35] to the activities of the enterprise.

67. In determining the entity's purpose in making the acquisition, regard may be had to:

- the objectively assessed purpose[36] of the entity in making the acquisition;[37]
- the result that making the acquisition is designed to achieve. This involves a causal analysis of the relationship between the acquisition and the possible results;[38]
- if the acquisition is made pursuant to a particular agreement or transaction or set of agreements or transactions, the result or outcome which the agreement or transaction under which the acquisition is made appears designed to achieve. This involves a causal analysis of the relationship between the acquisition, the agreement or transaction and theoretical results, including the gaining of assessable income;[39]
- for a natural person, the subjective intention of the person, as this may be relevant to the drawing of inferences about the causal relationship between the acquisition and the results;[40] and

[32] (2005) 146 FCR 77; 2005 ATC 4829; (2005) 61 ATR 1 at paragraph 100.
[33] *Macquarie Finance* 2005 ATC 4851 at paragraph 100. See proposition 3.
[34] *Macquarie Finance* 2005 ATC 4851 at paragraph 100. See proposition 1.
[35] *Macquarie Finance* 2005 ATC 4851 at paragraph 100. See proposition 2.
[36] *Magna Alloys & Research Pty Ltd v. Commissioner of Taxation* 80 ATC 4542, at 4544 (judgement of Brennan J) contains a description of subjective and objective purpose in an income tax context. Subjective and objective purpose are described as 'the taxpayer's purpose – where it means the object which the taxpayer intends to achieve by incurring the expenditure; or it may be an objective purpose, meaning the object which the incurring of the expenditure is apt to achieve'.
[37] *Macquarie Finance* 2005 ATC 4851 at paragraph 100. See proposition 4.
[38] *Macquarie Finance* 2005 ATC 4851 at paragraph 100. See proposition 5.
[39] *Macquarie Finance* 2005 ATC 4851 at paragraph 100. See proposition 6.
[40] *Macquarie Finance* 2005 ATC 4851 at paragraph 100. See proposition 7.

- for a corporation, to the subjective purposes of its directing minds or those of its agents as this may assist assessment of the entity's objective purpose;[41] Where a corporation is part of a group and under the control of either a parent company or other members of the group, the purposes of the parent company or other members of the group may be attributed to it when it acts at their bidding.[42]

68. In the Commissioner's view, 'incidental and relevant', 'desirable or appropriate' and 'purpose', are not three separate tests which may establish a sufficient connection between the acquisition and the enterprise, but rather are all similar lines of enquiry. As Brennan J noted in the income tax case *Magna Alloys & Research Pty Ltd v. Commissioner of Taxation*:[43]

> If the purpose of incurring expenditure is not the gaining or producing of assessable income or the carrying on of a business, the expenditure cannot be said to be 'incidental and relevant' to gaining or producing assessable income or carrying on business…

69. It is therefore the Commissioner's view that whether or not a thing is acquired by an entity in carrying on its enterprise can be determined by the purpose for which the entity makes the acquisition.

70. If the entity's purpose in making an acquisition is partly for carrying on its enterprise and partly of a private or domestic nature, apportionment will be required as the acquisition is not wholly for a creditable purpose.[44]

71. How an acquisition is used, intended to be used or is capable of being used, will assist in determining the entity's purpose in making the acquisition.

Acquisition of a private or domestic nature

72. Paragraph 11-15(2)(b) makes it clear that an acquisition is not acquired for a creditable purpose to the extent that the acquisition is of a private or domestic nature.

73. Hill J in *HP Mercantile*,[45] in the context of a discussion of the system of credits available under a value added tax system, distinguished acquisitions made in the course of carrying on an enterprise from those made as a consumer. The clear implication is that an acquisition made as a consumer is not made in the course of carrying on an enterprise and vice versa.

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[41] *Macquarie Finance* 2005 ATC 4851 at paragraph 100. See proposition 9.
[42] *Macquarie Finance* 2005 ATC 4851 at paragraph 100. See proposition 10.
[43] 80 ATC 4542 at 4552.
[44] The other requirements of section 11-5 must also be met if the acquisition is to be partly a creditable acquisition.
[45] [2005] FCAFC 126 at paragraph 13.

74. The Commissioner considers that an acquisition that is of a private or domestic nature would rarely, if ever, be acquired in carrying on the enterprise and that paragraph 11-15(2)(b) does not operate independently from subsection 11-15(1).[46] Further, the Commissioner considers that the body of income tax case law which determines whether a loss or outgoing is private or domestic, is also applicable for the purposes of paragraph 11-15(2)(b).[47]

75. Whether a thing is acquired for the purposes of carrying on your enterprise or is acquired for some other purpose (for example, it is private or domestic in nature), is dependent upon the facts and surrounding circumstances. It is not enough that an acquisition appears to be for the purposes of the enterprise or conversely does not appear to be for the purposes of the enterprise. The following two examples illustrate this.

Example 1 – acquisition not made in carrying on the enterprise

76. *Errol is registered for GST and has a retail shoe store. He has large feet and orders a special size of shoe for his own use a number of times a year.*

77. *The acquisition of shoes may appear to be for the purposes of Errol's enterprise, however, the particular facts and circumstances show that Errol's purpose in acquiring the large size shoes is of a private or domestic nature. Therefore the shoes are not acquired in carrying on the enterprise and are not for a creditable purpose. Section 11-15 is not satisfied.*

Example 2 – acquisition made in carrying on the enterprise

78. *Lewis is registered for GST and runs an organic food store. At a conference he makes a contact who offers him a shipment of computer games at a bargain price. He acquires the computer games and sells them through his organic food store*.

79. *The acquisition of the computer games may appear not to be for the purposes of Lewis' enterprise, however, the particular facts and circumstances show that Lewis' purpose in acquiring the computer games is to sell them through his enterprise. The acquisition is therefore made in carrying on the enterprise.*

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[46] This is consistent with the approach in GSTR 2006/4.

[47] See paragraphs 37 to 43 of this Ruling for a discussion of the relevance of income tax cases, in interpreting section 11-15.

Commissioner's approach to determining a connection between an acquisition and making of supplies that would be input taxed

80. In this section we explain the Commissioner's approach to determining whether an acquisition relates to the enterprise's activities of making supplies that would be input taxed. Paragraph 11-15(2)(a) provides that a thing is not acquired for a creditable purpose to the extent that it 'relates to' making supplies that would be input taxed.

81. If an enterprise's activities do not include the making of supplies that would be input taxed, there is no need to consider whether paragraph 11-15(2)(a) applies. Instead, to establish whether an acquisition is for a creditable purpose, you only need to ascertain whether the acquisition is made in carrying on the enterprise.

82. However, if you make, or intend to make, input taxed supplies, you will need to consider whether paragraph 11-15(2)(a) applies to your acquisitions. An acquisition may relate to making supplies that would be input taxed if:

- the acquisition has a connection to particular activities of making input taxed supplies;[48] or
- the acquisition has a connection to all the activities of the enterprise (or a segment of the enterprise) and those activities include the making of input taxed supplies;[49] or
- the acquisition has a connection to an activity of an entity which involves making more than one type of supply.[50] For example, the activity of credit card issuing by a financial institution involves the making of input taxed supplies of credit and taxable supplies of interchange services.

83. In the Commissioner's view, the methods of establishing whether an acquisition is made in carrying on an enterprise and establishing whether an acquisition relates to making supplies that would be input taxed are broadly the same, although each focuses on different aspects of an enterprise's operations. Subsection 11-15(1) focuses on whether there is a connection between the acquisition and any of the activities of the enterprise, while paragraph 11-15(2)(a) focuses on whether there is a connection between the acquisition and any of the activities that involve the making of supplies that would be input taxed.

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[48] See paragraph 35 of *HP Mercantile* [2005] FCAFC 126, where Hill J refers to the words 'relates to' signifying some connection between two subject matters.
[49] See paragraph 37 of *HP Mercantile* [2005] FCAFC 126.
[50] See paragraph 37 of *HP Mercantile* [2005] FCAFC 126.

84. The judgment of Hill J in *HP Mercantile* provides guidance on the operation of paragraph 11-15(2)(a). In *HP Mercantile,* Hill J considered the application of paragraph 11-15(2)(a) and the connection required between an acquisition and the making of supplies that would be input taxed.

85. In applying paragraph 11-15(2)(a), Hill J adopted a contextual approach, giving effect to the policy behind the provision to deny input tax credits to an entity that makes only input taxed supplies.

The decision in HP Mercantile

86. HP Mercantile Pty Ltd (as trustee) acquired by way of legal assignment certain debts and set about recovering those debts. The debts were acquired in a single transaction. For GST purposes, the acquisition of the debts by HP Mercantile Pty Ltd is both an acquisition and a financial supply[51] by HP Mercantile Pty Ltd and is referred to as an acquisition-supply.[52]

87. Prior to acquiring the debts, HP Mercantile Pty Ltd acquired due diligence advice by way of a feasibility study as to whether it should acquire the debts. Once HP Mercantile Pty Ltd acquired the debts, it also acquired debt collection services. As the recovery of the debts is not itself a supply, the only supply made by HP Mercantile Pty Ltd to which the acquisitions could relate was the earlier single acquisition-supply of the debts.

88. For the acquisition of debt collection services, the issue was whether there existed a relevant connection between the acquisition of the debt collection services and the earlier acquisition-supply of the debt. In the course of considering this issue, Hill J considered the nature of the connection required.

89. With regard to the requirement in paragraph 11-15(2)(a) that the acquisition 'relates to making supplies that would be input taxed', Hill J considered the phrase 'relates to' and commented:

> … the words 'relates to' are wide words signifying some connection between 2 subject matters. The connection or association signified by the words may be direct or indirect, substantial or real. It must be relevant and usually a remote connection would not suffice. The sufficiency of the connection or association will be a matter for judgment which will depend, among other things, upon the subject matter of the inquiry, the legislative history, and the facts of the case. Put simply, the degree of relationship implied by the necessity to find a relationship will depend upon the context in which the words are

[51] Item 2 of subregulation 40-5.09(3) of the A New Tax System (Goods and Services Tax) Regulations 1999 (the GST Regulations).

[52] Acquisition-supply is not a defined term in the GST Act. It is a term used to refer to a supply which is the acquisition of a financial interest, as explained in paragraph 26 of Goods and Services Tax Ruling GSTR 2002/2 Goods and services tax: GST treatment of financial supplies and related supplies and acquisitions.

> found. So much appears from the various cases referred to by the tribunal when discussing the meaning of these words…[53]

90. In applying this approach to the acquisition of the debt collection services, Hill J stated:

> … the activities of the Trust in acquiring the debts and then collecting them were closely connected as one continuous course of conduct….To say that fees paid for assistance to collect the debts had no real relationship with the acquisition of the debts would, in this context, be remarkable.[54]

91. Thus the court held that the acquisition of the debt collection services related to making supplies that would be input taxed even though the relevant supply (the acquisition-supply of the debts) was made before the acquisition. In making this finding, Hill J stated that there was no reason why the words 'relates to making supplies that would be input taxed' required that the connection between acquisitions and supplies to be made at some future time. Instead, the connection could be between an acquisition and a supply that was made before the acquisition.[55]

92. With regard to the due diligence advice acquired by way of a feasibility study, Hill J considered whether there was a sufficient relationship between the acquisition of the advice and the making of the financial supply (that is, the acquisition-supply of the debts).[56] The court held that the due diligence advice related solely to the making of input taxed supplies (that is, the acquisition-supply of the debt) which if proceeded with would be input taxed.[57]

93. In his judgment Hill J. also discussed the application of section 11-15 when an acquisition such as an undifferentiated general overhead has a relevant connection to a number of activities, some of which involve the making of taxable supplies and some the making of input taxed supplies. He explained that the acquisition will not relate wholly to any one of the activities, and may require apportionment.[58]

Principles established by HP Mercantile

94. The decision in *HP Mercantile* established the following principles that can be applied to determine whether an acquisition is for a creditable purpose:

(1) an acquisition may have a connection to the activities of an enterprise but further enquiry is needed to determine to which activity or activities of the entity it has a connection;

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[53] See paragraph 35 of *HP Mercantile* [2005] FCAFC 126.
[54] See paragraph 39 of *HP Mercantile* [2005] FCAFC 126.
[55] See paragraph 39 of *HP Mercantile* [2005] FCAFC 126.
[56] See paragraph 73 of *HP Mercantile* [2005] FCAFC 126.
[57] See paragraph 76 of *HP Mercantile* [2005] FCAFC 126.
[58] See paragraphs 37, 49 and 76 of *HP Mercantile* [2005] FCAFC 126.

(2) there is a connection if there is a 'real or substantial relationship' between the acquisition and the activity or activities;

(3) the connection may be to two or more activities, and if these activities involve the making of input taxed and other supplies, apportionment is required;

(4) where an acquisition has no connection to any particular activity, for example, an overhead, the connection is to the activities of the enterprise as a whole (or to a segment of the enterprise). Apportionment may be required if the activities of the enterprise include the making of input taxed supplies.

95. In the Commissioner's view, in order to determine whether the connection between an acquisition and the making of supplies that would be input taxed is real or substantial rather than remote, it is relevant to consider the purpose of the entity in making the acquisition. The points made by French J in *Macquarie Finance*, that are discussed at paragraphs 66 and 67 of this Ruling are of assistance in determining the entity's purpose.

Part C – application of the Commissioner's approach to particular acquisitions

96. Whether an acquisition is for a creditable purpose is often a straightforward exercise. In this section we consider particular types of acquisitions where it is less straightforward. The topics addressed in this section of the Ruling are as follows:

Type of acquisition	Paragraphs
Acquisitions of a private or domestic nature – paragraph 11-15(2)(b)	97 to 114
Acquisitions of a capital nature - *Acquisitions which protect or preserve the structure of the enterprise*	115 to 129 117 to 129
Acquisitions relating to current or past supplies of the enterprise - *Acquisitions that are overheads or enterprise costs* - *Acquisitions where there is a change in the activities of the enterprise*	130 to 145 131 to 140 141 to 145
Acquisitions relating to making future supplies that would be input taxed - *Acquisition of advice on a particular proposal* - *Acquisition for a particular proposal requiring approval or ratification* - *Acquisition of advice where a range of options are being considered*	146 to 164 147 to 155 156 to 158 159 to 164
Acquisitions made in commencing an enterprise	165 to 174
Acquisitions made in terminating an enterprise - *Acquisitions made in terminating an enterprise where the entity makes or has made supplies that are input taxed*	175 to 183 178 to 183
Acquisitions made in the course of raising capital	184 to 197
Acquisitions made in the course of making other acquisitions - *Acquisition - supplies*	198 to 204 202 to 204
Acquisitions relating to promotion, marketing and advertising	205 to 207
Acquisitions provided to a third party	208 to 211

Acquisitions of a private or domestic nature – paragraph 11-15(2)(b)

97. Paragraph 11-15(2)(b) makes it clear that an acquisition is not acquired for a creditable purpose to the extent that the acquisition is of a private or domestic nature.

98. As discussed at paragraphs 37 to 43 of this Ruling, it is the Commissioner's view that the concept of an acquisition being of a private or domestic nature for GST purposes[59] is similar to the concept of a loss or outgoing being of a private or domestic nature for income tax purposes,[60] and thus income tax case law is relevant. Some of the examples shown below are based on income tax decisions (as footnoted) but illustrate the GST consequences.

Example 3 – acquisition solely of a private or domestic nature – it is not made in carrying on an enterprise

99. *George is registered for GST and conducts an enterprise of selling books. His daughter is about to turn 21, and he acquires a limited edition volume of flower illustrations to give her for her birthday.*

100. *George's purpose in acquiring the book is not to carry on his enterprise, but is of a private or domestic nature. The acquisition is not for a creditable purpose and George is not entitled to an input tax credit.*

Example 4 – child minding services[61] – private or domestic in nature

101. *Janet carries on an enterprise as a solicitor and is registered for GST. Janet is a single parent with an infant daughter and is unable to carry on her enterprise as a solicitor without sending her child to a child minding centre.*

102. *The purpose of the acquisition of the child minding services is to put Janet in a position to be able to carry on the enterprise rather than actually carrying on her enterprise. The acquisition of the child minding services is of a private or domestic nature and is not made in carrying on the enterprise. The acquisition is not for a creditable purpose and Janet is not entitled to an input tax credit.*

Example 5 – security services[62] – private or domestic in nature

103. *Jordan is a television media personality. He conducts an enterprise of contracting his services to a television network. As a result of threats made against himself, his home and his family, Jordan contracts with a security firm to patrol his residence.*

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[59] Paragraph 11-15(2)(b).
[60] Paragraph 8-1(2)(b) of the ITAA 1997.
[61] See *Lodge v. FC of T* 72 ATC 4174, which concludes that for income tax, this type of expenditure is private or domestic in nature.
[62] See *Frankcom v. FC of T* 82 ATC 4599, which concludes that for income tax, this type of expenditure is of a private or domestic in nature.

104. *The purpose of the acquisition of the security services is not for carrying on the enterprise but is to ensure his personal security and that of his family. The acquisition is of a private or domestic nature and is not made in carrying on the enterprise. The acquisition is not for a creditable purpose and Jordan is not entitled to an input tax credit.*

Example 6 – travel to and from work[63] – private or domestic in nature

105. *Gina is a bookshop owner who buys and sells children's books. She conducts her enterprise from premises she rents in the city. Gina lives in the outer suburbs and she catches the train to and from the city each day.*

106. *The purpose of the acquisition of the weekly train ticket is to put Gina in a position to be able to carry on her enterprise rather than actually carrying on her enterprise. The acquisition of the weekly train ticket is of a private or domestic nature and is not made in carrying on the enterprise. The acquisition is not for a creditable purpose and Gina is not entitled to an input tax credit.*

Acquisitions partly made for a creditable purpose

107. Where an acquisition is made partly for the purpose of carrying on an enterprise and is partly of a private or domestic nature, the acquisition is for a creditable purpose to the extent that it is made in carrying on the enterprise.[64] In these circumstances apportionment is required.

Example 7 – acquisition partly of a private or domestic nature and partly made in carrying on an enterprise

108. *Lionel is registered for GST and conducts an enterprise of selling menswear. He acquires a computer partly to use in his shop for recording stock levels and sales of menswear and partly for his daughter to use for her studies and research.*

109. *The acquisition of the computer by Lionel is only partly for the purposes of carrying on his menswear enterprise. It is not for the purposes of carrying on Lionel's enterprise to the extent it is for use by his daughter for her studies. To this extent the purpose of acquiring the computer is of a private or domestic nature. To the extent that the computer is for use by Lionel in his menswear shop it is acquired for a creditable purpose.*

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[63] See *Lunney v. Commissioner of Taxation* 100 CLR 478, which concludes that for income tax, that this type of expenditure is not incurred in gaining or producing the assessable income or necessarily in carrying on a business for the purpose of gaining or producing such income.

[64] This is provided the acquisition does not relate to making supplies that would be input taxed.

110. An entity is not limited to consideration of the first intended application of the thing acquired in determining whether the acquisition is for a creditable purpose. Where, for example, the initial application is not for a creditable purpose but the entity intends to apply the thing for a creditable purpose in the future, the acquisition is partly creditable and apportionment is required. The apportionment method needs to be fair and reasonable, reflect the intended use of the acquisition and be appropriately documented.[65]

Example 8 – acquisition – partly input taxed and partly creditable future application

111. *James Ltd is a property developer that is building stratum units. James Ltd recognises that the market for selling new residential premises is slow, so it intends to lease the stratum units and at the same time market the units for sale. James Ltd has engaged a real estate agent to obtain tenants for the units and to market the units with the intention of selling them.*

112. *The acquisitions James Ltd makes in building and marketing the units are for two purposes – being the making of an input taxed supply of residential premises by way of lease*[66] *and, when the units are sold, a taxable supply of new residential premises.*[67]

113. *James Ltd's acquisitions are for a creditable purpose to the extent that they relate to making taxable supplies of new residential premises. James Ltd determines the extent of creditable purpose based on an estimate of the consideration from the sale of the new residential premises compared with the estimated consideration from the letting.*[68]

114. If the actual application of an acquisition varies from its intended application, adjustments may be required under Divisions 129 and 130.

Acquisitions of a capital nature

115. Acquisitions of a capital nature are denied a deduction under paragraph 8-1(2)(a)[69] of the ITAA 1997 (although deductions may be available under other provisions of the ITAA 1997 or the ITAA 1936). There is no similar denial of an input tax credit under section 11-15 for capital acquisitions. That is, acquisitions of a capital nature are treated in the same manner as other acquisitions.

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[65] See paragraph 73 of GSTR 2006/3 and paragraph 100 of GSTR 2006/4.
[66] Section 40-35.
[67] Sections 40-65 and 40-75.
[68] Where consideration for the letting is less than market value, this method does not provide a reasonable basis for ascertaining the extent of creditable purpose. Instead, in these circumstances the entity should use a notional market value of rent that could be obtained from an arm's length tenant.
[69] See paragraph 38 of this Ruling, where paragraph 8-1(2)(a) of the ITAA 1997 is reproduced.

Example 9 – capital acquisition – made in carrying on the enterprise

116. *Wellington Welding acquires a new piece of welding equipment for use in its metal fabrication plant. The equipment is an acquisition of a capital nature. The purpose of the acquisition is to carry on Wellington's enterprise. The acquisition is for a creditable purpose.*

Acquisitions which protect or preserve the structure of the enterprise

117. Some acquisitions are made to protect or preserve the capital structure or the ownership of the entity. These acquisitions may not be deductible under section 8-1 of the ITAA 1997 on the basis that they are not incurred in carrying on the entity's business. See for example *FCT v. The Swan Brewery Company Limited*[70] *(Swan Brewery)*, where the court held that takeover defence costs were not deductible because the necessary nexus between the expenditure and the carrying on of the business of the taxpayer was absent.[71]

118. The wording of paragraph 8-1(1)(b)[72] of the ITAA 1997 refers to losses or outgoings 'necessarily incurred in carrying on a business for the purpose of gaining or producing assessable income'. The ending words restrict deductibility to expenditure incurred in the derivation of income. Subsection 11-15(1) contains no such restriction. It merely requires the thing that you acquire to be acquired in carrying on your enterprise.

119. The concept of carrying on an enterprise for the purposes of the GST Act has an expanded meaning encompassing commencement and termination of the enterprise. Additionally, the Explanatory Memorandum[73] makes it clear that, unlike section 8-1 of the ITAA 1997, the GST provisions are not meant to deny credits for capital acquisitions. Consequently, the Commissioner considers that the concept of carrying on an enterprise under the GST Act is sufficiently broad to allow input tax credits for the type of acquisitions considered in *Swan Brewery*. Allowing credits in these circumstances accords with the scheme of the GST Act.

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[70] 91 ATC 4637 at 4644.
[71] The type of capital expenditure under consideration in *Swan Brewery* is now allowable under section 40-880 of the ITAA 1997.
[72] See paragraph 38 of this Ruling, where paragraph 8-1(1)(b) is reproduced.
[73] See paragraph 3.25 of the Explanatory Memorandum which reads as follows:
The creditable purpose test is broader than the test of deductibility for income tax in section 8-1 of the *Income Tax Assessment Act 1997*. For example, input tax credits may be available in relation to the acquisition of capital items whereas your capital purchases are not deductible for income tax. The acquisition of services for preparing your tax returns may satisfy the creditable purpose test, even though these are only deductible under a specific provision for income tax.

Example 10 – takeover defence acquisitions[74] – made in carrying on the enterprise

120. *Bradmore Ltd is a small listed company which runs a fleet of trucks. A large trucking company makes a takeover offer to acquire the shares in Bradmore Ltd.*

121. *The board of directors of Bradmore Ltd instruct the company's solicitors to provide advice in relation to the takeover offer and in the preparation of a statement required under the Corporations Act 2001.*

122. *Bradmore Ltd also engages another firm to prepare an independent report for shareholders on the takeover offer. In the circumstances of this takeover, an independent report is also a requirement under the Corporations Act 2001.*

123. *These acquisitions are made for the purposes of carrying on Bradmore Ltd's enterprise. The acquisitions therefore satisfy subsection 11-15(1).*

124. *The acquisitions are for the purposes of the enterprise as a whole.*[75] *Apportionment is required to the extent that Bradmore Ltd makes supplies that would be input taxed.*

Example 11 – acquisition to defend reputation of the entity[76] – made in carrying on the enterprise

125. *Sunpearl Co (Sunpearl) conducts an enterprise of manufacturing and selling bird cages. It operates a loyalty scheme under which points are awarded when a retailer places an order for cages that exceeds a minimum quantity. The points can be redeemed for gifts.*

126. *Occasionally, when Sunpearl was attempting to establish itself in a new area, it gave the points to the employees in charge of placing orders instead of the retailer. This gave Sunpearl a competitive advantage and contravened an Act prohibiting secret commissions. When Sunpearl's competitors found out, the negative publicity damaged Sunpearl's reputation.*

127. *Sunpearl's directors were charged with a criminal offence and Sunpearl retained legal advisers and paid the costs of defending the charges.*

128. *The legal services were acquired for the purposes of defending Sunpearl's reputation. The acquisitions are made in carrying on Sunpearl's enterprise and are not of a private or domestic nature even though the acquisitions provide a benefit to the directors. The acquisition of the legal services therefore satisfies subsection 11-15(1).*

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[74] See *Swan Brewery*.
[75] Acquisitions in the nature of overheads and enterprise costs are discussed at paragraphs 131 to 140 of this Ruling.
[76] *Magna Alloys & Research Pty Ltd v. Commissioner of Taxation* 80 ATC 4542.

129. *The acquisition of the legal services is for the purposes of the enterprise as a whole.*[77] *Apportionment is required to the extent that Sunpearl makes supplies that would be input taxed.*

Acquisitions relating to current or past supplies of the enterprise

130. In the view of the Full Federal Court in *HP Mercantile*, there is no requirement for an acquisition to precede a supply before it can be said that the acquisition is connected to the activity of making that supply.[78] Thus an acquisition may be for the purposes of the past, current or future activities of the entity in making supplies.

Acquisitions that are overheads or enterprise costs

131. Certain acquisitions are made for the purposes of carrying on the enterprise as a whole. Typically these are referred to as overheads or enterprise costs. Examples of overhead and enterprise costs are costs of maintaining a register of shareholders, stock exchange services and acquisitions made for the purposes of protecting or preserving the capital structure.[79]

132. As Hill J noted in *HP Mercantile* overhead acquisitions do not directly relate to particular supplies.[80] Acquisitions in the nature of overheads and enterprise costs, which are not made for the purposes of making particular supplies, are most often made for the purposes of the current activities of the enterprise (or a segment or branch of the enterprise) in making taxable, GST-free and/or input taxed supplies.

Example 12 – acquisition of accounting services for the purposes of current activities

133. *Maverick Pty Ltd (Maverick) is a commercial leasing and financing company and makes both taxable and input taxed supplies in carrying on its enterprise. On 1 July 2007 Maverick discontinues making input taxed financial supplies and continues making only taxable supplies of commercial leases. In September 2007, Maverick Pty Ltd makes an acquisition of accounting services for the preparation of its income tax return for the year ended 30 June 2007.*

134. *The acquisition is made for the purposes of complying with a statutory obligation to lodge a tax return, and is not made for the purposes of making any particular supplies. As the acquisition serves the entity as a whole it is an overhead or enterprise cost. The acquisition is made in carrying on Maverick's enterprise.*

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[77] Acquisitions in the nature of overheads and enterprise costs are discussed at paragraphs 131 to 140 of this Ruling.
[78] [2005] FCAFC 126 at paragraph 52.
[79] Acquisitions made to protect or preserve capital are discussed at paragraphs 117 to 129 of this Ruling.
[80] [2005] FCAFC 126 at paragraphs 37 and 49.

135. *The acquisition of the accounting services is made for the purposes of the enterprise currently being carried on. As the enterprise currently being carried on does not include the making of supplies that would be input taxed the acquisition is for a creditable purpose.*

136. *Conversely if the enterprise currently being carried on by Maverick consisted only of making supplies that would be input taxed Maverick would be denied input tax credits on the acquisition of these services.*

137. An entity may also make acquisitions in the nature of overheads that indirectly relate to particular activities of the enterprise. The acquisitions of overheads may relate to the past, current or future activities of the enterprise in making taxable, GST-free and/or input taxed supplies.

Example 13 – overhead acquisitions made for the purposes of a particular activity

138. *Sundile Pty Ltd (Sundile) is involved in complex litigation concerning the sale of commercial property made in a prior year. In the current year it has become necessary to take some employees away from their normal tasks to assist in preparing for the litigation. The management of Sundile has set aside a designated area within its head office for the specified employees to work on the litigation.*

139. *Sundile makes a range of acquisitions in the nature of overheads to enable the specified employees to perform their tasks. The acquisitions are made for the purposes of litigation concerning the earlier taxable supply (sale) of commercial property. The acquisitions of overheads are for a creditable purpose.*

140. Where an acquisition in the nature of an overhead or enterprise cost relates to, for example, the current activities of the entity in making both taxable and input taxed supplies the acquisition is for a creditable purpose to the extent that it relates to making taxable supplies. The entity is required to apportion the input tax credit according to the entity's apportionment methodology.[81]

Acquisitions where there is a change in the activities of the enterprise

141. An entity that has undertaken particular activities in carrying on its enterprise may cease, or partially cease, those activities and commence different activities. While the entity is continuing to carry on an enterprise, the activities that constitute the whole or a part of the enterprise have changed.

[81] See GSTR 2006/3 and GSTR 2006/4.

142. In these circumstances, the entity may make acquisitions that are not for the purposes of the current activities that it is carrying on but are for the purposes of its past activities. Where the acquisition is for the purposes of a past activity of making input taxed supplies the acquisition relates to making supplies that would be input taxed and is not for a creditable purpose under section 11-15.[82]

Example 14 – acquisition of legal advice

143. *Pale Rider Pty Ltd (Pale Rider) is a commercial leasing and financing company which makes both taxable and input taxed supplies in carrying on its enterprise. On 1 July 2007, Pale Rider discontinues its activities of making input taxed supplies (financing activities) and continues activities of making only taxable supplies (commercial leasing activities). In November 2007, Pale Rider makes an acquisition of legal advice in relation to the recovery of a security for a defaulted finance contract.*

144. *The acquisition of legal advice is for the purposes of Pale Rider's enterprise and therefore subsection 11-15(1) is satisfied.*

145. *As the purpose of the acquisition is to recover a security pursuant to a finance contract it relates to the past input taxed activities of the enterprise. Therefore, the acquisition of the legal advice is not for a creditable purpose.*[83]

Acquisitions relating to making future supplies that would be input taxed

146. In the course of advancing its enterprise an entity often investigates various proposals or options. Some proposals or options may mean that the entity would make input taxed supplies.

Acquisition of advice on a particular proposal

147. The acquisition of advice on a particular proposal that the entity is committed to, which will result in the making of supplies that would be input taxed, is for the purpose of making the proposed input taxed supplies. The expression 'making a supply that would be input taxed' means 'making a supply that would be input taxed if actually carried out'. This is consistent with Hill J's judgment in *HP Mercantile.*[84]

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[82] This is subject to subsections 11-15(3), (4) or (5).
[83] This is subject to subsections 11-15(3) and (4).
[84] [2005] FCAFC 126 at paragraph 42.

Example 15 – advice on a particular proposal to which the acquirer has committed

148. *Metro is a privately owned company that owns a chain of cinemas. It makes only taxable supplies (with the exception of some input taxed supplies such as the holding of bank accounts[85]). The finance officer of the company has been given approval to proceed to a public listing of the company to raise capital through share issues. Metro acquires the services of a merchant bank to provide advice on the flotation and issue of the shares.*

149. *The acquisition of the advice is made by Metro for the purposes of carrying on its enterprise. The acquisition therefore satisfies subsection 11-15(1).*

150. *Metro is acquiring the advice for the purposes of floating the company and issuing shares to the public. The issuing of the shares is an input taxed supply. Therefore, the acquisition of the advice is made for the purposes of making supplies that would be input taxed. The acquisition of the advice is not for a creditable purpose.*[86]

151. Advice might also be sought on a particular proposal under consideration but prior to the entity actually committing to that course of action. Where the proposal under consideration would, if implemented, result in the making of supplies that would be input taxed, the acquisition of the advice relates to the making of supplies that would be input taxed and is not for a creditable purpose.

152. Conversely, if the proposal under consideration would, if implemented, result in the making of taxable supplies, the acquisition of the advice does not relate to the making of supplies that would be input taxed and is made for a creditable purpose.

Example 16 – advice on a particular proposal under consideration

153. *Excepton Bank owns its head office premises, which are located in the Sydney CBD. The property division is considering whether to move the bank to leased premises and lease the highly desirable CBD building.*

154. *To assist their deliberation, Excepton Bank acquires the services of an agency specialising in valuing commercial premises, and another which specialises in leasing trends and demographics.*

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[85] Item 1 of subregulation 40-5.09(3) of the GST Regulations.

[86] The facts in the example are subject to subsection 11-15(4) not applying. Acquisitions made in the course of raising capital are discussed at paragraphs 184 to 197 of this Ruling.

155. *These acquisitions are made for the purposes of carrying on Excepton Bank's enterprise. The purpose of the advices, as evidenced by the contents of each advice, is to assist the bank with its deliberations of leasing. The acquisitions are made for the purposes of making a supply (leasing the building), that would be a taxable supply if actually carried out. The acquisitions are therefore for a creditable purpose.*

Acquisition for a particular proposal requiring approval or ratification

156. An entity may make an acquisition for the purposes of making supplies that would be input taxed even though the actual making of the supplies is contingent upon a third party's approval or ratification. Although the input taxed supplies cannot be made without approval or ratification, the intention to make input taxed supplies can nonetheless be formed and acquisitions are therefore made for the purposes of making such supplies.

Example 17 – course of conduct requires ratification

157. *Pits Pty Ltd is a coal mining company. Its investment division has identified a suitable transport company for takeover. The investment division, with the approval of senior management, acquires a valuation of the target company, advice about funding the takeover and legal advice on takeovers. As it is to be a friendly takeover, negotiations are entered into with the Board of the target company on an informal basis. The takeover cannot proceed without ratification by the shareholders of Pits Pty Ltd.*

158. *The valuation service and the advices are acquired for the purposes of carrying on the enterprise of Pits Pty Ltd. Despite the fact that the contemplated input taxed supply (that is, the acquisition of the shares) cannot be completed without shareholder ratification, the acquisitions are made for the purposes of making supplies that would be input taxed and are therefore not for a creditable purpose under section 11-15.*

Acquisition of advice where a range of options are being considered

159. Where advice is sought on a range of options that an entity is exploring (some of which involve the making of supplies that would be input taxed) but the advice is not for the purposes of any particular option, the acquisition of the advice is likely to represent an overhead or enterprise cost. Whether the acquisition of the advice is for a creditable purpose is determined according to the current activities of the enterprise in making taxable, GST-free and/or input taxed supplies. (With respect to apportionment refer to paragraph 140 of this Ruling).

Example 18 – considering a range of options

160. *Jetstream is company listed on the Australian Stock Exchange. Within Jetstream a designated team monitor other companies and industries to identify potential investment opportunities. The team are empowered to conduct research and to work up proposals for presentation to the board. The team has a relatively free reign when considering options.*

161. *Jetstream acquires online market reports to assist the team in their analysis. This acquisition is made for the purposes of carrying on Jetstream's enterprise. The acquisition is not for the purposes of the activity of making a particular supply, whether input taxed or taxable. The acquisition is for the purposes of the enterprise's activities as a whole and is an overhead or enterprise cost. The acquisition is therefore for a creditable purpose to the extent the current activities of Jetstream do not include making supplies that would be input taxed.*

162. Where advice is more specific in nature, it may be that the acquisition of the advice is for the purposes of a particular option under consideration. If, for example, advice is specific to an option that, if adopted, would result in the entity making supplies that would be input taxed, the advice is for the purposes of making such supplies and is not for a creditable purpose.[87]

Example 19 – considering two options – one option is making input taxed supplies – the other option is making a taxable supply

163. *Pulp Pty Ltd is carrying out activities in the course of commencing its enterprise and is therefore carrying on an enterprise. It has been incorporated specifically to construct a block of units. Prior to commencing the construction, Pulp Pty Ltd commissions E-Trend, a company with experience in evaluating the property market, to advise whether the block of units, once constructed, will be more profitable if it is sold (taxable supply), or used for residential rental (input taxed supply). The decision will influence the final design of the unit block. Once the decision has been made the construction will commence.*

164. *The acquisition of market evaluation services is for the purposes of carrying on Pulp Pty Ltd's enterprise. The purpose of the advice is to evaluate two possible activities of the entity; one being input taxed (residential rental), the other taxable (sale of the unit block). The purpose of the acquisition therefore relates in part to each possible activity. Therefore, the acquisition is for a creditable purpose to the extent that it relates to the option of selling the block of units. It is not for a creditable purpose to the extent that it relates to the option of renting the units for residential purposes.*

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[87] This is subject to subsections 11-15(3) and (4).

Acquisitions made in commencing an enterprise

165. Miscellaneous Taxation Ruling MT 2006/1 provides guidance as to preliminary activities which are accepted as commencing an enterprise and those which are not.[88] For further information on whether activities form part of the preliminary activities of commencing an enterprise refer to paragraphs 122 to 139 of MT 2006/1.

166. An entity may undertake commencing activities that never result in supplies being made. Hill J referred to this possibility in his judgment in *HP Mercantile.*[89] The implication of Hill J's comments is that even where supplies are not actually made, an acquisition made in the commencement of an enterprise can be made in carrying on that enterprise. Whether an acquisition relates to supplies that would be input taxed is determined according to the supplies the entity intended to make.

Example 20 – commencing an enterprise that makes taxable supplies – supplies do not eventuate

167. *Luis registers for GST and acquires professional advice on marketing in commencing an enterprise of selling model cars (taxable supplies). Luis negotiates a franchise agreement for the supply of special die-cast models and pays the franchise fee. Luis makes acquisitions of advertising services and begins to advertise his business. Due to a change in personal circumstances, Luis is unable to proceed with the enterprise and is forced to abandon it prior to making any supplies.*

168. *Luis acquires the advertising for the purposes of carrying on his enterprise and this is not altered by the fact that Luis subsequently has to abandon the carrying on of the enterprise prior to making any supplies. The acquisition of advertising by Luis is made in carrying on the enterprise even though the supplies of model cars do not eventuate. As the acquisition is for the purposes of carrying on the enterprise (and does not relate to making supplies that would be input taxed) the acquisition is for a creditable purpose.*

169. An entity may be formed with a single purpose which is the making of input taxed supplies. In this case, the Commissioner's view is that all acquisitions are made for the purposes of preparing to make input taxed supplies or commencing the activities of making input taxed supplies. This characterisation flows from the nature, or proposed nature, of the particular enterprise.

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[88] The term 'carrying on' an enterprise for GST purposes includes doing anything in the course of the commencement or termination of the enterprise: section 195-1.
[89] [2005] FCAFC 126, at paragraph 48.

Example 21 – commencing an enterprise that makes input taxed supplies

170. *Core Pty Ltd is a company that is conducting activities in the commencement of an enterprise and is therefore carrying on an enterprise. It has been incorporated for the purpose of conducting a debt factoring business by purchasing debts from identified entities or groups of entities and undertaking debt collection activities to realise the debts. Core Pty Ltd contracts D-Rate, an agency that specialises in rating debt, to advise on the range of potential suppliers of debt chosen by Core Pty Ltd's directors as targets.*

171. *The acquisition of the debt rating services by Core Pty Ltd is made for the purposes of carrying on its enterprise. However, as the only supply envisaged by Core is the acquisition of debt (the acquisition of the debt is a financial supply by Core Pty Ltd) the acquisition of the debt rating service is for the purposes of the proposed activities of making input taxed supplies and therefore the acquisition is not for a creditable purpose*.

172. An entity may also be formed where it is intended that the entity will make taxable or GST-free supplies and also input taxed supplies. In this case, acquisitions made in commencing the enterprise are not made for a creditable purpose to the extent those acquisitions are for the purposes of preparing to make input taxed supplies.

Example 22 – commencing an enterprise that makes taxable and input taxed supplies

173. *Bazza has purchased land from an entity registered for GST. The supply of the land to Bazza is a taxable supply and the margin scheme was not used to calculate the GST on the supply. Bazza intends to build a stratum unit complex on the land consisting of commercial shops on the ground floor and residential premises in the remainder of the complex. It is intended that the shops and residential premises will be leased.*

174. *Bazza's acquisition of the land is for the purposes of making both input taxed supplies (leasing residential premises) and taxable supplies (leasing commercial shops). To the extent that the acquisition of the land relates to the leasing of the commercial shops it is acquired for a creditable purpose and apportionment is required.*

Acquisitions made in terminating an enterprise

175. If a thing is acquired for the purposes of activities undertaken in the termination of an enterprise, the acquisition is made in the course of carrying on the enterprise.[90] MT 2006/1 provides guidance as to activities typically undertaken in terminating an enterprise. For further information refer to paragraphs 140 to 148 of MT 2006/1.

Example 23 – terminating an enterprise that makes taxable supplies

176. *Girlpower is a company that operates a retail store selling clothing. Due to competition in the market, the enterprise is losing money and the decision has been taken to cease trading. Girlpower has a closing down sale and sells all the stock. As the lease has not expired, Girlpower obtains legal advice on how to terminate the lease.*

177. *The acquisition of the legal services is made in the course of terminating the enterprise. The acquisition is for a creditable purpose.*

Acquisitions made in terminating an enterprise where the entity makes or has made supplies that are input taxed

178. An entity may continue the activities of its enterprise in the course of terminating the enterprise, or it may cease those activities and undertake winding up activities.

179. Where an entity continues with the same activities, whether an acquisition relates to making supplies that would be input taxed is determined in the same way as it would have been prior to the entity beginning the process of termination.

180. However, an entity that has ceased its former activities and is undertaking different activities in termination needs to consider whether the acquisitions it makes are for the purposes of its current activities or its past activities.

Example 24 – terminating an enterprise – change of activities

181. *Uptown Ltd has conducted an enterprise of manufacturing lifts for some years. Poor business decisions have led to a lack of contracts and the manufacturing activities being terminated. The entity is to go into voluntary liquidation, and the only activities it is carrying on are the sale of the manufacturing equipment and the liquidating of its investment portfolio.*

182. *Uptown Ltd acquires the services of an agent to assist in selling its equipment. This acquisition is made for the purposes of carrying on the enterprise and, in particular, the activities of making taxable supplies of equipment. This acquisition is for a creditable purpose.*

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[90] The term 'carrying on' an enterprise for GST purposes includes doing anything in the course of the commencement or termination of the enterprise: section 195-1.

183. *Uptown Ltd acquires the services of an investment adviser to assist in decision-making about its portfolio of investments. This acquisition is made for the purposes of carrying on the enterprise and, in particular, liquidating its investment portfolio which involves the making of input taxed financial supplies. This acquisition is not for a creditable purpose under section 11-15.*[91]

Acquisitions made in the course of raising capital

184. For acquisitions that are made in the course of raising capital by share issue, the question arises as to whether the acquisitions are for the purpose of raising capital for the enterprise's business or income-earning activities (which may be taxable supplies or GST-free supplies) or for the purpose of the issue of the shares (an input taxed supply).

185. One view that has been raised is that the purpose for making such acquisitions is not the financial supply of the shares, but the activities of the entity for which the capital is raised.

186. It is contended under this view that denying input tax credits for acquisitions made for the purpose of raising capital causes a cascade of tax where the business or income-earning activities of the entity is the making of taxable supplies.

187. It is said that this is contrary to the policy intent of the GST which is to have no cascade of tax, where possible. It is therefore argued that the purpose of the acquisitions is the making of taxable supplies, and not the making of input taxed supplies (for example, the issue of shares or other securities). This contention is said to be supported by the decision of the European Court of Justice in *Kretztechnik AG v. Finanzamt Linz*[92] which held that the issue of shares is not a supply for the purposes of the VAT thereby allowing the full recovery of input tax credits.

188. In the context of the Australian GST, the Commissioner considers that the issue of shares, as a means of capital raising, are input taxed financial supplies. Therefore, acquisitions made for the purposes of a share issue are acquisitions that relate to making supplies that would be input taxed.

189. The provision, acquisition or disposal of an interest mentioned in subregulation 40-5.09(3) of the GST Regulations is a financial supply.[93] A share fits within the definition of a security, which is an interest mentioned in item 10 of subregulation 40-5.09(3). Regulation 40-5.03 of the GST Regulations defines the provision of an interest to include the allotment, creation, grant and issue of the interest.

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[91] The facts in the example are subject to subsection 11-15(4) not applying.
[92] Case C-465/03 [2005] STC 1118.
[93] If the other requirements in paragraphs 40-5.05(1)(a) and 40-5.05(1)(b) of the GST Regulations are satisfied.

190. Regulation 40-5.06 of the GST Regulations provides the issue of a share as an example of an interest created by a financial supply provider in making the supply of an interest. These references in the legislation make it clear that the issue of a share is a financial supply (and consequently input taxed).

191. The policy intention to deny input tax credits for things acquired in the course of making a supply of shares by way of issue (capital raising) is supported by items in subregulation 70-5.02(2) of the GST Regulations dealing with arranging services for share floats and underwriting of share issues. That is, such acquisitions are reduced credit acquisitions for the purposes of Division 70 and the reduced input tax credits provided for under Division 70 are available only if input tax credits are denied by the application of paragraph 11-15(2)(a). To paraphrase Hill J in *HP Mercantile,*[94] the regulations proceed on the basis that various acquisitions made in relation to issuing securities, while not attracting a full input tax credit, will qualify as being entitled to a reduced credit.

192. Further support for the Commissioner's view that acquisitions made for the purposes of raising capital by way of share issue relate to the share issue and not to how the subsequent funds are used is provided by subsection 11-15(5). As explained at paragraphs 218 to 226 of this Ruling, this provision ensures that an acquisition, which would otherwise not be for a creditable purpose because it relates to a financial supply being a borrowing,[95] is for a creditable purpose if the borrowing relates to making supplies that are not input taxed. Clearly this provision would be unnecessary if it were appropriate to consider the purposes for which the borrowing is used.

193. While the policy underlying the input taxation of financial supplies in Australia draws upon the treatment of such supplies under equivalent VAT regimes, it is necessary to recognise that the Australian GST legislation diverges from international VAT models. The Australian model limits the scope of input taxation and grants a degree of input tax relief under the reduced input tax credit regime to achieve a revenue neutral result.

194. The Commissioner therefore considers it consistent with the policy intent of the legislative provisions that acquisitions such as brokerage services, which are made for the purposes of raising capital through the issue of shares (or other securities), relate to the making of supplies that would be input taxed (being the issue of shares or other securities).

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[94] [2005] FCAFC 126, paragraph 65.
[95] Goods and Service Tax Ruling GSTR 2003/9 Goods and services tax: financial acquisitions threshold, paragraphs 61 to 65.

Example 25 – initial placement offer – acquisition of arranging services

195. *Noddy Industries (Noddy) is a private company that manufactures furniture thereby making taxable supplies. Noddy needs to upgrade its manufacturing equipment to remain competitive with other manufacturers. To do this it needs to raise $100,000,000. The shareholders of Noddy decide to list the company and raise the necessary capital through an initial placement offer.*

196. *A merchant bank is engaged to arrange the flotation. Noddy makes a supply of interests in securities (a financial supply) when it issues the shares.*

197. *The acquisition of the arranging service is for the purpose of carrying on Noddy's enterprise and to raise capital through the issue of securities, which is an input taxed supply. The acquisition of the arranging service relates to making supplies that would be input taxed (issue of securities) and is not for a creditable purpose under section 11-15.*[96]

Acquisitions made in the course of making other acquisitions

198. Some acquisitions are made in the course of making other acquisitions. For example, in acquiring a rental property, acquisitions of valuation and legal services are made.

199. To determine whether the acquisition of the property, and other acquisitions made in acquiring the property, are for a creditable purpose it is necessary to consider whether the property is acquired for the purposes of making supplies that would be input taxed. The acquisition of the rental property along with other incidental acquisitions of valuation and legal services are for the purposes of making a supply of that property.

200. If the supply is of commercial accommodation, the acquisitions are made for the purposes of making taxable supplies, and the acquisition of the services is for a creditable purpose.

201. If, however, the supply is of residential accommodation, the acquisitions are made for the purposes of activities of making supplies that would be input taxed and the acquisition of the services is not for a creditable purpose.

[96] The facts in the example are subject to subsection 11-15(4) not applying.

Acquisition – supplies[97]

202. The acquisition of a financial supply by an entity is not merely an acquisition; it is both an acquisition and a financial supply by that entity. (The status of financial acquisitions as supplies is provided for in regulations 40-5.06 and 40-5.09 of the GST Regulations.)

203. Where an acquisition is for the purpose of making an acquisition-supply (a financial supply), the acquisition relates to making a supply that would be input taxed. For example, brokerage and legal services, which are acquired for the purposes of acquiring shares (a financial supply) relate to making supplies that would be input taxed and are not for a creditable purpose.

204. Authority for finding a connection between acquisitions and acquisition–supplies is found in *HP Mercantile*[98] which held that the acquisition of debt collection services related to the earlier acquisition-supply of the debts by HP Mercantile (see paragraphs 86 to 95 of this Ruling for a discussion of this case).

Acquisitions relating to promotion, marketing and advertising

205. An entity may make an acquisition of goods that are to be given away for the purpose of promoting, marketing or advertising some particular aspect of the entity's enterprise. Where goods are given away for the purpose of promoting, marketing or advertising the making of supplies by the entity that are input taxed, the acquisition of the goods relates to making supplies that would be input taxed and is not for a creditable purpose.

Example 26 – promotional give-aways

206. *Gorgon Bank acquires five million attractively coloured pens to give away, along with information brochures concerning its input taxed retail banking services, to anyone who makes an inquiry about opening an account; receiving a pen is not dependent upon the person actually opening an account. The pen is stamped with the Bank's name, branch address and phone number for the person's future reference.*

207. *The Bank acquires the pens for the purposes of promoting and advertising its bank account products. The supply of a bank account is an input taxed financial supply. As the pens are acquired for the purposes of promoting and advertising the bank account products, the acquisition of the pens relates to making supplies that would be input taxed and is not for a creditable purpose.*

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[97] Acquisition-supply is not a defined term in the GST Act. It is a term used to refer to a supply which is the acquisition of a financial interest as explained in paragraph 26 of GSTR 2002/2.

[98] [2005] FCAFC 126.

Acquisitions provided to a third party

208. A thing may be acquired by one entity (the recipient) but be provided to another entity.[99] As explained at paragraph 58 of this Ruling it is the recipient entity that acquires the thing. Consequently it is the recipient entity that must satisfy the creditable purpose requirements in section 11-15.

Example 27 – acquisition by recipient entity is provided to shareholders

209. *Galeon Ltd is a mining and exploration company that makes both taxable and input taxed supplies in carrying on its enterprise. Harpoon Corporation proposes a merger with Galeon Ltd by means of acquiring the shares of Galeon Ltd's existing shareholders.*

210. *Galeon Ltd engages and pays for the services of Saffron Securities Ltd to provide a statement to the shareholders as to whether the proposed merger with Harpoon Corporation would be in the best interests of the company and its shareholders. The provision of this statement to shareholders is a statutory requirement under the Corporations Act 2001.*

211. *The acquisition of the services by Galeon Ltd is for the purposes of its enterprise as a whole. Apportionment is required to the extent that Galeon Ltd makes supplies that would be input taxed.*

Part D – the interaction of subsections 11-15(3), (4) and (5) with paragraph 11-15(2)(a)

212. Subsections 11-15(3), (4) and (5) apply to treat acquisitions that would otherwise relate to making supplies that would be input taxed, as not relating to the making of such supplies. They are exceptions to paragraph 11-15(2)(a). If one or more of these subsections apply to an acquisition, then the acquisition is not, to the extent that the subsection applies, precluded from being for a creditable purpose by virtue of paragraph 11-15(2)(a).

Subsection 11-15(3)

213. Subsection 11-15(3) states that:

> 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 Australia.

[99] See GSTR 2006/9.

214. The objective of this provision is to negate the effect of paragraph 11-15(2)(a) to the extent that an acquisition by an entity relates to the making of input taxed supplies through an enterprise, or part of an enterprise, that the entity carries on overseas.

Subsection 11-15(4)

215. Subsection 11-15(4) applies to acquisitions that are not for a creditable purpose because they relate to making financial supplies.[100] Subsection 11-15(4) only applies where the entity making the acquisition does not exceed the 'financial acquisition threshold', as set out in Division 189.

216. If subsection 11-15(4) applies, an acquisition is not treated as relating to making supplies that would be input taxed and is therefore for a creditable purpose.

217. The operation of subsection 11-15(4) is discussed in GSTR 2003/9, which is about the financial acquisitions threshold.

Subsection 11-15(5)

218. The purpose of subsection 11-15(5) is to ensure that acquisitions otherwise denied a creditable purpose under paragraph 11-15(2)(a) as relating to a financial supply consisting of a borrowing[101] are not so denied.

219. An acquisition that is made for the purpose of a borrowing (a financial supply) is for a creditable purpose if the borrowing is for the purpose of making supplies, other than supplies that are input taxed. That is, subsection 11-15(5) requires that we look to the supplies to which the borrowing relates to determine if the acquisition is for a creditable purpose.

220. If the borrowing does not relate to making particular supplies, it relates to all of the supplies made by the entity and apportionment may be required.[102]

Example 28 – acquisition for purpose of a borrowing – borrowing for purpose of an activity of making taxable supplies

221. *Juggernaut Pty Ltd is a truck manufacturer. It acquires legal and accounting services for the purposes of entering into a loan agreement with Big Bank. The funds borrowed by Juggernaut Pty Ltd are used to upgrade manufacturing equipment.*

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[100] The term 'making financial supplies' is used in subsection 11-15(4) and the term 'making supplies that would be input taxed' in paragraph 11-15(2)(a). The effect of this is to provide relief under subsection 11-15(4) to financial supplies, and not to other input taxed supplies.
[101] GSTR 2003/9.
[102] Refer paragraphs 131 to 140 of this Ruling for a discussion of overheads.

222. *The acquisition of the legal and accounting services is made in carrying on Juggernaut's enterprise, and is for the purposes of making a financial supply consisting of a borrowing (taking out the loan). Under paragraph 11-15(2)(a) the acquisition of the legal and accounting services is not for a creditable purpose. However, subsection 11-15(5) requires that we look to the purpose of the borrowing to determine if the acquisition is for a creditable purpose.*

223. *As the borrowing is for the purpose of making taxable supplies of the trucks, the acquisition of the legal and accounting services is for a creditable purpose.*

Example 29 – acquisition of a borrowing where proceeds are used to pay dividends

224. *Viva Ltd is an event organiser. It has very uneven cash flows and invests surplus income in various securities. Although Viva has made a profit, at the time it is called upon to pay a dividend to its parent company, it is engaged on a major project and has no cash available. It incurs legal and broker's fees in borrowing the funds required to pay the dividend.*

225. *The acquisition of the legal and brokerage services is acquired in carrying on Viva Ltd's enterprise. Under paragraph 11-15(2)(a) the acquisition of the legal and broking services is not for a creditable purpose. However, subsection 11-15(5) requires that we look to the purpose of the borrowing to determine if the acquisition is for a creditable purpose.*

226. *The purpose of the borrowing is to pay dividends, which is not a supply. The borrowing is not for the purposes of making any particular supplies; it is for the purposes of Viva Ltd's enterprise as a whole. Viva Ltd's activities include making both taxable and input taxed supplies, and therefore the acquisition of the services is partly creditable and partly not creditable.*

Further examples

227. This section includes some further examples to illustrate the application of section 11-15.

Example 30 – acquisition for purposes of charitable activities

228. *Nostros Care is a charitable organisation that is registered for GST and is totally funded by donations. In carrying on its enterprise, Nostros Care acquires a lease of premises which it operates as a drop-in centre for distressed people. It makes no taxable supplies, input taxed supplies or GST-free supplies. The acquisition of the lease is made in carrying on Nostros Care's enterprise and is not for the purposes of making supplies that would be input taxed. The acquisition of the lease is therefore for a creditable purpose.*

Example 31 – legal services to draft contracts under which taxable supplies will be made

229. *Baldrock & Co is a bus construction company. Baldrock & Co pays Eager Beaver Legal Services to draw up a contract under which a fleet of buses will be provided to BusCo. The acquisition of the legal services is made in carrying on Baldrock & Co's enterprise and is for the purposes of making taxable supplies of buses. The acquisition of the legal services is therefore for a creditable purpose*.

Example 32 – acquisition for purposes of making input taxed supplies

230. *Flotsam Ltd makes low documentation loans of amounts under $10,000. Flotsam Ltd makes only input taxed supplies. Flotsam Ltd acquires advertising services to promote its loan products. The acquisition is made in carrying on Flotsam Ltd's enterprise and is for the purposes of making loans, which are input taxed supplies. The acquisition of advertising services is therefore not for a creditable purpose.*

Example 33 – overhead acquisition

231. *Following on from the previous example, Flotsam Ltd acquires new carpet for its head office. The acquisition of the carpet is made in carrying on Flotsam's enterprise but is not for the purposes of making any specific supplies (it is an overhead). As Flotsam Ltd only makes input taxed supplies the acquisition is not for a creditable purpose.*

Example 34 – entity makes taxable and input taxed supplies – acquisition is for the purposes of making taxable supplies

232. *Round the Block Pty Ltd is a leasing company that makes acquisitions of real property which it leases to clients. Most of its acquisitions are of residential properties, however, Round the Block Pty Ltd also has a small commercial property division that acquires strata titled office accommodation.*

233. *Round the Block Pty Ltd acquires valuation services in acquiring a strata titled office. The acquisition is made in carrying on Round the Block Pty Ltd's enterprise and is for the purposes of the leasing activities of the commercial property division. The acquisition of the valuation services is therefore for a creditable purpose.*

Example 35 – acquisition is for the purposes of making both taxable supplies and input taxed supplies

234. *Following on from the previous example, Round the Block Pty Ltd acquires advertising services in promoting both its residential and commercial leasing divisions. A single advertising campaign is run for the two divisions.*

235. *The acquisition of advertising is made in carrying on Round the Block Pty Ltd's enterprise and is for the purposes of both divisions. The acquisition of the advertising services is therefore partly for a creditable purpose and partly for a non-creditable purpose.*

Example 36 – acquisition for the purposes of all the supplies of the enterprise

236. *Following on from the previous example, Round the Block Pty Ltd makes acquisitions of rental premises, gas and electricity for the office from which both divisions are operated. These acquisitions are made in carrying on the enterprise and, as the acquisitions are not made for the purposes of making particular supplies, the acquisitions are for the purposes of the current activities of Round the Block Pty Ltd in making taxable and input taxed supplies.*

237. *These overhead acquisitions are therefore partly for a creditable purpose and partly for a non-creditable purpose.*

Example 37 – acquisition for purposes of making input taxed supplies

238. *Stack Trucks sells trucks to customers and also offers them finance by way of loans. Stack Trucks makes an acquisition of specialist loan management software which is used exclusively by loans staff. The acquisition is made in carrying on Stack Trucks' enterprise. The acquisition of the software is for the purposes of making input taxed supplies. The acquisition of the software is therefore not for a creditable purpose.*

Example 38 – acquisition for the purposes of a financial acquisition - supply

239. *Juggernaut Pty Ltd acquires brokerage services in acquiring shares in a rival company, Rocky Pty Ltd. Juggernaut Pty Ltd's intention in acquiring the shares is to strip the assets of Rocky Pty Ltd and use the assets in the manufacture of its trucks.*

240. *The acquisition of the brokerage services is made in carrying on Juggernaut Pty Ltd's enterprise and is for the purposes of acquiring the shares in Rocky Pty Ltd (an input taxed acquisition-supply). The acquisition of the brokerage services relates to making a supply that would be input taxed and is not for a creditable purpose.*

Your comments

241. We invite you to comment on this draft Goods and Services Tax Ruling. Please forward your comments to the contact officer(s) by the due date. (Note: The Tax office prepares a compendium of comments for the consideration of the relevant Rulings Panel. The Tax Office may use a sanitised version (names and identifying information removed) of the compendium in providing its responses to persons providing comments. Please advise if you do not want your comments included in a sanitised compendium.)

Due date:	**8 June 2007**
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Subject references:

- acquisition
- advertising & promotion expenses
- borrowing & loans
- capital
- carrying on an enterprise
- creditable acquisitions
- creditable purpose
- input taxed supplies
- private or domestic
- shares
- takeover

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