GSTR 2003/15 - Goods and services tax: importation of goods into Australia

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Goods and Services Tax Ruling

Goods and services tax: importation of goods into Australia

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Preamble

This document is a ruling for the purposes of section 37 of the ***Taxation Administration Act 1953****. You can rely on the information presented in this document which provides advice on the operation of the GST system.*

What this Ruling is about

1. This Ruling is about the operation of the provisions in the *A New Tax System (Goods and Services Tax) Act 1999* ('GST Act') which apply to the importation of goods into Australia.

2. In the Ruling we explain what taxable importations are, including the meaning of the word 'import' and its derivatives for the purposes of the GST Act. We also explain who is liable to pay GST on taxable importations and how GST is paid.

3. We also discuss creditable importations including the meaning of the phrase 'you import goods' in paragraph 15-5(a), and who is entitled to claim input tax credits for creditable importations.

4. The role of agents in relation to taxable importations and creditable importations is discussed, including the GST consequences of resident agents acting for non-residents.

5. This Ruling also addresses other issues such as taxable importations without entry for home consumption, what a non-taxable importation is, the value of taxable importations, including the value for re-imported goods, how GST can be deferred under the Deferred GST Scheme, and when input tax credits for creditable importations are attributed.

6. In addressing these issues, the operation of the following provisions of the GST Act is discussed:

- Section 9-25 - Supplies connected with Australia;
- Division 13 - Taxable importations;
- Division 15 - Creditable importations;
- Section 29-15 - Attributing the input tax credits for your creditable importations;

- Section 33-15 - Payments of amounts of GST on importations;
- Division 38 - GST-free supplies;
- Division 42 - Non-taxable importations;
- Division 57 - Resident agents acting for non-residents;
- Division 114 - Importations without entry for home consumption; and
- Division 117 - Valuation of re-imported goods.

7. This Ruling only relates to the importation of goods.[1] It does not address the importation of services and intangibles covered by Division 84.

8. All legislative references in this Ruling are to the GST Act unless otherwise stated. References to the Customs Act are to the *Customs Act 1901* ('Customs Act').

9. It is necessary at this point to especially clarify the use of the term 'agent'. In this Ruling, 'agent' is used to describe an entity that is appointed to undertake transactions, on behalf of another, the principal. For example, a company wishing to import goods to Australia may appoint a subsidiary as agent to arrange the importation. The agent may be authorised to enter into transport contracts and arrange customs clearance (ordinarily by engaging a customs broker) on behalf of its principal. According to the common law, the principal is thereby bound by the legal effects of the transactions entered into through its agent. In this Ruling, the term agent is used in this context and is not intended to extend to the usual service of customs brokers attending to customs formalities for their clients.

Date of effect

10. This Ruling explains our view of the law as it applied from 1 July 2000. You can rely upon this Ruling on and from its date of issue for the purposes of section 37 of the *Taxation Administration Act 1953*. 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.

[1] 'Goods' is defined in subsection 195-1(1) to mean 'any form of tangible personal property'. Therefore, 'goods' does not include intangible things, such as computer software downloaded over the Internet.

11. If this Ruling conflicts with a previous private ruling that you have obtained, this 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 this public ruling. This means that if you have underpaid an amount of GST, you are not liable for the shortfall prior to the later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

Context

12. GST is a tax on the consumption of most goods, services and anything else in Australia, including things that are imported.[2] GST is payable on importations of goods into Australia where the importation is a taxable importation. The term 'taxable importation' is discussed in detail at paragraphs 27 to 45 and 79 to 113.

13. Any entity, including a natural person, can make a taxable importation. Unlike a taxable supply, there are no requirements for registration of the entity for GST purposes, or for the importation to be made in the course of an enterprise, for an entity to make a taxable importation. This is because GST is a tax on private consumption and private consumers can import goods directly.

14. The entity that makes the taxable importation must pay the GST payable on the taxable importation.

15. The amount of GST is 10% of the value of the taxable importation. The value of the taxable importation is essentially the value of the goods plus the cost of bringing the goods to Australia, including insurance, plus customs duty and wine tax (if any).

16. GST on a taxable importation is usually paid to the Australian Customs Service ('Customs') before goods are released from Customs control. Alternatively, under the GST regulations, an entity may apply to defer payment of the GST in some circumstances.[3]

17. To ensure that GST is effectively borne by consumers, an input tax credit for the GST paid on imported goods is available where goods are imported in carrying on an enterprise, unless the importation relates to making input taxed supplies or is of a private or domestic nature.

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[2] Explanatory Memorandum to the *A New Tax System (Goods and Services Tax) Bill 1998* at Chapter 1.

[3] Payment of GST on taxable importations is discussed at paragraphs 109 to 113, and the regulations relating to deferral of GST are discussed at paragraphs 283 to 288.

18. The amount of the input tax credit is the same as the amount of the GST paid to Customs on importation, unless the importation is not wholly for a creditable purpose, such as where the goods are to be applied partly for a private purpose or in making input taxed supplies. In effect, the input tax credit is a reimbursement of the GST paid on importation.[4]

19. If a registered supplier (or a supplier that is required to be registered) sells or uses imported goods to make other supplies, any supplies made that are taxable supplies are subject to GST.

Customs and importations

20. The Customs Act requires imported goods to be entered for home consumption, warehousing or transhipment. The 'owner' of the goods must provide Customs with specific information in a specified format (the 'customs entry'). If goods are entered for home consumption, the 'owner' must pay any customs duty to Customs at the time of entry of the goods

21. As defined in section 4 of the Customs Act, 'owner' in respect of goods includes any person (other than an officer of Customs) being or holding himself out to be the owner, importer, exporter, consignee, agent, or person possessed of, or beneficially interested in, or having any control of, or power of disposition over, the goods.

22. The Customs Act defines 'owner' very broadly to ensure that whichever entity is named as owner on the Customs entry is responsible for payment of duty, retention of records, and other responsibilities under the Customs Act.

23. It is common for 'owners' to employ a licensed customs broker to complete the entry formalities on their behalf. Only customs brokers authorised under the Customs Act or employees of the 'owner' of the goods may lodge Customs entries on behalf of an owner.[5]

24. Customs entries lodged by customs brokers on behalf of an owner of goods are entered in the name of the owner together with the owner's ABN (if any) and a declaration that the customs broker has been authorised by the owner to act on the owner's behalf. The customs broker would not normally use the broker's own name as 'owner' of the goods. Customs hold the 'owner' as the entity primarily responsible for the import entry.

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[4] Explanatory Memorandum to *A New Tax System (Goods and Services Tax) Bill 1998* at Chapter 1.
[5] Subsection 181(2) of the Customs Act.

25. There are certain situations where Customs entries are not required. The most common are 'low value importations' – goods imported through Australia Post or other than by post that have values not exceeding specified limits.[6]

Ruling

26. You should refer to the section headed 'Explanation' for a more detailed examination of the issues covered in this part of the Ruling.

Taxable importations

27. You must pay the GST on any taxable importation that you make.[7]

Taxable importations under Division 13

28. You make a taxable importation if you enter for home consumption (within the meaning of the Customs Act) goods imported into Australia.[8]

29. Goods are typically imported into Australia when they are brought to Australia to be unloaded here.[9] 'Imported' in this context has its ordinary meaning.

30. Imported goods are entered for home consumption, within the meaning of the Customs Act, by an 'owner', as defined in that Act[10], entering imported goods for home consumption. The imported goods are entered by lodging an import entry in the name of the 'owner'.[11]

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[6] At the time of issue of this Ruling, the limits are $1000 for goods imported through Australia Post and $250 for goods consigned other than by post.
[7] Subsection 13-15.
[8] Taxable importation is defined in section 13-5.
[9] Not all imported goods are unloaded. For example, vessels that arrive in Australia under their own power that are intended to remain here are imported.
[10] 'Owner' is a defined term in the Customs Act – refer section 4. The term includes '… any person (other than an officer of Customs) being or holding himself out to be the owner, importer, exporter, consignee, agent, or person possessed of, or beneficially interested in, or having any control of, or power of disposition over the goods'.
[11] Goods are taken to be entered in accordance with subsections 71A(6) and 71A(7) of the Customs Act, when a) the goods are imported or brought to the first port or airport in Australia at which any goods will be discharged, or b) the entry is communicated to Customs, whichever occurs later.

31. If you, as 'owner', lodge an import entry in your name, you enter imported goods for home consumption within the meaning of the Customs Act and you are liable to pay GST on that importation if the importation is a taxable importation.

32. Typically, the 'owner' that enters imported goods is the legal owner of the goods, or the importer, exporter, consignee, or other person with an interest in, or control of, the goods. While the 'owner' can lodge the entry for home consumption itself, it is more likely that a licensed customs broker is engaged to prepare the entry on behalf of the 'owner'. In either case, the entry is made in the name of the 'owner' and, if it is a taxable importation, it is the owner that makes the taxable importation and is liable for GST. The customs broker does not make the taxable importation and is not liable for the GST on the taxable importation.

33. The definition of 'owner' in the Customs Act also includes an agent. If an agent enters goods for home consumption under an authority granted by the principal, it is the principal, not the agent, that makes the taxable importation. The principal is liable to pay the GST on a taxable importation made through an agent.

34. This is consistent with the general law of agency. The acts of an agent are the acts of the principal, and the principal is bound to the legal effects of the transaction.

35. Where an agent enters goods on behalf of a principal, the name of the agent appears on the entry form (unless the agent engages a customs broker[12] and the goods are entered in the name of the principal). As the entity that appears as 'owner' on the entry form is ordinarily the entity that makes the taxable importation and is liable to pay the GST, it is important to be able to demonstrate the existence of an agency relationship where goods are entered in the name of an agent. Verifying the existence of an agency relationship is important for both liability and input tax credit purposes. (Entitlements to input tax credits are discussed at paragraphs 46 to 70 below).

[12] Under the Customs Act, a customs broker is able to enter goods in the name of the 'owner' – see section 181 of the Customs Act. If a principal authorises an agent to arrange clearance and the agent engages a customs broker to prepare and lodge the entry, the agent may disclose the principal, in which case the broker may prepare the entry in the name of the principal as 'owner', rather than in the name of the agent. If the agent does not disclose the principal, the broker would enter the goods in the agent's name.

36. An agency relationship is created by the express or implied intention of the parties. Evidence of the agency relationship would normally exist in the form of written instructions and clear authority granted to the agent. We would also expect that there would be an arrangement for reimbursement of the agent by the principal for GST outlaid by the agent or for the principal to put the agent in funds before the entry is made (unless a non-resident makes a creditable importation through a resident agent, see paragraphs 65 to 70 below).

37. If an agent engages a customs broker to complete the customs formalities, the customs broker may be able to enter the goods in the name of the principal. If this is the case, it is clear that liability for GST on the taxable importation rests with the principal, not the agent.

38. In summary, the entity that makes the taxable importation, including an entity that makes a taxable importation through an agent, is liable to pay the GST on that taxable importation.[13] An agent may pay the GST on behalf of its principal, but it is not liable to pay the GST.

39. However, general law agency principles are overridden in one special circumstance. If the entity that makes a taxable importation is a non-resident and that non-resident makes the taxable importation through a resident agent, the resident agent is liable to pay the GST on the taxable importation, not the non-resident principal.[14]

40. A non-resident entity makes a taxable importation *through* an Australian resident agent where the non-resident appoints the agent to make the entry and the resident agent is entered as 'owner' on the customs entry. As noted in paragraph 33, an agent may be the 'owner' for customs entry purposes.

41. In these circumstances, a resident agent may also include a licensed customs broker where the broker is appointed to enter the goods as an 'owner', in the capacity of an agent. This is to be contrasted with the common situation where a customs broker merely facilitates the entry on behalf of an 'owner', but the broker is not shown as 'owner' on the entry.

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[13] Section 13-15.

[14] Section 57-5. 'Non-resident' is defined in section 195-1 as 'an entity that is not an Australian resident'. 'Australian resident' means 'a person who is a resident of Australia for the purposes of the [Income Tax Assessment Act 1936]'. 'Resident agent' is defined in section 195-1 as 'an agent that is an Australian resident'.

Taxable importations under Division 114

42. Taxable importations are also made in certain circumstances when goods are not entered for home consumption. These taxable importations occur when a circumstance listed in the table to subsection 114-5(1) occurs. This table is set out at Appendix A to this Ruling.

Non-taxable importations

43. An importation, that would otherwise meet the requirements of a taxable importation, is not a taxable importation to the extent that it meets the requirements of a non-taxable importation.[15] An importation is a non-taxable importation if it is an importation of a kind set out in Division 42.[16] This Division is summarised in Appendix B. An importation is also a non-taxable importation to the extent that, had it been a supply, the supply would have been a GST-free or input taxed supply.[17]

Calculation and payment of GST

44. The amount of GST payable on a taxable importation is 10% of its value.[18] The value of a taxable importation is the sum of the customs value of the goods, the amount paid or payable for the international transport, insurance for the transport and any customs duty and wine tax.[19] If an importation is partly a taxable importation and partly a non-taxable importation, the value of the part that is a taxable importation is the proportion of the value of the importation that the taxable importation represents.[20]

45. Unless the entity that makes the taxable importation is approved to defer payment of GST, the GST on a taxable importation is payable to Customs in the same manner as customs duty is paid on the goods (or would be paid if the goods were subject to duty).[21] For most importations, this means that the GST is paid to Customs before the goods are released from Customs control. If the entity that makes the taxable importation is approved to defer payment of GST, the GST

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[15] Section 13-5.
[16] Section 195-1, paragraph 13-10 (a) and Division 42.
[17] Section 195-1 and paragraph 13-10 (b).
[18] Subsection 13-20(1).
[19] Subsection 13-20(2).
[20] Section 13-25.
[21] Paragraph 33-15 (1)(a).

must be paid to the Commissioner on or before the 21st day after the end of the month in which the liability arises.[22]

Creditable importations

46. Input tax credits are available for creditable importations.[23] An entity makes a creditable importation under Division 15 if the entity imports goods solely or partly for a creditable purpose, the importation is a taxable importation, and the entity is registered, or required to be registered.[24] An entity can make a creditable importation in respect of a taxable importation made under Division 13 or Division 114.

47. The first requirement for an entity to make a creditable importation is that the entity imports the goods. Consistent with the scheme of the Act that only one entity can claim the input tax credit on a creditable acquisition or creditable importation, there can be only one entity that imports the goods within the meaning of Division 15.

48. For a taxable importation under Division 13, the entity that enters goods for home consumption is not necessarily the entity that imports them. The act of entering goods through Customs does not in itself equate to importing goods.

49. The entity that imports goods within the meaning of Division 15, in the context of a taxable importation under Division 13, is the entity that:

(a) causes the goods to be brought to Australia for application to its own purposes after importation, whether by way of supply, use, or otherwise; and

(b) completes the customs formalities for the entry of the goods.[25]

50. The entity that causes goods to be brought to Australia is identified by looking to the purpose for which the goods are brought here. The entity whose purpose it is to apply the goods by way of supply, use or other application to its purposes after importation is the entity that causes the goods to be brought to Australia.

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[22] Regulation 33-15.07 of the A New Tax System (Goods and Services Tax) Regulations 1999 ('GST Regulations').
[23] Section 15-15.
[24] Section 15-5.
[25] It is necessary, therefore, to ensure that the entity seeking to claim the input tax credit has caused the goods to be brought to Australia for application to its purposes and is also the entity that makes the taxable importation. If one entity causes the goods to be brought to Australia for application to its purposes, and another entity makes the taxable importation, neither entity is entitled to an input tax credit for the GST paid on the importation. (This is discussed further in the Explanations section at paragraphs 166 to 176).

51. An entity causes goods to be brought to Australia to apply them to its own purposes by way of supply, use or other application where, for example, it:

(i) arranges for goods that it owns to be sent to Australia so that it can use them in Australia;

(ii) places an order with a foreign supplier for goods, for use as trading stock, to be sent to Australia;

(iii) sends or arranges for goods to be sent to Australia to sell, lease or hire them in Australia; or

(iv) sends or arranges for goods to be sent to Australia for the entity to retain as a collector's piece or for investment.

52. Goods are commonly applied to the purpose of an entity when used in a manner consistent with their design or nature, or for the purpose for which the goods are intended to be, or capable of being, used. For example, an item of mining equipment is applied by the entity that uses the equipment for mining. An entity that transports the equipment to Australia and/or provides storage does not apply it in a manner consistent with its design or the purpose for which it is intended to be used. The transporting entity does not cause the equipment to be brought to Australia in this context, even though it is responsible for the physical transporting of the equipment.

53. The importing entity commonly acquires the ability to apply goods to its own purposes by giving consideration commensurate with the value of the goods, where an entity buys the goods, or commensurate with the value of the rights obtained in respect of the goods, where an entity rents or hires goods. Typically, the entity that imports the goods buys them from an overseas source and either uses or consumes the goods in Australia, or re-sells them.

54. An entity completes the customs formalities where the entity makes a taxable importation by entering the imported goods for home consumption[26]. An entity either enters goods itself, including through an employee, engages a customs broker, or appoints an agent to enter goods on the entity's behalf (in which case the agent is likely to engage a customs broker).

[26] An entity also completes customs formalities by entering imported goods for warehousing or transhipment; however, these customs entries are not taxable importations, and cannot therefore result in creditable importations.

55. In respect of a single importation, more than one party may cause goods to be brought to Australia for application to their purposes. One entity may send the goods to Australia to supply them, and another entity may request or arrange for the goods to be sent so that it can acquire them to use or resell. Where this is the case, the importing entity is the one that finalises the importation process by completing the customs formalities. That is, the entity that enters the goods for home consumption is the entity that imports the goods in these circumstances.

56. The importing entity can either physically bring goods to Australia and complete the customs formalities itself, or engage other entities to do these things on its behalf. Entities such as freight forwarders, international couriers, or other transport providers engaged to arrange the transportation and/or Customs clearance of goods do not import the goods. Such entities do not cause the goods to be brought to Australia to apply them to their own purposes after importation. The purpose of these transport entities is to move the goods, and/or facilitate the importation, on behalf of another entity that imports the goods to apply to its own purposes. The purpose for which the goods are brought to Australia is not the purpose of the transport entity.

57. Imported goods may be under the care, custody and control of various entities such as a logistics operator or a customs broker. Unless that entity causes the goods to be brought to Australia to apply them to its own purposes after importation, that entity does not import the goods. (This is discussed further in the Explanations section at paragraphs 156 to 165).

58. In certain circumstances, taxable importations are made without an entry for home consumption. This occurs where the circumstances set out in the table in subsection 114-5 are met. The entity in the fourth column of the table, under the heading 'Importer', is the entity that makes the taxable importation. For these taxable importations, we consider that this entity is also the entity that imports the goods within the meaning of section 15-5.

59. The remaining requirements for making a creditable importation are that the importing entity imports the goods for a creditable purpose, the importation is a taxable importation, and the importing entity is registered, or required to be registered.

60. An entity imports goods for a creditable purpose to the extent that the entity imports the goods in carrying on its enterprise[27], but not for making input taxed supplies[28], nor for private or domestic purposes.[29]

61. An entity entitled to an input tax credit for a creditable importation attributes the input tax credit to the tax period in which it pays the GST.[30] However, if the entity is approved to defer payment of GST on a taxable importation, the input tax credit is attributable to the tax period in which the deferred liability for the GST arises.[31]

62. In three special cases, an input tax credit for a creditable importation is allowed to an entity that does not import the goods within the meaning of Division 15.

63. First, an entity that enters for home consumption warehoused goods (within the meaning of the Customs Act) that have been imported by another party, is treated under section 114-25 as having imported the goods for the purposes of Division 15. If this entity is registered or required to be registered, to the extent that it enters the goods for a creditable purpose the entity is entitled to an input tax credit.

64. Secondly, a company may be entitled to an input tax credit under Division 60 where, before the company comes into existence, the goods are imported by a person who becomes a member, officer or employee of the company.

65. Thirdly, an Australian resident agent of a non-resident principal is entitled, under Division 57, to the input tax credits for creditable importations made by the non-resident through the agent.

66. The non-resident entity must make a creditable importation. That is, the non-resident must import the goods into Australia for a creditable purpose, the importation must be a taxable importation and the non-resident must be registered, or required to be registered.

67. A creditable importation is made through the resident agent where the resident agent has the authority to clear the goods through Customs on behalf of the non-resident, and the resident agent is entered as 'owner' on the entry for home consumption. The resident agent, which might, for example, be an Australian subsidiary of a non-resident company, would normally engage a customs broker.

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[27] Section 15-10(1).
[28] Subject to the exception relating to the financial acquisitions threshold in subsection 15-10(4).
[29] Goods and Services Tax Ruling: GSTR 2000/15 Determining the extent of creditable purpose for claiming input tax credits and for making adjustments for changes in extent of creditable purpose, paragraph 40.
[30] Subsection 29-15(1).
[31] Subsection 29-15(2) and paragraph 33-15(1)(b).

68. A creditable importation may be made through a customs broker as a resident agent. This occurs where the broker is appointed to enter the goods as an 'owner', in the capacity as agent for the non-resident. However, an importation is not made through a customs broker as resident agent where the customs broker merely prepares and lodges the entry for a non-resident who is named as the owner on the entry.

69. A resident agent is not entitled to an input tax credit under section 57-10 merely because it is liable to pay the GST under section 57-5 on a taxable importation of the goods. A credit entitlement exists only if the non-resident makes a creditable importation through the agent. That is, the non-resident must satisfy the requirements of section 15-5.

70. If a creditable importation is made through a resident agent, the agent needs to be able to demonstrate that there is an agency relationship, and that the requirements for a creditable importation are met.

Other issues

Section 9-25

71. A supply of goods is a taxable supply if the requirements of section 9-5 are met, including the requirement that the supply is connected with Australia.

72. For supplies of goods to Australia, paragraph 9-25(3)(a) provides that the supply is connected with Australia if the supplier imports the goods. A supplier imports goods where the supplier causes the goods to be brought to Australia to apply them to its own purposes and completes the customs formalities.

73. This is the case where a supplier causes the goods to be brought to Australia and enters the goods for home consumption,[32] or for warehousing or transhipment (within in the meaning of the Customs Act). However, a supplier does not import goods where the customs formalities for the importation of the goods are completed by the entity that acquires the goods from the supplier.[33]

74. Where a supplier imports goods, there may be both a taxable importation and a taxable supply as a result of a single commercial transaction.[34]

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[32] For example, Delivered Duty Paid ('DDP') as per ICC Incoterms 2000 (International Chamber of Commerce, International Commercial Terms).

[33] For example, the goods are sold on free on board ('FOB') or cost, insurance and freight ('CIF') terms, as per ICC Incoterms 2000.

[34] See GSTR 2000/31 'Supplies connected with Australia' at paragraphs 152 to 162.

Other provisions

75. The operation of the provisions relating to the following other issues is discussed in the 'Explanations' part of this Ruling:

- importations without entry for home consumption (Division 114);
- non-taxable importations (section 13-10, Division 42);
- calculation of the value of a taxable importation, including where the imported goods have previously been exported from Australia (section 13-20, Division 117);
- deferral of payments of GST on taxable importations (section 33-15); and
- attributing input tax credits for creditable importations (section 29-15).

Explanation

GST on importations

76. To complement the collection of GST on taxable supplies of goods in Australia, the GST Act also provides for the collection of GST on goods brought from overseas by way of taxable importations. Input tax credits are provided for creditable acquisitions,[35] and the GST Act likewise provides for input tax credits for creditable importations.

77. Division 13 defines taxable importations, states who is liable for the GST, and describes how to work out the amount of GST payable.

78. Division 15 defines creditable importations, states who is entitled to input tax credits and describes how to work out the input tax credits.

[35] Section 11-5.

Taxable importations

79. GST is payable on all taxable importations of goods into Australia. GST applies even where the taxable importation is made by an entity that is not registered, or required to be registered.[36] This ensures that goods for consumption in Australia are taxed irrespective of whether the goods are acquired domestically or imported.

80. Taxable importations, referred to in Division 13, occur when goods are:

a) imported;

b) entered for home consumption (within the meaning of the Customs Act); and

the importation is not a non-taxable importation.[37]

Goods are imported

81. The first requirement for a taxable importation is that 'goods are imported'. The word 'import' is defined in section 195-1 to mean 'import goods into Australia'. We take this definition to apply to the derivative 'imported' in the expression 'goods are imported'.

Meaning of Australia

82. 'Australia' is defined in the GST Act as follows:

> 'Australia does not include any external Territory. However, it includes an installation (within the meaning of the Customs Act 1901) that is deemed by section 5C of the Customs Act 1901 to be part of Australia'.[38]

83. The *Acts Interpretation Act 1901* provides that:

> 'any reference in an Act…to Australia…shall be read as including a reference to the coastal sea of Australia'.[39]

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[36] The note to section 13-5 states 'There is no registration requirement for taxable importations, and the importer need not be carrying on an enterprise.'
[37] Subsection 13-5(1).
[38] Section 195-1.
[39] Paragraph 15B(1)(b) of the *Acts Interpretation Act 1901.*

84. Coastal sea[40] is defined as:

'in relation to Australia, means:

(i) the territorial sea of Australia; and

(ii) the sea on the landward side of the territorial sea of Australia and not within the limits of a State or internal Territory; and

includes the airspace over, and the sea-bed and subsoil beneath, any such sea'.

85. By proclamation made under the *Seas and Submerged Lands Act 1973*,[41] the outer limit of the territorial sea extends to 12 nautical miles from the territorial sea baseline.

86. This means that 'Australia' includes all land territory (except external territories), the coastal sea and the installations described in section 5C of the Customs Act. Typically, the installations referred to in section 5C are oil drilling rigs and similar mining exploration installations.

Meaning of import

87. The definition of import - 'import goods into Australia' - includes the word 'import'. Therefore, the definition does not ascribe a particular or special meaning to the word in the GST Act. Rather, it confirms that the word 'import' means import into Australia rather than import into another country.

88. The ordinary meaning of import, in relation to goods, is to bring goods, or cause them to be brought, into Australia from abroad. However, the meaning of the word must be determined from the context in which it is used. In that regard, the meaning of import in the context of provisions of the Customs Act has been considered by the High Court of Australia on a number of occasions.

89. In *Wilson v. Chambers* (1926) 38 CLR 131[42], the High Court held that goods are imported into Australia when they are brought to their port of destination for the purpose of being unloaded.

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[40] Subsection 15B(4) of the *Acts Interpretation Act 1901*.
[41] Proclamation made in November 1990 under section 7 of the *Seas and Submerged Lands Act 1973*.
[42] (1926) 32 ALR 274.

90. In *The Queen v. Bull* [1974] 131 CLR 203[43], Barwick CJ stated at 131 CLR 212[44]:

> … importation of goods, in my opinion, according to the natural meaning of the word, involves landing them, or bringing them within a port for the purpose of landing them in the country or place in relation to which importation is regulated.

91. Gibbs J in the same case said at 131 CLR 254 and 255:[45]

> No definition of 'import' or of any derivative of the word is contained in the [Customs] Act. Its ordinary dictionary meaning is 'To bring in, or cause to be brought in (goods or merchandise) from a foreign country, in international commerce' (Oxford English Dictionary….
>
> It does not conform to ordinary usage to say that goods are imported into a place if they are brought there in the course of transit but with no intention that they should be unloaded there. …
>
> Even if goods are brought into port they are not necessarily imported; for example, a cargo being carried from England to New Zealand is not imported into Australia when the ship on which it is carried puts into an Australian port en route. …
>
> However, if goods are brought into port with the intention of being discharged there they are imported: Wilson v. Chambers & Co. Pty Ltd (1926) 38 CLR, at pp 136, 147, 150; and see also Forbes v. Traders Finance Corporation Ltd (1971) 126 CLR 429, at pp 443-444. …
>
> Of course it is not necessary, to constitute an importation, that the goods should be brought into port - they may be landed in some other way.

92. Similarly in the context of the GST Act, it is the Commissioner's view that goods are imported into Australia where they are brought to Australia with the intention of being unloaded in Australia. A liability for GST on an importation of goods can only arise if the goods are to be unloaded in Australia. If the goods pass through Australia in transit to another country, they are not imported and GST is not payable.[46]

Example 1 – Goods brought to Australia but only some imported

93. *A cargo ship arrives in Australia with the intention of discharging goods at the Port of Melbourne and travelling on to*

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[43] (1974) 3 ALR 171; (1974) 48 ALJR 232.
[44] (1974) 3 ALR 171 at 176; (1974) 48 ALJR 232 at 235.
[45] (1974) 3 ALR 171 at 210; (1974) 48 ALJR 232 at 252.
[46] If goods are brought to Australia with the intention of unloading, but instead of being unloaded are shipped on to another country, no taxable importation arises under Division 13 if the goods are not entered for home consumption.

Auckland to discharge the remainder of its cargo. When the ship arrives at the Port of Melbourne, the goods intended for discharge, are imported into Australia. The goods that remain on board the ship, for carriage to a destination outside Australia, are not imported into Australia, despite having entered Australian territory.

94. Not all imported goods are unloaded. For example, vessels that arrive in Australia under their own power, and are intended to remain here, are imported.

Goods entered for home consumption

95. The second requirement for a taxable importation is that goods are entered for home consumption. This is achieved by the lodgement of an entry of imported goods for home consumption with Customs.[47] An entry for home consumption is the specified format in which Customs requires information to be provided in respect of imported goods. When it is processed and approved, the entry for home consumption allows the goods to be removed from Customs control. Imported goods can be entered for home consumption, entered for warehousing or entered for transhipment, within the meaning of the Customs Act. Only entries for home consumption are relevant for the purposes of section 13-5.

96. While it is a requirement for a taxable importation under section 13-5 that goods are imported, the identity of the entity importing goods into Australia is not relevant for the purposes of establishing who makes a taxable importation. It is possible for an entity to make a taxable importation even though it does not import goods.

97. The entity that enters goods for home consumption is the entity that makes the taxable importation. Typically, this is the importing entity, though in some cases it may be another entity. Under the Customs Act an entry for home consumption must be made by or on behalf[48] of the 'owner' of the goods.[49]

98. The 'owner' of the goods for Customs purposes is not restricted to the legal owner. Section 4 of the Customs Act provides that the 'owner' can be:

> … any person (other than an officer of Customs) being or holding himself out to be the owner, importer, exporter, consignee, agent, or

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[47] An entry is required under section 68 of the Customs Act. Goods are taken to be entered in accordance with subsection 71A (6) and 71A(7) of the Customs Act. Refer to footnote 11 above.

[48] An entry for home consumption can be made by a customs broker on behalf of the 'owner' - section 183 of the Customs Act.

[49] Subsections 71A(2) and 71A(3) of the Customs Act.

person possessed of, or beneficially interested in, or having any control of, or power of disposition over the goods.

99. The wide meaning of 'owner' ensures that customs duty (and GST) can be collected on imported goods from the entity that enters the goods for home consumption, regardless of who imported the goods. The 'owner' is held responsible by Customs for the information contained in the import entry. The goods may not be released from Customs control until the GST has been paid.[50]

100. GST is not payable on the entry of imported goods for warehousing or transhipment. Nor is GST payable on the entry of goods for home consumption where the circumstances of the importation satisfy the requirements of the non-taxable importation provisions.[51] Also, where the imported goods meet the requirements of a temporary importation within the meaning of the Customs Act, GST is not payable if the goods are exported within a specified time period. Non-taxable importations are discussed at paragraphs 239 to 252 under 'Other issues'. Temporary importations are discussed at paragraphs 254 to 257.

101. Section 13-15 states that the entity making a taxable importation must pay the GST on the taxable importation. As discussed above, this is the entity that enters goods for home consumption. There is no requirement for that entity to be registered or enter the goods in the course of carrying on an enterprise.

102. Commonly, the entity that enters goods for home consumption by holding itself out on the entry to be 'owner' is the legal owner of the goods. This entity normally engages a licensed customs broker to prepare and lodge the entry on its behalf.

103. Others that may enter imported goods include the importer, exporter, consignee or other person with an interest in, or control of, the goods. Again, this entity normally enters the goods by engaging a customs broker to prepare and lodge the entry on its behalf. In each case, it is the 'owner' that makes the taxable importation, not the customs broker.

104. According to the definition of 'owner' in the Customs Act, the 'owner' in respect of goods may also be an agent. If an agent is authorised to undertake entry of the imported goods on behalf of a principal (thereby binding the principal to the legal effects of that transaction), the principal is the entity that makes the taxable importation, not the agent. Section 13-15 does not override the common law principle of agency, whereby the acts of an agent are taken to be the acts of the principal. Again, where an agent enters goods as 'owner', the agent will commonly engage a customs broker

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[50] Subsection 33-15(2).
[51] Section 13-10 and Division 42.

to prepare and lodge the entry on behalf of the agent as the 'owner' named in the entry.

105. In respect of entries through agents, the entity that appears as 'owner' is ordinarily taken to be the entity that makes the taxable importation in its own right. Therefore, if this entity is not in fact making the taxable importation because it is making the entry as an agent, the entity needs to be able to demonstrate the existence of an agency relationship. If the existence of the agency relationship cannot be established, the entity named as owner in the entry will be considered to be making the taxable importation in its own right, and would, therefore, be personally liable for the GST on the entry.

106. Paragraphs 196 to 220 further explain the role of agents and in particular the special rules that apply to resident agents acting for non-residents.

107. The amount of GST payable on a taxable importation is 10% of the value of the taxable importation.[52] The value of the taxable importation is the customs value of the goods plus the cost of bringing those goods to Australia (including insurance) plus the customs duty and wine tax (if any). This is explained further in paragraphs 258 to 282 under 'Other issues'.

Taxable importations under Division 114

108. In addition to taxable importations under section 13-5, a taxable importation can be made under Division 114. Section 114-5 sets out certain circumstances where goods are not entered for home consumption, but nevertheless there is a taxable importation. Division 114 is discussed at paragraphs 226 to 238 under 'Other issues'.

Payment of GST on taxable importations

109. Subsection 33-15(1) explains how and when the liability for GST on taxable importations is payable.

110. GST on taxable importations is payable by the 'importer' to Customs at the same time and place, and in the same manner, as the customs duty on the goods is payable (or would be payable if the goods were subject to customs duty).

111. 'Importer' in this context does not mean the entity that actually brings the goods, or causes them to be brought, into Australia. The liability for GST falls on the entity that makes the taxable importation. Importer, in this context, therefore, simply means the entity that

[52] Section 13-20.

makes the taxable importation and is therefore liable to pay the GST on the taxable importation. That entity is typically, but need not be, the same entity that brings the goods, or causes the goods to be brought, into Australia.

112. An importer with a GST liability may pay the amount personally or arrange for another party, such as a customs broker or an agent, to pay the amount on its behalf. Alternatively, some importers can defer GST on taxable importations and account for it directly to the Australian Taxation Office ('ATO'). For approval to defer GST, the importer must satisfy the eligibility requirements for the deferral scheme as set out in the regulations.[53]

113. While the entity that actually imports the goods usually enters them for home consumption and pays any GST, in some cases, goods that one party imports may be entered for home consumption by another party. The fact that an entity enters goods for home consumption does not necessarily mean that it is that entity that imports the goods into Australia. Completing the customs formalities is just one part of the importation process. Identifying the entity that imports goods determines which entity may have an entitlement to input tax credits. This is discussed in the following paragraphs.

Creditable importations

114. Entities that are registered, or required to be registered, may be entitled to input tax credits for GST paid on taxable importations. An entity is entitled to an input tax credit for any creditable importations that it makes.[54]

115. Allowing input tax credits reimburses GST to entities that acquire or import things in carrying on their enterprises. Where an entity (that is registered, or required to be registered) acquires something by way of a taxable supply, it is entitled to an input tax credit for the GST included in the price paid where it makes a creditable acquisition. Similarly, if an entity acquires goods by way of importation, it is entitled to an input tax credit for the GST paid to Customs (or accounted for to the ATO if GST is deferred) if the importation is a creditable importation.

116. Under section 15-5 there are three requirements that must be satisfied for an importation to be a creditable importation. The section states:

> 'You make a *creditable importation* if:

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[53] Regulation 33-15.03. The deferral scheme is discussed further at paragraphs 283 to 288 under 'Other issues'.
[54] Section 15-15.

(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'.

117. The meaning of creditable purpose is discussed in GSTR 2000/15.[55] Goods are imported for a creditable purpose when they are imported for the purposes of an enterprise, not for some other purpose such as private use and not to the extent that the importation relates to making supplies that would be input taxed.[56] The meaning of 'you import goods' is discussed further at paragraphs 120 to 155 below.

118. Paragraph 15-5(b) requires that the importation is a taxable importation. If the importation is a non-taxable importation there is no entitlement to an input tax credit. The paragraph 15-5(b) requirement cannot be met until the customs formalities are complete, as these determine whether the importation is a taxable importation. For example, entry of certain imported food[57] for home consumption or entry of any goods for warehousing is not a taxable importation.

119. Where an importation is solely for a creditable purpose, the amount of the input tax credit is the same as the amount of the GST that is paid on the importation. In effect, the input tax credit is a reimbursement of the GST paid on the importation.[58]

Meaning of 'you import goods'

120. Section 15-15 provides that '*you* are entitled to the input tax credit for any creditable importation that *you* make' (italics added). The first part of paragraph 15-5(a) states that you make a creditable importation if '*you* import goods' (italics added). To determine who is entitled to input tax credits for a creditable importation, it is necessary to identify the '*you*'. That is, the entity that imports the goods.

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[55] GSTR 2000/15: Determining the extent of creditable purpose for claiming input tax credits and for making adjustments for changes in extent of creditable purpose. See also the exception relating to the financial acquisitions threshold in subsection 15-10(4).

[56] See paragraph 40 of GSTR 2000/15.

[57] The importation of 'food', a supply of which would be GST-free under Subdivision 38-A, is not a taxable importation because of the operation of paragraph 13-10(b).

[58] Explanatory Memorandum relating to the *A New Tax System (Goods and Services Tax) Bill 1998* at Chapter 1.

121. Consistent with the meaning of import discussed at paragraphs 87 to 94, 'you import goods' requires that you bring goods, or cause them to be brought, into Australia.

122. You bring goods into Australia by physically carrying or transporting the goods yourself. You cause goods to be brought to Australia by engaging, or instructing your agent to engage, another party such as a freight forwarder, international courier, or other transport provider, to bring those goods to Australia on your behalf. Alternatively, you may cause goods to be brought into Australia by simply requesting a foreign supplier to dispatch them to you in Australia.

123. Where you physically bring goods to Australia at the request of, or under an engagement for, another entity, you do not cause those goods to be brought into Australia for your own purposes and therefore are not the importer. For example, where a freight forwarder is engaged to bring goods to Australia on behalf of another, the freight forwarder does not cause those goods to be brought to Australia. It is likely to be the freight forwarder's client, having engaged the freight forwarder to bring the goods to Australia, who causes the goods to be brought to Australia.

124. While there can be several entities involved in bringing goods or causing them to be brought into Australia, Division 15 clearly intends to identify one party only as the entity that imports the goods. This is because the Division contemplates only one entity having an entitlement to an input tax credit.

125. Paragraph 15-5(a) contemplates that the goods may be imported for a particular purpose, that is, a creditable purpose. Thus 'you import' connotes that, in importing the goods into Australia, you do so for your own purposes, such as application in your business, resale or retention of the goods for business or other purposes. This is to be distinguished from cases where the entity bringing the goods to Australia does so only for the purposes of another entity, such as where a freight forwarder brings goods to Australia for the purposes of its client.

126. In the High Court of Australia case *He Kaw Teh v. R*[59], Dawson J referred to the purpose of importation in considering an alleged offence relating to prohibited imports. Whilst the other judges relied on other reasons, Dawson J acknowledged purpose as an intrinsic element of importation. His Honour said at 157 CLR 596:[60]

> … importation connotes a commercial purpose, or at least an intention to use or consume the goods… it is not possible as a matter

[59] (1985) 157 CLR 523; (1985) 60 ALR 449; (1985) 59 ALJR 620; (1985) 15 A Crim R 203.
[60] 60 ALR 449 at 502; (1985) 59 ALJR 620 at 651; (1985) 15 A Crim R 203 at 256.

of language to speak of importation without introducing some element of purpose or intention.

127. It follows that the 'you', in 'you import goods' in paragraph 15-5(a), refers to the entity that causes the goods to be brought to Australia for its own purposes.

128. Identifying the importing entity in this way is in keeping with the scheme of the GST Act as a whole, in particular, Divisions 11 and 129 as discussed below.

129. Division 11 looks at the application of goods after domestic supply by the entity that acquires them. Where the application of the goods, which could include a further supply, is in the course of carrying on an enterprise, an input tax credit is allowed.

130. Division 129, which operates in respect of creditable acquisitions *and* creditable importations, tests the intended application of a thing acquired or imported against the actual application of the thing. The Division provides for an adjustment in some circumstances if the actual application differs from the intended application. The operation of this provision in relation to importations is only meaningful if the entity that imports and makes the creditable importation is the entity that is able to apply the goods.

131. In this regard, section 129-55 defines 'apply,' in relation to a thing acquired or imported, to include:

(a) supply the thing; and

(b) consume, dispose of or destroy the thing; and

(c) allow another entity to consume, dispose of or destroy the thing.

132. To make an adjustment for a change in creditable purpose, an entity must import goods and then apply them in a manner or to an extent that differs from its original intention. That entity must have had the intention and the right to apply the goods to its own purposes within the meaning of 'apply' in section 129-55.

133. Often the entity which causes the goods to be brought to Australia for its own purposes is the legal owner of the goods, but it may also be, for example, a lessee or licensee of the goods. The critical factor is that the importing entity is the entity that will apply the goods to its own purposes after their arrival in Australia. Usually, that entity will have borne consideration in respect of the goods, such as by paying the purchase price or lease charges or licence fees. This is in contrast to, for instance, a transport company which is merely engaged to transport the goods. The transport company does not acquire any interest in, or rights in respect of, the goods, other than rights which are merely incidental to the freight contract, and does not provide any consideration in respect of the goods.

134. In this context, an entity that uses goods in a manner consistent with their design or nature or the purpose for which they are intended to be, or are capable of being used, applies the goods to its own purposes. For example, driving a car is an application or use of the car consistent with its design. To read a book is to apply the book to its intended use. Racing, breeding or showing a thoroughbred horse is an application of the horse consistent with its nature. On the other hand, mere transporting or temporary storing of goods in Australia on behalf of another is not such a use. An entity which brings goods to Australia for that purpose only is not regarded as the importer of the goods.

135. Where goods are imported in the course of being sold, or otherwise supplied, there may be cases where both the supplier and the acquirer can be said to have caused the goods to be brought to Australia for their own purposes. For example, the supplier may cause the goods to be brought into Australia for the purpose of supplying them, and the acquirer causes the goods to be brought to Australia to apply them to its own purposes after importation, for example, by contracting with the supplier to supply the goods under a CIF contract.

136. Since Division 15 contemplates only one importer, identifying an entity that causes the goods to be brought to Australia for application to its own purposes cannot be the *sole* basis for determining the entity that imports the goods.

137. Importation, in the context of Division 15, is not achieved merely by landing the goods in Australia for a particular purpose, but also requires completion of the customs formalities. All goods imported into Australia must be dealt with in accordance with the Customs Act. This is an intrinsic part of the importation process. Customs formalities include entering goods for home consumption, for warehousing or for transhipment within the meaning of the Customs Act.[61] Goods cannot be released from Customs control, thus completing the importation process, until the customs formalities are completed.

138. Paragraph 15-5(b) specifically requires that *the* 'importation' referred to in paragraph 15-5(a) is a taxable importation. Whether an importation is a taxable importation or a non-taxable importation can only be determined by the customs formalities. Therefore, 'the importation' in paragraph 15-5(b) is referring to the entire importation process, which is the same process referred to by 'you import goods' in paragraph 15-5(a).

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[61] Section 68 of the Customs Act.

139. In the context of certain provisions of the Customs Act, Barwick CJ in *Forbes v. Traders Finance Corporation Ltd*[62] acknowledged at 126 CLR 432[63] that

> … 'importation' extends to both sides of the actual act of importing goods into the country. The importation does not cease at the moment of the import.

140. In that case it was argued that a car used to transport goods, after they had been illegally imported, was not 'used in the importation of the goods', and not therefore subject to forfeiture. Barwick CJ and Windeyer J considered the process of importation, in this context, was not complete when the goods are put on land in Australia. Thus, it is the Commissioner's view that if the context requires it, the word 'importation' can encompass activities occurring before or after the goods are physically landed in Australia, including, for example, the completion of customs formalities.

141. The GST taxing structure for imports also recognises that customs formalities form part of the importation process. In the context of a taxable importation under section 13-5, the importation process includes the physical importation of the goods and the clearance through customs by an entry for home consumption.

142. Hence, we consider that the words 'you import goods' in their context in paragraph 15-5(a) include not only causing the goods to be brought to Australia for your own purposes, but also completing the customs formalities.

Example 2 – Supply by non-resident, acquisition by resident manufacturer

143. *A non-resident supplier causes goods to be brought to Australia for the purpose of filling an order and completing a sale to an Australian manufacturer. The Australian manufacturer also causes the raw materials to be brought to Australia to use in its factory, by placing the order with the non-resident supplier. In this case, causing the goods to be brought into Australia does not of itself identify the entity that imports the goods. The entity that imports the goods in these circumstances is the entity that also completes the customs formalities and pays the GST, thus completing the importation. If the purchaser attends to the customs formalities, such as in the case of a contract on FOB or CIF terms,*[64] *the purchaser is the entity that imports the goods.*

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[62] (1970) 126 CLR 429; [1972] ALR 653; (1971) 45 ALJR 668.
[63] (1971) 45 ALJR 668 at 668.
[64] Free on Board and Cost Insurance Freight respectively – as per ICC Incoterms 2000.

144. *If the importing entity imports the goods for a creditable purpose, an input tax credit is available.*[65]

145. In circumstances where there are several parties that cause the goods to be brought to Australia, it is usual for the parties to agree which party takes responsibility for the completion of the customs entry formalities. It is this entity that imports the goods. For example, in a contract of sale a party's obligation to complete the customs formalities is established by adopting a particular Incoterm. According to ICC Incoterms 2000, the seller under DDP terms is responsible for customs formalities on importation, whereas under FOB, CIF or DDU[66] terms, the buyer is responsible.

146. The entity that imports may complete the customs formalities itself or engage a customs broker. For example, a supplier under a DDP contract may engage a customs broker to arrange clearance of the goods as required for them to complete delivery of the goods under the sale contract.

147. An entity completes the customs formalities where that entity's name appears on the import entry as 'owner'. This occurs where the entity completes the entry itself, or engages a customs broker.

148. Another way that an entity may complete the customs formalities is through an agent, who may in turn engage a customs broker to attend to the entry of the goods. In this case, the agent may be named as the 'owner' on the entry, but the principal is the entity that imports the goods, assuming the principal has also caused the goods to be brought to Australia. The parties must be able to clearly demonstrate the existence of the agency arrangement for the entity said to be the principal to be accepted as the importer. An arrangement for the principal to reimburse the agent for GST paid on the taxable importation, or to be put in funds by the principal to enable the agent to pay the GST on behalf of the principal, is indicative of agency. However, it is expected that written instructions and clear authority would also be given. Alternatively, to avoid any doubt as to whether the importation is made by the 'agent' in its own right or by

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[65] Subsection 15-10(2).

[66] In Australia, customs formalities must generally be completed in respect of imported goods before they are released from Customs control. This means DDU contracts, in the strict sense of the ICC guidelines, cannot be effected in Australia. Therefore, where the parties intend for the seller to deliver goods to the buyer's premises, but for the buyer to pay the GST to Customs on the entry, the seller may agree to complete the customs formalities on behalf of the buyer. The buyer would then reimburse the seller for the cost of completing the formalities as well as any duty and GST paid. A buyer, by entering into a contract to buy goods that are located outside Australia, where the customs clearance that allows the goods into Australia is attended to by the buyer or on the buyer's behalf, is the importer of the goods. Ideally, the customs clearance arrangements should be set out clearly in the contract of sale.

the principal, the agent may be able to arrange clearance through a licensed customs broker in the name of the principal. The role of agents is discussed at paragraphs 196 to 220.

In summary

149. In the context of a taxable importation under section 13-5[67], the entity that imports goods within the meaning of paragraph 15-5(a) cannot be identified by one factor alone. For the purposes of section 15-5, the entity that imports goods is the entity that:

(i) causes the goods to be brought to Australia for application to its own purposes after importation; and

(ii) completes the customs formalities (whether directly or through a customs broker or an agent).

Alternative view of the meaning of 'you import goods'

150. An alternative view is that the entity that makes the taxable importation is the entity that imports the goods. It could be argued that the context of the GST Act as a whole suggests that 'you import goods' has this special meaning, that is 'you make a taxable importation'. Use of the word 'importer' in section 33-15 supports this alternative view.

151. Under this alternative view, the only entity that needs to be identified is the one that holds itself out as the 'owner' in terms of the Customs Act in the entry for home consumption. For example, a consignee or agent that appears on the entry as 'owner' would be the importer – see the discussion at paragraphs 204 to 207 below in relation to *Granite Arms v. Chief Executive Officer of Customs* [2003] FCA 506. Identifying which entity is instrumental in causing the goods to be brought to Australia to apply to its own purposes is unnecessary on this view.

152. In the Commissioner's view, a special rule in the GST Act demonstrates that the alternative view is not correct. This rule provides for circumstances where the importing entity is not the same entity that makes the taxable importation. The special rule allows the entity making the taxable importation to claim the input tax credits, provided the other requirements of section 15-5 are met. The special rule is contained in section 114-25.

153. Section 114-25 operates despite Division 15 which is about creditable importations. This section states that if you enter for home

[67] The meaning of 'you import goods' in section 15-5, in the context of a taxable importation made under section 114-5, is discussed at paragraphs 226 to 238.

consumption goods that are warehoused goods (within the meaning of the Customs Act) and that were imported by another person, you are treated, for the purpose of Division 15, as having imported the goods.

154. This section recognises that the entity that imports the goods may store the goods in a Customs licensed warehouse instead of entering them for home consumption. The entity that imports the goods may supply the goods while they are in the warehouse. If a purchaser wishes to take the goods out of Customs control, it must enter them for home consumption ex-warehouse. At this point, the purchaser makes a taxable importation. Without the special rule the entity that enters the goods for home consumption, that is, the purchaser, would not be entitled to input tax credits because it does not import the goods.

155. There would be no need for this special rule if the alternative view were the correct interpretation of the GST Act. That is, there would be no need for the special rule if, under Division 15, the entity that merely enters imported goods for home consumption were properly treated as the importer in any case.

Entities that transport goods or arrange transport for other entities; logistics or customs broker entities

156. A number of entities (including a ship or airline operator) may be involved in bringing goods to Australia on behalf of another entity by transporting them or arranging for their transport. An entity that is engaged to transport goods, or arrange for the transport, on behalf of another entity is not, simply because of these actions, the entity that imports the goods under paragraph 15-5(a).

157. Facilitation[68] and physical movement of goods is part of the importation process. Also, entities that arrange or facilitate the physical movement of goods have a purpose associated with bringing the goods to Australia. However, that purpose (to move goods in the course of their business) is not the purpose for which goods are brought to Australia. The purpose in bringing the goods to Australia is not to change their location, which the transporting entity does, but to fulfil some purpose of the entity that caused the importation.

[68] Facilitation may include customs clearance, quarantine inspection and arranging any necessary import permits.

158. Unlike the act of bringing goods to Australia, which can be carried out by another party, an entity's purpose in causing goods to be brought to Australia for its own purposes cannot be delegated to another party. This remains the case even if the transporter undertakes other services such as storage on behalf of the importing entity.

159. The mere handling, storage, holding, monitoring or transporting of goods by a transporter, forwarding or logistics entity is not an application or use of the goods. The nature of the goods and their intended use is immaterial to entities that merely transport and store them on behalf of others, except to the extent that it may change the way the goods must be handled. Therefore, transport, forwarding and logistics entities do not, merely by handling, storing, monitoring or transporting goods for another entity, cause those goods to be brought to Australia for their own purposes. It follows that such entities are not the importers of the goods in these circumstances.

Example 3 – International logistics operators

160. *Inter Express operates a worldwide logistics enterprise. Harry's Wholesale is an Australian reseller of various foreign manufactured goods. Harry purchases goods from an overseas supplier and engages Inter Express to arrange the transportation, completion of customs formalities, and storage after importation. The goods are stored until Harry sells them to retailers in Australia and the Pacific region at which time Harry directs Inter Express to distribute them.*

161. *Inter Express does not import the goods within the meaning of Division 15 as it does not cause the goods to be brought to Australia for its own purposes. Inter Express merely facilitates the importation for Harry. Harry's Wholesale causes the goods to be brought to Australia for a creditable purpose and applies the goods to that purpose when he sells them to his retail customers.*

162. *Accordingly, Inter Express is not the importer of the goods and is not entitled to an input tax credit in respect of the importation of the goods, even if it prepares and lodges the entry for home consumption.*

163. The right to apply imported goods to its own purposes remains with the entity that caused the goods to be brought to Australia. Also, that right is usually acquired for consideration commensurate with the value of the goods or the rights obtained in respect of the goods, such as under a lease. In contrast entities that merely move, store or transport goods ordinarily do so under a contract under which the consideration is not set by reference to the intrinsic value of the goods or such other rights in respect of the goods.

164. Imported goods may be under the care, custody and control of various entities, such as a logistics operator or a customs broker, but unless that entity causes the goods to be brought to Australia for its own purposes, it is not the entity that imports the goods.

165. In summary, while there may be many parties (including a ship operator) involved in moving goods from a foreign country to Australia for another entity, their actions do not make each one an importer of the goods. Only the entity that causes the goods to be brought to Australia for its own purposes is the importing entity. Unless the transporting, logistics operator or customs broker entity causes the goods to be brought to Australia for its own purposes, such as applying them to some use in its business, that entity does not import the goods within the meaning of Division 15. This is the case even if the entity enters the goods for home consumption and pays the GST.

Ensuring that the entity that causes the goods to be brought to Australia for its own purposes also makes the taxable importation

166. The entity that imports goods for the purposes of Division 15 must both cause the goods to be brought to Australia and enter the goods for home consumption. Where an entity, other than the entity that causes the goods to be brought to Australia, makes the taxable importation by attending to the customs formalities in its own right, neither entity makes a creditable importation. This is because the entity that causes the goods to be brought to Australia does not complete the customs formalities and pay the GST, and the entity that completes the customs formalities and pays the GST does not cause the goods to be brought to Australia.

167. An entity that causes goods to be brought to Australia may engage a customs broker or an agent to make the taxable importation on its behalf. In that case, that entity both causes the goods to be brought to Australia and completes the customs formalities. The entity is entitled to an input tax credit if the other requirements for a creditable acquisition are satisfied.

168. As noted in paragraph 97, taxable importations can be made by anyone who satisfies the definition of 'owner' in the Customs Act. The definition is wide and includes entities that do not cause goods to be brought to Australia. For example, a consignee of a bulk shipment of goods may simply be a warehousing depot that unbundles and dispatches the goods at the direction of others. The consignee may make the entry for home consumption. The consignee is not the entity importing the goods for the purposes of section 15-5 and has no input tax credit entitlement as it does not cause the goods to be brought to Australia for its own purposes. In these circumstances, the entity that causes the goods to be brought to Australia cannot claim the credit

unless the consignee is the agent of the importing entity, such that the entity that causes the goods to be brought to Australia also enters the goods for home consumption through its agent, either directly or with the assistance of a customs broker.

169. For input tax credit entitlement purposes, the entity that causes the goods to be brought to Australia must ensure that it enters the goods for home consumption by appearing as 'owner' on the entry, or appointing an agent to do so on its behalf.

170. If the importing entity engages a customs broker to complete the customs formalities on its behalf, the broker enters the name of the importing entity as 'owner' on the entry. Only a licensed customs broker may do this.

171. If the importing entity engages an agent that is not a customs broker, the agent may enter the name of the importing entity on the entry. The agent does this by itself engaging a customs broker, and disclosing to the broker that it is acting on behalf of the importing entity.

Example 4 – Facilitation of an importation - specialised goods transporter

172. *Jill from Coolac in NSW purchases a horse from Ireland. Jill engages a specialist horse transporter to move the horse from Ireland to Australia, to complete Customs and quarantine formalities and to pay the GST on the taxable importation. The horse transporter enters the goods for home consumption as 'owner' of the horse, and delivers the horse to Jill's stables in Coolac.*

173. *Jill is registered for GST. She is bringing the horse to Australia to race. The horse transporter does not cause the horse to be brought to Australia to apply for its own purposes after importation. Therefore the horse transporter does not import the horse, within the meaning of subsection 15-5, and is not entitled to an input tax credit.*

174. *Jill imports the horse for a creditable purpose as she will race it in the course of her enterprise. Only if the horse transporter enters the goods for home consumption on behalf of Jill as her agent, is Jill entitled to an input tax credit on importation of the horse.*

175. This example highlights the importance of ensuring that the entity seeking to claim the credit also enters the goods for home consumption. In particular, it is necessary to establish that the entity making the entry for home consumption does so as agent for the entity that causes the goods to be brought to Australia for application to its purposes. If agency cannot be established, the entity that causes the

goods to be brought to Australia for application to its purposes would not be entitled to an input tax credit.

Example 5 – Facilitation of an importation – specialised goods transporter

176. *The same facts as in Example 4 but the horse transporter obtains a written agency agreement from Jill, outlining the authority to make the taxable importation of the horse on her behalf. The terms of the agency also entitle the horse transporter to be reimbursed by Jill for the GST paid on her behalf. In that case Jill both causes the goods to be brought to Australia and makes the taxable importation of the horse. Jill is entitled to claim an input tax credit for the GST paid on the importation. If the goods are entered in the name of Jill, it is clear that she is liable for GST. If the horse is entered in the name of the horse transporter in its capacity as Jill's agent, it is still Jill who is entitled to the input tax credit as principal. Jill will also be entitled to the input tax credit if the horse transporter engages a customs broker to arrange clearance in Jill's name as the 'owner' of the horse.*

More than two parties involved in the purchase of imported goods

177. Most importations involve two parties, such as an overseas supplier and a resident acquirer. However, there are situations where several entities have an interest in goods being imported. This occurs, for example, when goods required by party A have to be obtained by party B from an overseas supplier. To determine which entity imports the goods, it is necessary to establish which entity both causes the goods to be brought to Australia for its own purposes and completes the customs formalities.

178. Several contracts of sale may be entered into before the goods arrive in an Australian port for unloading. In these cases, all of the parties to the contracts of sale may cause the goods to be brought to Australia for their own purposes. For example, the overseas supplier causes the goods to be brought to Australia for its purpose of sale to entity B; entity B causes the goods to be brought to Australia for its purpose of sale to entity C; and entity C causes the goods to be brought to Australia to apply in its enterprise. Whichever of these entities completes the customs formalities (whether directly or through a customs broker or agent), thereby satisfying both requirements set out at paragraph 149, is the entity that imports the goods for the purposes of Division 15. That entity is the only entity that is entitled to an input tax credit if the importation is a creditable importation.

Example 6 - Several parties with an interest in imported goods before they are entered for home consumption

179. *Mining Co Pty Ltd, an Australian company, wishes to obtain some specialised equipment which is only available from a Korean manufacturer. It contacts the company in Korea, Korean Co, to ascertain whether the equipment could be supplied with a modification to meet Mining Co's particular requirements. Korean Co indicates that it should be possible for the equipment to be modified in line with Mining Co's request, but advises that all Australian supplies of its equipment are made through an Australian distributor, Hardy Co Pty Ltd. Hardy Co operates as a distributor for several overseas suppliers of custom-made equipment through a small office in Sydney. It does not carry any stock, but rather sources the equipment from the overseas companies for which it acts as distributor in response to orders from customers. Both Mining Co and Hardy Co are registered for GST.*

180. *Mining Co enters into a contract with Hardy Co Pty Ltd for supply of the equipment on CIF terms which require Hardy Co to arrange for the equipment to be shipped to Australia. Hardy Co in turn purchases the equipment from Korean Co, also under CIF terms requiring Korean Co to arrange the shipping of the equipment to Australia.*

181. *All three parties can be said to cause the goods to be brought to Australia for their own purposes; Korean Co to sell to Hardy Co, Hardy Co to sell to Mining Co, and Mining Co to use in its mining business. Whichever of these entities completes the customs formalities by making the taxable importation is the entity that imports the goods. This would normally be agreed by the parties in the terms of the contract. When the equipment arrives in Australia, it is more likely that either Hardy Co or Mining Co would enter the goods for home consumption and would be liable to pay GST. Whichever of these parties undertakes this function is the entity that imports the goods. Only that entity is entitled to an input tax credit, assuming the other requirements for a creditable importation are satisfied.*

182. *If Mining Co makes the taxable importation by entering the goods for home consumption, the supply of the equipment by Hardy Co to Mining Co is not a taxable supply under section 9-5. This is because the supply of those goods is not connected with Australia as required for a taxable supply under that section. Subsection 9-25(1) does not apply to make the supply connected with Australia because the supply is not a supply of goods 'wholly within Australia'. Rather, the supply is one that involves the goods being 'brought to Australia'. This is because the goods are not in Australia when the arrangement for the supply is made, and the contractual arrangement requires the parties to complete the process of importing the goods into Australia.*

That is, to complete the transporting of the goods to Australia, and the customs entry. Subsection 9-25(3) is also not satisfied. While that subsection applies to supplies that involve goods being brought to Australia, a connection with Australia only exists if the supplier either imports the goods into Australia or installs or assembles the goods in Australia. Neither situation is applicable in this case. The supplier, Hardy Co, is not the importer of the goods as it did not attend to the customs formalities on importation of the goods.

183. *Mining Co is liable to pay GST on the taxable importation that it makes. Mining Co imports the goods into Australia in carrying on its enterprise, the importation is a taxable importation and it is registered for GST. Therefore, Mining Co makes a creditable importation and is entitled to an input tax credit.*

184. *As Mining Co imports the goods into Australia, the supply by Korean Co to Hardy Co is not connected with Australia. Subsection 9-25(3) is not satisfied. The supplier, Korean Co, neither imports the goods into Australia nor installs or assembles the goods in Australia.*

185. *If, though, Hardy Co were to make the taxable importation by entering the goods for home consumption, for instance if the contract was on DDP terms, the supply of the equipment by Hardy Co to Mining Co would be a taxable supply. This supply is connected with Australia under subsection 9-25(3), because the supply involves the goods being brought to Australia and the supplier, Hardy Co, imports the goods. Hardy Co must pay the GST on the taxable supply that it makes to Mining Co. An input tax credit is available to Mining Co in respect of the acquisition, if its acquisition from Hardy Co is a creditable acquisition.*

186. *Hardy Co is also liable to pay GST on the taxable importation that it makes. Hardy Co imports the goods into Australia in carrying on its enterprise, the importation is a taxable importation and it is registered. An input tax credit is therefore available to Hardy Co for the GST paid on the importation, provided the other requirements for a creditable importation are satisfied.*

187. *As Hardy Co imports the goods into Australia, the supply by Korean Co to Hardy Co is not connected with Australia. Subsection 9-25(3) is not satisfied. The supplier, Korean Co, neither imports the goods into Australia nor installs or assembles the goods in Australia.*

Special rules for creditable importations

188. Special rules in section 114-25 provide for circumstances where a different entity makes the taxable importation from the entity that imports the goods. The rules allow an input tax credit for creditable importation to the entity that makes the taxable importation, even though that entity is not the entity that imports the goods.

189. Where a non-resident entity makes a creditable importation through a resident agent, special rules in section 57-10 apply to allow the input credit entitlement to the resident agent. Section 57-10 is discussed at paragraphs 213 to 220.

190. A company may be entitled to input tax credits in respect of goods imported by a person before the company was in existence, provided the importer becomes a member, officer or employee of the company. The requirements of this special rule are set out in Division 60.

Warehoused goods entered for home consumption by an entity other than the entity that imports

191. Section 114-25 has effect despite Division 15 which is about creditable importations. The section states that if you enter for home consumption warehoused goods (within the meaning of the Customs Act) and that were imported by another person, you are treated, for the purpose of Division 15, as having imported the goods.[69] The person who makes the entry is entitled to the input tax credit to the extent that the goods were imported for a creditable purpose. The extent to which that person entered the goods for home consumption for a creditable purpose is treated as the extent to which that person imported the goods for a creditable purpose.[70]

192. This section recognises that an entity that imports goods may enter them for warehousing and store them in a Customs licensed warehouse. This entity normally satisfies paragraph 15-5(a) as being the entity that imports the goods. However, as the customs formalities do not result in a taxable importation under the normal rules, there is no creditable importation at that point.

193. An entity that imports goods, and enters the goods for warehousing, may make a supply of them while the goods are in the Customs licensed warehouse. In these circumstances, the entity that acquires the goods enters them for home consumption ex-warehouse if it wishes to take the goods out of the warehouse, and thus may make a taxable importation of the goods.

194. Without the special rule, in these circumstances the entity that enters the goods for home consumption would not be entitled to an input tax credit for a creditable importation because that entity did not import the goods. That is, the entity did not cause the goods to be brought into Australia.

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[69] Paragraph 114-25(1)(a).
[70] Paragraph 114-25(1)(b).

Non-resident makes a creditable importation through a resident agent

195. Section 57-10 has effect despite section 15-15, which is the basic rule about who is entitled to input tax credits. Section 57-10 describes who is entitled to the input tax credits when a non-resident makes a creditable importation through a resident agent. The section states that the agent is entitled to the input tax credit on the importation despite not being the entity that imports the goods. Creditable importations made through resident agents are discussed at paragraphs 213 to 220.

Role of agents

Resident agent acting for an entity that imports

196. An intermediary may be authorised by another party to do something on that party's behalf as its agent. Under the general law of agency, an agent is a person who is authorised, either expressly or impliedly, by a principal to act for that principal so as to create or affect legal relations between the principal and third parties.[71]

197. If an entity importing goods into Australia authorises an intermediary such as a freight forwarder, customs broker or other party to undertake the entry of the goods on its behalf, thereby binding the principal to the legal effects of that transaction, the principal is the entity liable to pay the GST. The principal makes the taxable importation.

198. According to the common law principles of agency, the actions of the agent are taken to be the actions of the principal. The principal is primarily liable for the actions of a duly authorised agent, notwithstanding that an agent acting for an undisclosed principal can also be held personally liable by third parties. The Explanatory Memorandum to the GST Act[72] indicates that the principles of the general law of agency are to be followed in applying the GST law in the context of importations by agents.

199. Alternatively, an importing entity may simply require the intermediary to pay the GST on its behalf. The intermediary in this sense is merely a paying agent.

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[71] *International Harvester Company of Australia Proprietary Limited v. Carrigan's Hazeldene Pastoral Company* (1958) 100 CLR 644; (1958) 32 ALJR 160.

[72] The Explanatory Memorandum relating to the *A New Tax System (Goods and Services Tax) Bill 1998* at paragraph 6.277 says: "You are liable for the GST on taxable supplies and importations made through your agent. You are entitled to the input tax credits on creditable acquisitions and importations you make through your agent. Your agent is not liable for the GST and is not entitled to the input tax credits."

200. The principal is the entity that is entitled to claim any input tax credit for the GST paid on a creditable importation. Where an agent pays the GST liability on behalf of its principal, recovery of the GST paid by the agent is a matter between the agent and the principal and the scope of the agent's right to be indemnified for expenses. The agent cannot claim input tax credits for the GST paid on behalf of its principal, as the agent does not import the goods. This is illustrated in Examples 4 and 5. However, see paragraphs 213 to 220 below for special provisions that apply where the principal is a non-resident.

Alternative view

201. An alternative view is that the agent is personally liable to pay the GST on a taxable importation when the agent enters the goods and is named as 'owner' on the entry for home consumption, even though the agent does so on behalf of the principal. However, as noted above, the Explanatory Memorandum to the GST Act confirms that the principles of the general law of agency are to be followed in applying the importation provisions to agency relationships. Section 13-5 does not, in our view, demonstrate that there is an intention to override the common law principles of agency in this context.

202. Further, if, as the alternative view would maintain, the agent is personally liable for the GST on the taxable importation, the agent is not entitled to an input tax credit on the importation. This is because the agent is not the entity that imports the goods for the purposes of paragraph 15-5(a), as it is the principal that causes the goods to be brought to Australia. The entity that imports the goods for the purposes of paragraph 15-5(a) would also not be entitled to an input tax credit for the GST on the taxable importation. This is because the importing entity would not be liable to pay the GST on the taxable importation made through an agent on the alternative view. This is particularly borne out by the attribution rule in section 29-15 which provides that the input tax credit in respect of a creditable importation is attributable to the period 'in which you pay the GST on the importation'. If the alternative view were correct, there would be the unintended consequence that no entity would be entitled to an input tax credit in respect of an importation made for a creditable purpose.

203. Also, if the agent is liable to pay the GST as the alternative view would maintain, this would be inconsistent with the apparent premise of Division 57. That Division recognises that where a taxable importation is made through a resident agent, the non-resident would otherwise be liable for the GST on that importation. However, the Division overrides the common law agency principles and makes the resident agent personally liable where the resident agent is acting for a non-resident. The operation of that Division is discussed in the next section of this Ruling.

204. A modification to this alternative view is that where a principal arranges for goods to be assigned to an agent who enters the goods for home consumption, the agent is the importer. Therefore, on this view, the agent, rather than the principal, is entitled to the input tax credit.

205. It has been suggested that the decision of Spender J in *Granite Arms v. Chief Executive Officer of Customs* [2003] FCA 506 might support that proposition. Spender J held that a consignee of goods which entered them for home consumption was the importer of the goods, notwithstanding that it did so on behalf of the owner of the goods. At the time of preparing this Ruling, the Full Court of the Federal Court had reserved judgement on Customs' appeal against the decision of Spender J.

206. Although Spender J examined the ordinary meaning of importer, the decision was in the context of the prohibited imports provisions of the Customs legislation relating to firearms, which His Honour noted focus upon physical possession of the goods. Additionally, Customs conceded that the agent imported the goods in this case, but argued that in the context of the provisions 'importer' referred to the principal.

207. For the reasons discussed at paragraphs 201 to 203, it is the Commissioner's view that consideration of the expression 'you import goods' in its context in section 15-5 requires that a consignee who simply enters the goods for home consumption on behalf of its principal is not the importer of the goods. In particular, as noted at paragraph 203, Division 57 would have no operation if the alternative view were correct, as the agent would be liable for GST on taxable supplies and entitled to input tax credits on creditable importations in any case.

Resident agents acting for non-residents – Division 57

208. Division 57 contains a special rule that makes resident agents acting for non-residents responsible for the GST consequences of supplies and acquisitions the non-residents make through their resident agents. This Division has effect despite sections 13-15 (which is about liability for GST) and 15-15 (which is about who is entitled to input tax credits).[73]

[73] Subsections 57-5(2) and 57-10(2).

Taxable importations made through resident agents

209. Under section 57-5, the resident agent[74] of a non-resident[75] is liable to pay GST on any taxable importations that the non-resident makes through the resident agent. The GST is not payable on the taxable importation in this case by the non-resident principal. Section 57-5 overrides the principles of the general law of agency which would otherwise apply.

210. Taxable importations are made by an entity entering imported goods for home consumption. A non-resident entity makes a taxable importation through a resident agent if the agent, on behalf of the non-resident, enters the goods as 'owner' on the customs entry form. Entering the goods as 'owner' means that the agent's name is shown on the entry form as the 'owner'. An agent is within the statutory definition of 'owner' in the Customs Act. In this case, section 57-5 makes the agent liable for GST on the taxable importation.

211. If instead the agent enters goods for home consumption in the name of the non-resident, the non-resident's name appearing as 'owner' on the entry for home consumption, the taxable importation is not made through the resident agent. It is made by the non-resident. The non-resident principal is liable for GST. It is not made *through* the resident agent, even if the agent assists with, or is responsible for, the administrative activity involved in lodging the entry. An agent can only enter goods in the name of the non-resident principal, if the agent is a customs broker, or the agent engages a customs broker and instructs the broker, in accordance with authority granted by the principal, to prepare the entry in the name of the principal.

212. By way of example, a non-resident may appoint an associated Australian entity, such as a subsidiary, to act as its resident agent. In other cases, the non-resident may appoint an Australian specialist transport and logistics operator to act as its agent in respect of importations. A non-resident may also appoint an Australian licensed customs broker as its resident agent, expressly authorising the broker to make taxable importations on its behalf. In this case, the goods are entered in the name of the broker, as agent. This differs from the ordinary circumstances where a customs broker is merely engaged to provide the service of preparing and lodging the import entry for its customer, the 'owner'. The ordinary role of a broker to prepare and lodge entries on behalf of its client, in its client's name, is distinguished from the role of making taxable importations, as 'owner', on behalf of a non-resident. In the former case, Division 57 has no operation, whereas in the latter case, Division 57 applies as the

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[74] A 'resident agent' is 'an agent that is an Australian resident'. An 'Australian resident' is defined in section 195-1 as a person who is a resident of Australia for the purposes of the [*Income Tax Assessment Act 1936*].

[75] A 'non-resident' is 'an entity that is not an Australian resident'.

non-resident makes a taxable importation through the customs broker as its agent.

Creditable importations made through resident agents

213. Ordinarily, if a non-resident makes a creditable importation, the non-resident is entitled to the input tax credit under section 15-15.

214. However, if a non-resident makes a creditable importation through a resident agent, only the agent is entitled to claim the credit. The non-resident is not entitled to the input tax credit on the creditable importation.[76]

215. A non-resident makes a creditable importation where all the requirements for making a creditable importation are satisfied. That is, the non-resident must be the entity that imports the goods (see paragraphs 120 to 155) and must do so for a creditable purpose, and be registered or required to be registered. The importation must also be a taxable importation.

216. A non-resident makes a creditable importation through a resident agent if the non-resident makes a taxable importation through the agent and the importation is for a creditable purpose and otherwise satisfies the requirements for a creditable importation. As discussed at paragraphs 209 to 212 above, this occurs where the resident agent is named as 'owner' on the customs entry for the goods. An arrangement whereby the non-resident does not reimburse the agent for the GST indicates that the agent is authorised to enter the goods as agent for the non-resident and claim the input tax credit. However, it is expected that the resident agent would also have clear evidence of the agency relationship, such as written authorisation from the non-resident.

217. It is important to note that a resident agent is not entitled to an input tax credit under section 57-10 simply because it is liable for GST under section 57-5. A taxable importation made through a resident agent does not necessarily result in a creditable importation being made. The requirements for a creditable importation must be satisfied by the non-resident. That is, the non-resident must import the goods for a creditable purpose and be registered or required to be registered.

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[76] Section 57-10.

Example 7 - Importation by non-resident through resident agent

218. *Gobi Publishing (Gobi) based in the Ukraine publishes a Russian language magazine which can only be purchased in Australia by subscription. Australian customers purchase the magazines by placing orders directly with Gobi Publishing via the internet. The subscription price includes delivery to the customer's address. Gobi engages Australian resident Simpson as agent to undertake certain functions in Australia. Periodically, Gobi forwards the magazines in one consignment to Simpson. Simpson arranges for the customs formalities in Australia and the delivery of the magazines to the subscribers. Simpson, as consignee and agent, appears as owner on the entry, makes the taxable importation on behalf of Gobi and pays the GST in accordance with section 57-5. Gobi makes the taxable importation through the resident agent, Simpson.*

219. *Gobi causes the magazines to be brought to Australia to supply to its subscribers. Gobi is also responsible for customs clearance, which it arranges through its agent. Therefore, Gobi is the entity that imports the magazines. As Gobi only makes occasional sales to Australian customers, it is not registered or required to be registered for GST. Therefore, Gobi does not make a creditable importation as it does not satisfy the requirement of paragraph 15-5(c), that is, to be registered or required to be registered. Simpson is therefore not entitled to claim the input tax credit as Gobi has not made a creditable importation through Simpson as its resident agent. Gobi is not entitled to claim the input tax credit.*

220. *Gobi does not make taxable supplies of the magazines in Australia. The supplies of the magazines are connected with Australia under subsection 9-25(3) as the sale of the magazines is a supply of goods to Australia and the supplier (Gobi) imports the magazines. However, as Gobi is not registered or required to be registered as required by paragraph 9-5(d), Gobi is not liable for GST on the supplies of magazines.*

Other issues

Section 9-25

221. One of the requirements for a supply to be a taxable supply is that the supply is connected with Australia.[77]

222. For supplies of goods to Australia, paragraph 9-25(3)(a) provides that a supply is connected with Australia if the supplier imports the goods into Australia.

[77] Paragraph 9-5(c).

223. Both a supplier and an acquirer of goods may cause the goods to be brought into Australia. The word 'import' must, therefore, in the context of paragraph 9-25(3)(a), also encompass completing the customs formalities. In that way it can be established which entity imports the goods into Australia, that is, the entity that not only causes the goods to be brought to Australia but also attends to the customs formalities.

224. The supplier, therefore, imports goods into Australia for the purposes of subsection 9-25(3) if it causes the goods to be brought to Australia and it also completes the customs formalities. This is the case where a supplier enters the goods for home consumption[78] or for warehousing or transhipment. However, a supplier does not import goods where the customs formalities for the importation of the goods are completed by the recipient of the supply.[79]

225. Where a supplier imports goods, there may be both a taxable supply and a taxable importation as a result of a single commercial transaction.[80]

Taxable importations without an entry for home consumption – Division 114

226. In certain circumstances, goods are not entered for home consumption. For example, personal household effects of passengers and crew or low value consignments by post. Importations of these goods are not, therefore, taxable importations as defined in section 13-5. However, they are taxable importations by virtue of section 114-5 (provided the importation does not satisfy the requirements for a non-taxable importation).[81]

227. The table in subsection 114-5(1) sets out, in column 3, circumstances that occur in relation to particular kinds of importations. It also identifies, in column 4, the person or entity that makes the taxable importation in relation to a particular circumstance. An entity is liable for the GST if the circumstance occurs and that entity is identified as making the taxable importation. However, there is no taxable importation to the extent that the importation is a non-taxable importation.

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[78] For example, Delivered Duty Paid ('DDP') as per ICC Incoterms 2000.
[79] For example, the goods are sold on free on board ('FOB') or cost, insurance and freight ('CIF') terms, as per ICC Incoterms 2000.
[80] See example 13 in this Ruling, and also GSTR 2000/31 'Supplies connected with Australia' at paragraphs 152 and 162.
[81] Most personal household effects and low value postal consignments will satisfy the requirements of a non-taxable importation under Division 42. See paragraphs 241 to 249 and Appendix B on non-taxable importations.

228. The table in Appendix A to this Ruling is an extract from section 114-5 providing a list of the circumstances in which goods, that are not entered for home consumption, are the subject of a taxable importation. It also identifies the entity that makes the taxable importation.

229. To determine whether an entity makes a creditable importation, it is necessary to determine whether the entity imports the goods.

230. Paragraph 149 of this Ruling sets out the entity that imports goods, in the circumstances of a taxable importation under Division 13. It is the entity that causes the goods to be brought to Australia for application to its own purposes and completes the customs formalities. However, in the context of Division 13, a taxable importation is made when:

(a) goods are imported; and

(b) an entry for home consumption is made.

231. In contrast, a taxable importation under Division 114 arises only because of the occurrence of one of the circumstances listed in the third column of the table. There is no requirement that 'goods are imported' for a taxable importation under section 114-5.

232. For these reasons, we consider that 'you import goods', in Division 15, has a different meaning in the context of a taxable importation under section 114-5, than in the context of a taxable importation under Division 13.

233. Paragraph 15-5(b) refers to 'the importation', stating the requirement that it must be a taxable importation. 'The importation' refers to the process introduced in the preceding paragraph which commences 'you import goods…'. A taxable importation, by definition[82], can arise under section 13-5 or section 114-5. In the case of a section 114-5 taxable importation, the process occurs when one of the circumstances listed in the table arises. Therefore, the process referred to by the words 'you import goods', in the case of a Division 114 taxable importation, refers to the process by which the taxable importation is made. That is, the process that gives rise to the circumstances listed in the table, such as removal of goods from a customs clearance area (item 13), or delivery of goods in accordance with a customs permission (item 5).

234. Therefore, in the special circumstances covered by Division 114, the Commissioner considers that the entity that makes the taxable importation under section 114-5 is the entity that imports the goods for the purposes of section 15-5.

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[82] Section 195-1.

235. This view is consistent with the use of the word 'Importer' in the heading to the fourth column of the table in subsection 114-5(1). It is also consistent with section 114-10, where goods subject to a taxable importation by application of an item in the table are referred to as goods 'taken to be imported'. This acknowledges that an 'application of an item' is not an actual importation of goods, but is taken to be an importation.

Alternative view

236. An alternative view is that the phrase 'you import goods' in paragraph 15-5(a) has the same meaning in the context of a taxable importation under Division 114 as in the context of a taxable importation under Division 13. On this alternative view, the entity named as the 'Importer' in the fourth column of the table in subsection 114-5(1) is only considered to be the entity that imports goods if it also causes the goods to be brought to Australia for application to its own purposes. This is consistent with the ordinary meaning of import.

237. The Commissioner considers that 'you import goods' is intended to take its meaning according to its context in the Act, in particular, the context of the taxable importation to which it refers. In the context of a taxable importation under Division 114, the process which the Act labels as an 'importation', is not in fact an importation in the ordinary meaning of that word. The process must be considered by reference to the particular circumstance listed in the table to subsection 114-5(1) that gives rise to the taxable importation.

238. If the alternative view were correct, there would also be some limited circumstances where, contrary to evident policy of the Act, input tax credits would not be available to an entity that makes a taxable importation under Division 114, pays GST and applies the goods to a creditable purpose. For example, this could occur under item 13 of the table in subsection 114-5(1) where a traveller purchases goods for the traveller's business from an inward duty free shop, and removes them from a customs clearance area.

Non-taxable importations

239. GST is payable on taxable importations.[83] Importations are not taxable importations to the extent that they satisfy the requirements for a non-taxable importation.[84] No GST is payable in respect of a non-taxable importation.

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[83] Subsection 7-1(1).
[84] Sections 13-5 and 114-5.

240. Section 13-10 states that an importation is a non-taxable importation if the importation:

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

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

Non-taxable importations under Part 3-2

241. Division 42 sets out classes of importations that are non-taxable importations. The operation of this Division complements several of the existing concessional items in Schedule 4 to the *Customs Tariff Act 1995,* which reduce the customs duty on importations to zero in particular circumstances.

242. Subsection 42-5(1) lists the Schedule 4 items in respect of which no GST is payable on an importation if the goods are covered by one of the items. Each of these items is described in Appendix B.

243. Subsection 42-5(1A) allows the importation of containers covered by item 34 in Schedule 4 of the *Customs Tariff Act 1995* to be a non-taxable importation where the containers, after having been used to import goods, are exported without being put to any further use. For example, reels for transporting cable, or drums for carrying liquid.

244. Subsection 42-5(1C) lists some additional Schedule 4 items which relate to importations where Australia has international obligations, such as those under treaties. Importations under these items are only non-taxable if they are so specified in the regulations. At the time of publication of this Ruling, no relevant regulations have been enacted.

245. Where goods cannot be covered by a Schedule 4 item due to the operation of subsection 18(1) of the *Customs Tariff Act 1995*,[85] subsection 42-5(2) treats importations of the goods as non-taxable importations if Schedule 4 would otherwise apply.

246. The importation of goods returned to Australia in an unaltered condition can be a non-taxable importation, provided the conditions in section 42-10 are satisfied.

247. Under subsection 42-10(1), where goods are exported and later re-imported into Australia, the re-importation is a non-taxable importation provided:

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[85] Subsection 18(1) of the *Customs Tariff Act 1995* excludes the application of Schedule 4 to goods which substantively have a zero duty rate.

- the exported and re-imported goods have not been subjected to any treatment, industrial processing, repair, renovation, alteration or any other process since their export;
- the importer was not entitled to, and did not claim, a refund of GST under the tourist refund scheme when the goods were exported; and
- the importer is the manufacturer of the goods, or had previously acquired the goods by way of a taxable supply[86] or taxable importation in respect of which GST was paid.

248. Under subsection 42-10(2), a re-importation of goods is a non-taxable importation provided:

- the importer manufactured, acquired or imported the goods prior to 1 July 2000; and
- the goods have been exported before, on or after 1 July 2000, then re-imported on or after 1 July 2000 without being subject to any treatment, industrial processing, repair, renovation, alteration or any other process since their export from Australia; and
- the importer was not entitled to, and did not claim, a refund under the tourist refund scheme when the goods were exported; and
- the ownership of the goods upon their return to Australia is the same as their ownership on 1 July 2000.

249. There is no intention test in subsections 42-10(1) or (2). That is, it is not necessary for the goods to have been exported with the intention of being re-imported. Provided the requirements of the relevant subsection are satisfied, the re-importation is a non-taxable importation, even though the goods may not have been exported with the intention of being re-imported.

Non-taxable importations of goods that would be GST-free or input taxed if supplied

250. An importation of goods that would have been GST-free or input taxed, if it were a supply, is a non-taxable importation.[87] For example, the supply of a wheelchair is GST-free, therefore, an importation of a wheelchair is a non-taxable importation.

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[86] Or what would have been a taxable supply but for section 66-45 which is about certain re-supplies of second-hand goods.
[87] Paragraph 13-10(b)

251. In determining whether an importation, if it had been a supply, would have been GST-free or input taxed, the Commissioner considers that you need to hypothesise that the importation were a supply *to the importer*. If this hypothetical supply to the importer would have satisfied one of the exemptions in Chapter 3 of the Act, the importation is non-taxable.

252. Non-taxable importations under paragraph 13-10(b) include importations of:

- food or beverage items that satisfy the exemption criteria in Subdivision 38-A;
- medical aids and appliances which meet the requirements of subsection 38-45(1) and are listed in Schedule 3, and spare parts for these;
- health goods as declared by the Health Minister and covered by section 38-47; and
- cars by a disabled person for that person's use in accordance with the requirements of Subdivision 38-P.

Other importations on which GST is not payable

Money

253. An importation of money is not an importation of goods into Australia.[88] 'Money' is defined in section 195-1 and includes both Australian and foreign currency, provided the market value does not exceed its stated value as legal tender in the country of issue. Money does not include collector's pieces, investment articles or items of numismatic interest.

Temporary imports where security is given

254. Under Division 171, no GST on a taxable importation is payable if a security or undertaking described in section 162 or section 162A of the Customs Act is given and complied with, and the goods are exported within a specified period, or one of the circumstances specified in the relevant Customs regulations applies.

255. Securities and undertakings may be taken in respect of temporarily imported goods, as prescribed by Customs regulations.[89] These include goods imported by temporary residents or tourists, goods imported for use at a public exhibition or entertainment event,

[88] Subsection 13-5(3).
[89] Regulations 124, 125 and 125A of the Customs Regulations 1926.

and goods covered by an inter-governmental agreement such as goods covered by an international carnet.

256. The conditions include that the goods cannot be lent, sold, pledged, mortgaged, hired, given away, exchanged or otherwise disposed of or altered in any way.[90] If the conditions of the security are contravened, GST becomes payable on the taxable importation, as the importation does not satisfy the requirements of section 171-5.

257. The conditions also require that the goods must be exported within 12 months (or such further time as Customs allows) after their importation.[91] GST becomes payable if the goods are not exported, unless they have no value as a result of being accidentally damaged or destroyed, or in the case of an animal, it has died or been destroyed as a result of an accident or illness.[92]

Value of the taxable importation

258. The amount of GST on a taxable importation is 10% of its value.[93] Subsection 13-20(2) provides that the value of the taxable importation is the sum of: the customs value of the imported goods; the cost of the international transport of the goods; the insurance for the transport; and any customs duty[94] or wine tax payable.

259. The customs value of imported goods is defined in section 195-1 by reference to Division 2 of Part VIII of the Customs Act. Section 161J of this Division stipulates that the customs value of goods is to be expressed in Australian currency based on the ruling rate of exchange on the day of exportation of the goods to Australia.

260. The cost of transporting goods to Australia forms part of the value of the taxable importation. Subparagraph 13-20(2)(b)(i) provides that the amount to be included is the amount paid or payable for the international transport of the goods to their place of consignment in Australia, to the extent that the amount is not already included as part of the customs value.

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[90] Subregulations 124(4) and 125B(1) of the Customs Regulations 1926.
[91] Paragraphs 162(3)(b) and 162A(5)(b) of the Customs Act.
[92] Customs Regulations 1901 regulations 124A and 125A.
[93] Subsection 13-20(1).
[94] Customs duty is defined in section 195-1 to mean any duty of customs imposed by that name under a law of the Commonwealth, other than under the *A New Tax System (Goods and Services Tax Imposition - Customs) Act 1999,* the *A New Tax System (Wine Equalisation Tax Imposition – Customs) Act 1999,* or the *A New Tax System (Luxury Car Tax Imposition – Customs) Act 1999*. Customs duty, where applicable, includes dumping duty, interim dumping duty and countervailing duty payable under the *Customs Tariff (Anti-Dumping) Act 1975.*

261. 'International transport' is defined in section 195-1. In relation to the importation of goods it means:

> … the transport of the goods from a place outside Australia to their place of consignment in Australia (excluding loading and handling within Australia).

262. The cost of loading and handling in Australia is not included in the value of the taxable importation. However, the supply of those services may be a separate taxable supply by the service provider.

263. 'Place of consignment' is also defined in section 195-1 to mean:

(a) if the goods are posted to Australia - the place in Australia to which the goods are addressed; or

(b) in any other case - the port or airport of final destination as indicated on the transportation document.

264. The Commissioner accepts that goods weighing less than 31.5 kilograms that are transported to Australia and delivered 'door to door' by an international express courier service, or similar door to door courier, are goods posted to Australia. This is consistent with the ordinary meaning of 'post' and the meaning suggested by the articles of the Postal Parcels Agreement, an international treaty setting out postal arrangements between member countries.

265. The 'port or airport of final destination' is the port or airport where the goods can be removed from Customs control after being dealt with in accordance with the Customs Act. If the goods are removed from Customs control at a place other than a port or airport, the last port or airport that the goods were located prior to being taken to that other place is the 'port or airport of final destination'.

266. 'Transportation document' includes such documents as: consignment notes, house bills of lading, ocean bills of lading, house air waybills, master air waybills, sea waybills, straight line air waybills, sub-master air waybills and other similar documents.[95]

267. In effect the total cost of transporting goods from an overseas supplier's premises to the consignee's premises in Australia is potentially subject to GST. Transportation costs incurred before goods arrive at the place of export are included in the customs value, for example, foreign inland freight. Transportation costs from the place of export to the port or airport of final destination are those referred to in subparagraph 13-20(2)(b)(i). The supply of these transport services is GST-free under section 38-355 (item 5). To the extent that a supply involves transporting the goods from the port or airport of final destination to the consignee's premises, the supply is a

[95] Section 195-1.

taxable supply if the requirements of section 9-5 are met. Section 38-355 does not extend to the supply of this transport.

268. The amount paid or payable to insure goods for international transport is also included in the value of the taxable importation.[96]

Example 8 - Components of international transport to be included in the value of the taxable importation

269. *Goods are consigned to Ballarat, Victoria from a supplier's premises in California. They are trucked to a freight consolidator in San Francisco where they are packed into a container and loaded on board a ship destined for Melbourne. Melbourne is the port of final destination nominated on the house bill of lading. The goods are offloaded in Melbourne, cleared though Customs, and delivered to the recipient's premises in Ballarat.*

270. *The cost of transporting the goods from the supplier's premises to where they are packed into a container is included in the customs value. The cost of transporting the container from the consolidator's depot to Melbourne is the international transport referred to in subparagraph 13-20(2)(b)(i). The supply of local cartage from Melbourne to Ballarat is a taxable supply assuming the requirements of section 9-5 are satisfied.*

271. It is common for the cost of international transport and insurance to be expressed (and often paid for) in a foreign currency. Where this happens, the equivalent in Australian currency is to be used for the purposes of calculating this component of the value of the taxable importation. Subsection 13-20(2A) provides that the exchange rate used to convert the foreign currency to Australian currency is that prevailing on the day of exportation of the goods to Australia.[97] This is the same date used when converting to Australian currency any amount taken into account in ascertaining the customs value, such as, for example, the price paid for the goods under an import sales transaction.[98]

272. In some cases the amount paid or payable by an importer for international transport and insurance covers a number of shipments. Paragraph 13-20(3)(a) provides for the Commissioner to determine the way in which the international transport and insurance are apportioned over the shipments.

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[96] Subparagraph 13-20(2)(b)(ii). The amount is included to the extent that it is not already included in the customs value.
[97] Subsection 13-20(2A) refers to section 161J of the Customs Act.
[98] Section 161J of the Customs Act.

273. In some cases the amount paid for international transport and insurance is zero. For example, the Commissioner accepts that there is no amount paid for the international transport and insurance for non-commercial goods imported by their private owner as accompanied baggage on an aircraft, provided no separate amount is charged for the transport of the goods.[99] However, goods may be carried by 'safe-hand couriers' who travel for the sole purpose of personally transporting the goods. In that case, the whole amount payable to the courier is included in the cost of the international transport of the goods and is therefore part of the value of the taxable importation.

Valuation of re-importations

274. In some cases the re-importation of goods that have been exported from Australia is a non-taxable importation. Circumstances where this is the case include the re-importation of goods that satisfy the requirements of section 42-10[100], or the re-importation of goods that are covered by item 18A in Schedule 4 to the *Customs Tariff Act 1995* (which is about goods returned to Australia after being repaired outside Australia free of charge under a warranty) as referred to in section 42-5.

275. However, for re-importations that are taxable importations, Division 117 provides a special rule for the valuation of the taxable importation. The special rule covers the re-importation of goods which have been exported to be repaired or renovated.[101] It also covers the valuation of re-importations of live animals such as breeding stock.[102]

276. When goods are exported from Australia for repair or renovation, or are exported as part of a batch repair process, then re-imported, GST applies to the cost of the materials, labour and other charges involved in the repair or renovation rather than the full customs value of the goods. This cost is as determined by the Chief Executive Officer of the Australian Customs Service.[103] The amount paid or payable for the international transport of the goods to their place of consignment in Australia and the amount to insure the goods

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[99] Paragraph 13-20(3)(b) also provides the Commissioner with the discretion to determine that an amount paid or payable for a specific kind of transport or insurance is zero.
[100] Section 42-10 is discussed at paragraphs 246 to 249
[101] Section 117-5.
[102] Section 117-10 and Explanatory Memorandum to the Taxation Laws Amendment Bill (No. 8) 2000, paragraphs 2.13 to 2.16.
[103] Paragraph 117-5(1)(a)

for that transport are also included in the value of taxable importation, as well as any customs duty payable.[104]

277. Goods are part of a batch repair process if they are:

- part of a process to replace goods that were exported from Australia for repair and renovation; and
- not new or upgraded versions of the exported goods; and
- not replacing goods that have reached the end of their effective operational life.[105]

Example 9 - Goods exported for repair and re-imported

278. *Equipco Pty Ltd sends an automatic drink vending machine with a value of $100,000 to Japan for repairs. The cost of materials, labour and other charges associated with the repairs is $20,000. The transport and insurance costs from Japan to Australia are $2,500. The customs duty is 5%. Equipco re-imports the vending machine. The value of the taxable importation is $23,500 ($20,000 plus $2,500 plus $1,000 customs duty ($20,000 x 5%)).*

279. Animals exported for the purpose of being serviced at stud and re-imported when pregnant are only subject to GST on the increased value of the animal, provided the animal is re-imported by the same owner who exported her.[106]

280. The increased value is the difference between the value of the animal on re-importation and the value of the animal immediately before it was exported.

Example 10 - Re-importation of breeding livestock

281. *A horse racing syndicate sends its best mare to New Zealand to be serviced by a past Melbourne Cup winning stallion. On export the mare is valued at $250,000. When the syndicate re-imports the mare, her value has increased to $275,000, due to her being infoal. The value of the taxable importation is $25,000 ($275,000 minus $250,000). The GST payable is $2500.*

282. If the difference between the export value of the animal and the import value of the animal is equal to, or less than, zero the value of the taxable importation is nil.

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[104] Paragraphs 117-5(1)(b) and 117-5(1)(c)
[105] Subsection 117-5(2).
[106] Subsection 117-10. This provision also applies to animals whose value increases for reasons other than pregnancy.

Scheme for deferred payment of GST

283. The provision for deferral of payment of GST allows registered businesses, subject to conditions outlined below, to defer GST normally payable at the time of entry for home consumption. The purpose of the provision is to remove the cash flow disadvantage of businesses that import goods, compared with businesses that obtain goods locally.[107]

284. Paragraph 33-15(1)(b) provides, in the circumstances specified in the regulations, for GST on taxable importations to be paid by the importer in accordance with the regulations. The regulations allow for deferral of GST payments on taxable importations to coincide with payments of net amounts of GST with the importer's business activity statement (BAS). Only eligible entities are able to defer payments of GST on imported goods.[108]

285. An entity may apply to the Commissioner for approval to defer payment of GST on taxable importations.[109] The application must be made in a manner approved by the Commissioner and contain the information required by the Commissioner.[110]

286. The requirements for approval to make deferred payments of GST on taxable importations contained in the regulations[111] include:

(a) the entity is registered for GST;

(b) the entity has an ABN;

(c) if the entity is an individual, the entity is not an undischarged bankrupt;

(d) the tax period applying to the entity is each individual month;

(e) if the entity is a member, but not the representative member, of a GST group, the representative member is an approved entity;

(f) a bank guarantee (if required by the Commissioner) has been provided; and

(g) the entity deals electronically with Customs and the ATO, that is, the entity enters goods for home consumption, lodges its GST returns and makes payments of its GST liability electronically.

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[107] Explanatory Statement to the A New Tax System (Goods and Services Tax) Amendment Regulations 2000 (No 3).
[108] Regulations 33-15.01 to 33-15.09.
[109] Regulation 33-15.02.
[110] Regulation 33-15.02.
[111] Regulation 33-15.03.

287. The Commissioner may refuse an application for approval to make deferred payments in certain circumstances, such as where the entity has an outstanding return or tax-related liability, or where the entity has been convicted of an offence in relation to taxation or customs requirements in the previous 3 years.[112]

288. The due date for deferred payments corresponds with the due date for lodgement of the BAS and payment of the net amount for the tax period.[113] The effect of this is that importers who satisfy the requirements of Division 15 can offset input tax credits for creditable importations against the amount of GST payable on the corresponding taxable importations – see paragraph 291.

Attributing the input tax credits for your creditable importation

289. Subsection 29-15(1) provides that 'the input tax credit to which you are entitled for a creditable importation is attributable to the tax period in which you pay the GST on the importation'.

290. The importing entity may have paid directly, or, in cases where the GST is paid on the entity's behalf from funds provided by the importer or reimbursed later, indirectly. In either case, for entities that do not defer the payment of GST on importations, the tax period to which any input tax credit is attributable is the same tax period in which payment is made to Customs.

291. For entities that defer payment of the GST on taxable importations, the input tax credit is attributable to the tax period in which the deferred liability for the GST arises.[114] The liability arises when the taxable importation is made. Therefore, the input tax credit is attributed to the tax period in which the taxable importation is made. This means that the GST on the taxable importation is effectively offset by the input tax credit to the extent that the importation is a creditable importation.

292. A tax invoice is not required for a creditable importation. Tax invoices are only required for taxable supplies.[115] A copy of the entry for home consumption for a taxable importation is evidence for the purposes of substantiating a claim for the input tax credit.[116] If the entry for home consumption does not show the entity that imported the goods as the 'owner'[117], the importing entity needs to also have

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[112] The circumstances are listed in subregulations 33-15.03(2) to 33-15.03(4).
[113] Regulation 33-15-07.
[114] Subsection 29-15(2).
[115] Subsection 29-70(1) and subsection 29-10(3).
[116] For taxable importations under Division 114 where there is no entry for home consumption, a receipt from Customs evidencing payment of GST is sufficient.
[117] This may occur where an agent enters the goods on behalf of the importer, as discussed at paragraphs 196 to 200.

evidence that it paid GST in order to claim the input tax credit. This may be in the form of evidence of payment of an invoice for reimbursement of the GST paid on the importer's behalf by another party, together with evidence showing that the 'owner' as per the customs entry was acting as agent for the importing entity.

Example 11 - Attribution of input tax credit

293. *An Australian car dealer purchases 50 Japanese cars from a Japanese car dealer and brings them to Australia to sell. The Australian car dealer completes the customs formalities and pays the GST on the taxable importation to Customs when the goods are entered for home consumption. The car dealer is the entity that causes the cars to be brought to Australia for sale in its business, which is a creditable purpose. The car dealer has made a creditable importation and is entitled to an input tax credit. The car dealer attributes the input tax credit to the tax period in which the dealer pays the GST on the taxable importation.*

Further examples

Examples of entities that import goods for the purposes of paragraph 15-5(a)

294. Goods are imported into Australia under many circumstances. Typically, they are sent from overseas in the course of being supplied or acquired by way of sale, hire or lease.

295. Other reasons for importing goods include non-resident entities sending goods to Australia 'on consignment', or Australian residents importing their own goods from overseas. For example, a resident company transferring goods from a branch office located overseas to its Australian facility.

296. The following examples further illustrate how to identify the entity that imports goods for the purposes of paragraph 15-5(a):

Example Number	Imports to Australia
12	Goods purchased from overseas to be used in Australia
13	Goods purchased from overseas and delivered by overseas supplier in Australia.
14	Lease of goods which are located overseas at time of agreement – lessee imports
15	Lease of goods – lessor imports

16	Personally owned goods
17	Goods consigned to Australian business for marketing on behalf of consignor
18	Goods sent to Australia for sale by agent in Australia
19	Goods sent to Australia to be displayed

297. The examples indicate in each case the entity that imports the goods and that is entitled to an input tax credit where the importation is a creditable importation. They also state whether each supply is a supply connected with Australia pursuant to section 9-25.[118]

Example 12 – Goods purchased from overseas to be used in Australia

298. *Aus Ice places an order for a gelato-making machine with Lorenzo in Italy. The machine is to be used by Aus Ice to make gelato as part of its ice cream business. Under the terms of the sale contract Aus Ice takes delivery of the machine once Lorenzo places it on board the ship destined for Australia.*[119] *Aus Ice completes the customs formalities including payment of customs duties and GST on the taxable importation.*

299. *By placing the order with the overseas supplier to buy the machine, Aus Ice causes the machine to be brought to Australia for use in its ice cream business. Aus Ice is liable to pay GST on the taxable importation. Aus Ice, therefore, is the entity that imports the machine. Aus Ice is entitled to input tax credits on the creditable importation.*

300. *Lorenzo does not make a taxable supply to Aus Ice as all the elements of a taxable supply are not met. The supply is not connected with Australia. Even though it is a supply that involves the goods being brought to Australia, the supplier (Lorenzo) does not import the goods into Australia (subsection 9-25(3)).*

Example 13 – Goods purchased from overseas and delivered by overseas supplier in Australia

301. *Jamie orders some sheep skin seat covers from New Zealand (NZ). The purchase price includes the delivery of the covers to Jamie's premises in Brisbane. To complete the sale, the supplier is obliged to freight the covers to Australia, undertake the customs*

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[118] Paragraph 9-25(3)(a) deals with supplies of goods to Australia. A supply of goods to Australia is connected with Australia where the supplier imports the goods or installs or assembles the goods in Australia.

[119] This is typically the situation for FOB contracts.

formalities including payment of customs duties and GST on the taxable importation and organise the local delivery.[120]

302. *The NZ company causes the seat covers to be brought to Australia for supply to Jamie. However, Jamie also causes the seat covers to be brought to Australia to use in his car. Whichever of these two entities undertakes the customs formalities and pays the GST is the entity that imports the covers. This entity is entitled to an input tax credit if the importation is a creditable importation.*[121]

303. *As the NZ supplier completes the customs formalities, makes the taxable importation and pays the GST, the NZ supplier is the entity that imports the seat covers. If the NZ supplier is registered, or required to be registered, the supplier is entitled to an input tax credit for the GST paid on the creditable importation that it makes.*

304. *If the NZ supplier is registered, or required to be registered, the supply to Jamie is a taxable supply as all the requirements of a taxable supply are met. The supply is connected with Australia because the supplier imports the seat covers into Australia (subsection 9-25(3)).*

Example 14 – Lease of goods which are located overseas at time of agreement – lessee imports

305. *Aus Farmequip purchases US-made crop dusters from US Co. The crop dusters remain in the US until Aus Farmequip enters into lease agreements with its customers. Aus Cotton leases a crop duster from Aus Farmequip which it intends to use to spray cotton crops in Moree, Australia. Delivery of the crop duster to Aus Cotton takes place in the US. Aus Cotton transports the crop duster from the US to Moree. Aus Cotton pays all the transportation costs, and takes care of the customs formalities, including paying any customs duty and GST on the taxable importation.*

306. *Aus Farmequip retains ownership of the crop duster, but has no further role in the importation of the duster. Aus Cotton causes the goods to be brought to Australia for spraying its crops and contracting to spray other farmers' crops. Aus Cotton is the entity that imports the crop duster and is entitled to the input tax credit on the creditable importation (provided the requirements for a creditable importation are satisfied).*

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[120] This is typically the case in DDP contracts of sale.

[121] In a DDP contract, the supplier undertakes the customs clearance. (If the contract is on DDU terms, the buyer agrees to pay for the customs clearance of the goods, including the GST, and is therefore the entity that imports the goods.)

307. *US Co does not make a taxable supply to Aus Farmequip as not all the requirements for a taxable supply are met. The supply is not connected with Australia under subsections 9-25(1) or 9-25(3). The supply of the crop duster by way of sale to Aus Farmequip is not made wholly within Australia (subsection 9-25(1)), and the supplier (US Co) does not import it (subsection 9-25(3)).*

308. *Aus Farmequip does not make a taxable supply to Aus Cotton as not all the requirements for a taxable supply are met. The supply by way of lease to Aus Cotton is not connected with Australia under subsections 9-25(1) or 9-25(3). The crop duster is not delivered, or made available, in Australia (subsection 9-25(1)), and the supplier (Aus Farmequip) does not import it (subsection 9-25(3)).*

Example 15 – Lease of goods – lessor imports

309. *As in example 14, Aus Farmequip intends to lease a US-manufactured crop duster to Aus Cotton. Aus Farmequip arranges for the crop duster to be transported from the USA and completes the customs formalities, executes the lease and delivers the crop duster to Aus Cotton. In this case, Aus Farmequip causes the crop duster to be brought to Australia for its own purposes, that is, to lease to Aus Cotton. Aus Farmequip applies the goods to its purposes after importation by making the supply by way of lease to Aus Cotton. Because Aus Farmequip also completes the customs formalities it is the entity that imports the goods.*

310. *Aus Farmequip makes a taxable supply to Aus Cotton as all the requirements for a taxable supply are met. The supply is connected with Australia as the crop duster is delivered, or made available, in Australia (subsection 9-25(1)).*

Example 16 – Personally owned goods

311. *Mr Spinner, a recently arrived Australian resident, is establishing a woollen mill in Australia to produce wool for export. Prior to arrival in Australia, Mr Spinner owned a similar business in New Zealand and imports the machinery he owned and used in that business. There is no supply of the machinery. Mr Spinner organises and pays all the costs of transportation, delivery and installation and engages a customs broker to clear the goods through Customs.*

312. *While other entities may be involved in facilitating the physical transportation of the machinery, Mr Spinner causes the machinery to be brought to Australia to use in his business. Mr Spinner completes the customs formalities and is liable to pay GST on the importation. Mr Spinner is the entity that imports the machinery into Australia and is entitled to the input tax credit on the creditable importation that he*

makes, assuming he is registered or required to be registered for GST purposes.

Example 17 –Goods consigned to an Australian business for marketing on behalf of consignor

313. *Berlin Co, a German based company, has developed an innovative lifting device. To establish a market in Australia, Berlin Co (consignor) sends 10 of the devices to Westoz, a distributor of similar equipment located in Fremantle, Western Australia. Westoz has agreed to provide floor space in its retail outlet for a commission from Berlin Co of 25% of the selling price of each of the devices. There is no supply of the goods by way of sale from Berlin Co to Westoz. Berlin Co sells the devices to the Australian customer. Berlin Co pays all costs in respect of the transportation and delivery of the goods and engages a customs broker to clear the goods through Customs on its behalf.*

314. *Berlin Co causes the goods to be brought to Australia to sell on the domestic market. Although the goods are physically in the care and custody of Westoz, Berlin Co retains legal ownership of and risk in the goods. Once Westoz finds a buyer, a contract of sale is effected between Berlin Co and the buyer. Berlin Co is the only entity that has the right to apply the goods to its own purposes after importation. Berlin Co is the entity that imports the goods and, if registered, or required to be registered, is entitled to the input tax credit on the creditable importation*

315. *If Berlin Co appoints Westoz as its agent to make the taxable importation Division 57 applies. See Example 7 for the operation of Division 57. Depending on the arrangements between Berlin Co and Westoz, Berlin Co may make taxable supplies through Westoz as a resident agent, in which case Division 57 would also apply in relation to the taxable supplies.*

Example 18 – Goods sent to Australia for sale by agent in Australia

316. *A wealthy foreign art collector wishes to sell a painting by a famous Australian-born artist. The painting has not previously been brought into Australia. To achieve the best price for the painting, the collector is advised by his selling agent, Kyles Auction House, to sell the painting in Australia. Kyles, for a commission, agrees to undertake the complete task of marketing, displaying and selling the painting in Australia, including arranging for the transport from overseas, customs clearance in Australia and insurance of the painting.*

317. *Kyles arranges for the transporting of the painting to Australia and enters it for home consumption, thus taking delivery of the painting and then displaying it with a view to attracting a buyer. The painting is sold by Kyles as agent for the foreign art collector at an auction in Sydney. Kyles receives a commission for the sale, deducts its expenses and passes on the remaining proceeds to the art collector in accordance with their agreement.*

318. *The collector causes the goods to be brought to Australia for its purpose of sale. The reason the painting is brought to Australia is for it to be sold by the collector, through the agent, Kyles. Kyles does not cause the painting to be brought to Australia for its own purposes, but for the collector's purpose of sale. Kyles can only display and sell the painting on behalf of the owner.*

319. *Kyles is not, therefore, the entity that imports the goods for the purposes of paragraph 15-5(a). While Kyles completes the customs formalities and appears as owner on the entry for home consumption, it does not cause the goods to be brought to Australia for its own purposes. Kyles' service of transporting the painting to Australia is not an end in itself. Rather, the goods are transported here for the collector's purpose ie sale of the goods.*

320. *If the art collector appoints Kyles to enter the goods for home consumption on the collector's behalf as agent (Kyles appears as 'owner' on the entry), the art collector makes a taxable importation through a resident agent in terms of section 57-5. Kyles is liable for GST on the taxable importation made on behalf of the collector as its non-resident principal. Kyles is also entitled to an input tax credit for the GST paid on the taxable importation made on behalf of the collector provided the art collector makes a creditable importation. To make a creditable importation, the art collector must import the goods into Australia in carrying on the collector's enterprise and be registered, or required to be registered. (See further example 7 regarding the implications of Division 57).*

321. *If the art collector is carrying on an enterprise and is registered or required to be registered, and makes the supply in the course of the enterprise, the sale of the painting at auction in Australia is a taxable supply. Since the taxable supply is made through Kyles as agent for the non-resident collector, it is Kyles and not the collector that has the liability for GST on the supply in accordance with section 57-5.*

Example 19 – Goods sent to Australia to be displayed

322. *To attract more visitors, a Melbourne museum organises a Renaissance Art exhibition featuring a famous Italian painting. With the permission of the painting's owner, the painting is removed from a gallery in Rome and transported to the museum. The Melbourne museum enters the painting for home consumption and pays GST. The museum is the entity that causes the goods to be sent to Australia for its purposes of applying the painting to the use for which it is intended (that is, display). The museum is the entity that imports the goods for the purposes of Division 15 and is therefore entitled to an input tax credit, assuming the requirements for a creditable importation are satisfied.*

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Related Rulings/Determinations:

GSTR 1999/1; GSTR 2000/15; GSTR 2000/31

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- creditable importation
- creditable purpose
- customs brokers
- deferral of GST
- deferred GST scheme
- entry for home consumption
- entry for transhipment
- entry for warehousing
- freight forwarders
- import
- imported
- importer
- importation
- input tax credits
- non resident supplier
- supplier
- resident agents
- taxable importations
- taxable supplies

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APPENDIX A

Division 114 - Importations without entry for home consumption

114-5 Importations without entry for home consumption

(1) You make a taxable importation if:

(a) the circumstances referred to in the third column of the following table occur; and

(b) you are referred to in the fourth column of the table as the importer in relation to those circumstances.

However, there is not a taxable importation to the extent that the importation to which the circumstances relate is a non-taxable importation.

Division 114 - Importations without entry for home consumption

Item	Topic	Circumstance	Importer
1	Personal or household effects of passengers or crew	Goods of a kind referred to in paragraph 68(1)(d) of the Customs Act are delivered into home consumption in accordance with an authorisation under section 71 of that Act.	The person to whom the authorisation was granted
2	Low value consignments by post	Goods of a kind referred to in paragraph 68(1)(e) of the Customs Act are delivered into home consumption in accordance with an authorisation under section 71 of that Act.	The person to whom the authorisation was granted
3	Other low value	Goods of a kind referred to in paragraph 68(1)(f) of the Customs Act	The person to whom the

	consignments	are delivered into home consumption in accordance with an authorisation under section 71 of that Act.	authorisation was granted
4	Other goods exempt from entry	Goods of a kind referred to in paragraph 68(1)(i) of the Customs Act are delivered into home consumption in accordance with an authorisation under section 71 of that Act.	The person to whom the authorisation was granted
5	Like customable goods	Goods are delivered into home consumption in accordance with a permission granted under section 69 of the Customs Act.	The person to whom the permission was granted

Division 114 - Importations without entry for home consumption (Continued)

Item	Topic	Circumstance	Importer
6	Special clearance goods	Goods are delivered into home consumption in accordance with a permission granted under section 70 of the Customs Act.	The person to whom the permission was granted
7	(Repealed by No 176 of 1999)		
8	(Repealed by No 176 of 1999)		
9	(Repealed by No 176 of 1999)		
10	Return of seized goods	Goods that have been seized under a warrant issued under section 203 of the Customs Act, or under section 203B or 203C of that Act, are delivered to a person on the basis that they are not forfeited goods.	The person to whom the goods are delivered
11	(Repealed by No 176 of 1999)		
12	(Repealed by No 176 of 1999)		
13	Inwards duty free shops	Goods that are *airport shop goods purchased from an *inwards duty free shop by a *relevant traveller are removed from a *customs clearance area.	The relevant traveller
14	COMPILE contingency arrangements	Goods are taken into home consumption in accordance with a permission granted under section 77D of the Customs Act.	The person to whom the permission is granted
15	Installations and goods on installations	Goods are deemed by section 49B of the Customs Act to be imported into Australia.	The person who is the owner (within the meaning of the Customs Act) of the goods when they are deemed to be so imported

16	Goods not entered for home consumption when required	Goods not covered by any other item of this table are imported into Australia, and: (a) if they are required to be entered under section 68 of the Customs Act - they are not entered in accordance with that requirement; or (b) in any other case - a requirement under that Act relating to their importation has not been complied with.	The person who fails to comply with that requirement

APPENDIX B

Subsection 42-5(1) - Non-taxable importations - Schedule 4 to the *Customs Tariff Act 1995*

Schedule 4 Item	Description *(The following descriptions are provided as a guide only. Refer to the legislation for the full description)*
4	Goods owned by and for official use of the government of a country other than Australia
8	Goods for use by or sale to persons the subject of a Status of Forces Agreement
15	Goods imported by passengers and crew, inward duty free purchases, goods brought in or sent to Australia by members of the Defence Force stationed outside Australia, goods imported by members of forces of Canada, New Zealand, or United Kingdom, and passengers' personal effects
18A	Goods, or parts of goods, previously imported into Australia and returned after repair overseas free of charge in accordance with the provisions of a warranty applicable to the previously imported goods
18B	Goods, or parts of goods, supplied free of charge under the provisions of a warranty to replace goods or parts of goods previously imported into Australia
18C	Goods, or parts of goods, supplied free of charge as part of a global product safety recall due to a product safety fault
21	Goods that are imported for repair, alteration or industrial processing and are to be exported
21A	Goods imported by a holder of a TRADEX order
23A	Goods donated or bequeathed by non residents to an organisation established in Australia for the purposes of performing work of a philanthropic nature
23B	Goods donated or bequeathed to the public or a public institution
24	Goods that are not to be sold or to be used for the purpose of trade that became the property of the importer under a will or intestacy of

	a deceased person
25A	Trophies won outside Australia
25B	Decorations, medallions or certificates awarded or to be awarded outside Australia and sent from outside Australia to persons within Australia
25C	Trophies or prizes sent by donor residents outside Australia for presentation or competition in Australia
32A	Goods on which no duty is payable and the value is insubstantial

Subsection 42-5(1)- Non-taxable importations - Schedule 4 to the Customs *Tariff Act 1995*

(continued)

32B	Goods on which the amount of duty that, but for this item, would be payable and the value are insubstantial
33A	Calenders, catalogues and overseas travel literature, overseas price lists and other overseas printed matter
33B	Samples of negligible value
64	Goods imported by, or on behalf of, non-Australian Olympic and Paralympic Family members, for use in, or for purposes related to, the Sydney 2000 Olympic Games, the Sydney Paralympic Games etc