Just what is a “Supply for consideration”?

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Section 9-5

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

However, the supply is not a taxable supply to the extent that it is GST-free or input taxed.
Section 9-10 Meaning of ‘supply’

- A supply of goods or services;
- The provision of advice or information;
- A grant, assignment or surrender of real property;
- The creation, grant, transfer, assignment or surrender of any right;
- Includes financial supplies

Continued....

Section 9-10 (continued)

Includes

- an entry into an obligation or
- release from an obligation
- to do anything
- to refrain from an act
- to tolerate an act or situation
What is not a supply?

“Supply” does not include a supply of money, unless the money is provided as consideration for a supply that is a supply of money. (s9-10(4))

Section 9-15 Meaning of ‘consideration’

“Consideration” Includes:

• any payment or any act or forbearance
• in connection with,
• in response to or
• for the inducement of
• a supply of anything
Case law

- *Reliance Carpet Company Pty Ltd v FCT*
  AAT (yes) FFC (no) HC (yes)
- *COT v Qantas Airways Ltd*
  AAT (yes) FFC (no) HC (yes)

GSTR 2006/9

The meaning of “Supply”
Proposition 4

- A transaction may involve two or more supplies
- Non-monetary consideration
- GST-inclusive market value
Proposition 5

• *To 'make a supply' an entity must do something*
• The ordinary meaning of 'supply' requires a positive act by the supplier
• Compulsory acquisitions?
  
  *Re Hornsby Shire Council v. COT*

Proposition 8

• *A supply cannot be made by more than one entity*
• Where supplies are made by different suppliers, they cannot be fused together to make a single supply.
• Going concern provisions
Proposition 8

Family Trust → Lease → Family Business → Purchaser

Proposition 9

• A creation of expectations alone does not establish a supply
• Grants, subsidies, sponsorships
• C of IR v. New Zealand Refining Co. Ltd - A supply requires a contractual obligation
Tripartite Arrangements

- A supply made to one entity but provided to another entity;
- Two or more supplies made; or
- A supply made and provided to one entity and consideration paid by a third party.

Analysis

Identify:
- The supply or supplies that were made;
- The consideration provided - includes a payment, act or forbearance (or all three);
- The nexus between the supply and the consideration; and
- The recipient of the supply.
Grandma’s Flowers

Proposition 12

Transactions that are neither based in an agreement that binds the parties in some way nor involve a supply of goods, services, or some other thing, do not establish a supply
Explanation

• “Recipient” means the entity to which the supply was made.
• “made” is not the same as “provide”

Health Services

• Under Subdiv 38-D, health services are only GST-free where an individual receiving that service or specific health treatment is the recipient of that supply
• A GST-free supply of a health service cannot be made to a business entity or a non-profit body
Ambulance Services

- Contract to supply ambulance services
- Transport to hospital
- Supply made
- Not GST-free

hospital → ambulance → patient

12/05/2017
Assessment Services

1. **Contract to supply assessment service**
   - **employer** → **therapist**

2. **Assessment of patient**
   - **therapist** → **Employee**

3. **Supply "made"**
   - **employer** ← **therapist**

4. **Not GST-free**
   - **patient**

5. **Supply "provided"**
   - **therapist** → **employee**
Teaching Services

- Contract to Provide training courses
- Supply of a GST-free training course

Teaching Services

- Taxable supply
- GST-free supply

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Proposition 14

A third party may pay for a supply but not be the recipient of the supply

- Who is the true recipient of the supply
- *Turakina Maori Girls College Board of Trustees & Ors v. C of IR*
- Creditable acquisition?

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Proposition 15

One set of activities may constitute the making of two (or more) supplies

[Diagram showing the relationship between Horse race Caller, Racing Club, and Radio Station through Supply 1 and Supply 2.]
Conclusion

• “Supply” and “Consideration” central issues in the GST
• The most crucial feature in analysing a transaction is identifying the elements
  • No “consideration without a linked supply
  • “Supply” more widely cast in Australia than elsewhere
THANK YOU

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