

Nota Técnica nº 06: Desenho Jurídico e Definição do Contribuinte Legal do Imposto sobre Bens e Serviços (IBS)

v.1, 20 de julho de 2017

Resumo

A ideia desta Nota Técnica, produzida no âmbito do Grupo de Arquitetura Jurídica (GAJ) do CCiF, é identificar o formato jurídico e a redação legal mais adequados para a definição legal do contribuinte do Imposto sobre Bens e Serviços (IBS). Para atender ao desenho econômico do imposto, a identificação do contribuinte deve estar atrelada à venda de bens e serviços, independente da pessoa que realiza o fato (física ou jurídica). Além disso, tem se mostrado salutar no debate sobre a reforma dos impostos sobre o consumo no Brasil, a elucidação do contribuinte de fato, deixando em relevo a neutralidade dessa carga tributária para as empresa, que são meros agentes arrecadadores.

Introdução

O contribuinte do imposto incidente sobre o consumo é consumidor final. A preponderância da eficiência em detrimento dessa lógica econômica *a priori*, impõe, contudo, que a cobrança seja feita sobre as empresas envolvidas na cadeia de produção e circulação dos bens e serviços. Transforma-se, assim, o imposto sobre o consumo em um imposto sobre o valor agregado (IVA).

Do ponto de vista jurídico, há duas formas de cobrar-se o imposto sobre o consumo dos vendedores de bens e serviços, que seriam os sujeitos passivos da obrigação tributária: tornando-os contribuintes (daí a origem das expressões “contribuinte de direito” e “contribuinte de fato”) ou responsáveis. Do ponto de vista da legislação e da jurisprudência brasileiras, a eleição como contribuinte ou responsável impõe diferentes consequências no que diz respeito aos meios de cobrança à aplicação de medidas penais (apropriação indébita).

Há outra questão relevante no que diz respeito à definição dos contribuintes do IVA: a diferenciação (ou não) entre pessoas físicas e jurídicas. A alternativa do IVA como forma de tributação do consumo dirige a cobrança às pessoas jurídicas: além de aqui os contribuintes estarem mais concentrados, elas são mais

controláveis e, portanto, mitiga-se a sonegação. Entretanto, a neutralidade desejada para o Imposto sobre Bens e Serviços (IBS) impõe que não se faça diferenciação entre vendedores de bens e serviços organizados ou não como pessoas jurídicas. O desafio, portanto, é definir o contribuinte do IBS de modo que seja preservada a neutralidade (todos que praticam vendas de bens e serviços devem ser estar incluídos) sem imposição de ônus de cumprimento desproporcionais aos particulares e ao Estado.

1. A Experiência Internacional

Ao pesquisar no Google por “taxpayer VAT”, os primeiros resultados referiam-se à **República das Filipinas**. Mas, não há nada de tão diferente ou inovador em seu modelo, comparativamente à União Europeia (berço do IVA) e aos modelos mais recentes de IVA (Austrália, Nova Zelândia e Bósnia), mas há um imposto direto que deve ser pago pelos não contribuintes (chamados de “NON-VAT”) e que não gera crédito. Sua alíquota é bem menor (3% comparativamente à alíquota regular de 12% para o IVA) e ele é chamado de “Percentage Tax”. Os critérios para a definição dos contribuintes do VAT são: (i) forma de organização dos negócios (tipos societários); (ii) faturamento anual (superior a PHP 1.910.000, o que equivale a USD 37.600,00) e (iii) natureza do negócio. Em razão da vagueza para definição dos critérios (i) e (iii), indica-se apenas o critério de faturamento como relevante, conforme o Manual Mundial de IVAs elaborado pela E&Y.

As diretivas da **União Europeia** não indicam o critério de faturamento e não há distinção entre pessoas físicas e jurídicas, muito embora em seu site haja afirmação genérica de que as pessoas físicas não são contribuintes porque em geral não realizam negócios. O critério utilizado pelas diretivas é a realização de qualquer atividade econômica, de forma independente (para excluir os empregados), ainda que sem finalidade lucrativa (artigo 9). São consideradas como atividades econômicas: (i) produtores, (ii) vendedores; (iii) prestadores de serviços; (iv) mineração e agricultura; (v) profissões independentes; (vi) exploração de bens tangíveis ou intangíveis com finalidade lucrativa e habitualidade; e (vii) venda ocasional de veículos considerados novos para outros estados europeus. A realização de atividade econômica pressupõe regularidade, com exceção da venda interestadual de veículos novos, mas há uma faculdade

para que os Estados-membros tributem a realização ocasional de qualquer atividade econômica, inclusive venda de edifícios e terrenos (artigo 12).

A **Bósnia** segue integralmente o critério e as definições da União Europeia, diferenciando-se apenas pela restrição da incidência do IVA aos negócios com finalidade lucrativa.

A Nova Zelândia e a Austrália não têm definição autônoma de contribuinte (*taxpayer*) em suas legislações.

No caso da **Austrália**, a definição aparece no Capítulo relativo às atividades tributáveis (*taxable activities*), com a rubrica de “responsável” (*liability for GST on taxable supplies*): “you must pay the GST payable on any taxable supply that you make” (Section 9-40)¹. O fato gerador na legislação australiana é definido como o fornecimento de bens ou serviços, de forma onerosa, no contexto de atividade empresarial, por pessoas obrigadas ao registro (Subdivision 9-A). Estão obrigados a se registrar todos aqueles que realizem atividade econômica e tenham volume de negócios (*turnover*) anual acima de AUD 50.000 para pessoas jurídicas com finalidade lucrativa e acima de AUD 100.000 para pessoas jurídicas sem finalidade lucrativa (Division 23). O percentual pode ser alterado por ato infralegal e o relativo a pessoas jurídicas com finalidade lucrativa está atualmente em AUD 75.000 (equivalente a USD 59.400,00).

A **Nova Zelândia** define o contribuinte apenas de forma implícita por meio da definição de *taxable supplies*: “any activity which is carried on continuously or regularly by any person, whether or not for a pecuniary profit, and involves or is intended to involve supply goods and services”. Do mesmo modo que a Austrália, acaba limitando a definição de contribuintes por meio daqueles que ficam ou não obrigados a se registrar. O limite do *turnover* para estar dispensado do registro de contribuintes na Nova Zelândia é de NZD 60.000 anuais (equivalentes a USD 44.100,00), que pode ser alterado por ato infralegal. Há também a exclusão das atividades desenvolvidas por pessoas físicas ou não, mas que sejam num contexto de recreação ou hooby.

Na **África do Sul** os critérios são similares, ou seja, o importante é a realização de atividade econômica (não importa se realizada por pessoas físicas, jurídicas,

¹ Essa definição, que na verdade remete ao conceito de fato gerador, foi a adotada no modelo de ICMS do Mato Grosso.

fundos etc.), mas há limite para isenção do registro, atualmente em ZAR 1.000.000 por ano (equivalente a USD 76.700,00). A definição de contribuinte também não é autônoma, remetendo àquele que pratica o fato gerador (Provision 7(2)).

2. O que utilizar para o IBS

A classificação do sujeito passivo da obrigação tributária em *responsável* ou *contribuinte* viabilizaria a cobrança do imposto dos vendedores de bens e serviços (responsáveis) mantendo-se a lógica do consumidor final como o real contribuinte do IVA (de fato e de direito). Essa diferenciação, contudo, não é observada na prática internacional. Há algumas hipóteses que podem explicar a relevância dessa diferenciação no Brasil: o abuso na utilização dos responsáveis, mediante a eleição de diversos sujeitos passivos diferentes do contribuinte que podem ser cobrados indistintamente, e o caráter formalista da dogmática jurídica, que influencia a formatação e aplicação da legislação tributária.

Essa distinção traria mais clareza aos debates, estimularia o exercício da cidadania e, potencialmente, diminuiria a sonegação (pela caracterização da prática de crime de apropriação indébita). Entretanto, há efeitos imprevisíveis nessa ruptura, considerando especialmente a ausência de experiência internacional e da singularidade da prática jurídica brasileira. Considerando (i) que a transparência sobre o ônus econômico e a qualificação do debate podem ser feitas de outras formas, especialmente após a simplificação do sistema brasileiro, e que (ii) a mitigação da sonegação por meio de penalização na esfera criminal tem sua efetividade questionável e pode ser feita no modelo atual (revisitando a aplicação da lei de crimes contra o sistema tributário), talvez não seja recomendada a utilização dessa diferenciação na legislação do IBS. O que alguns países fazem e que parece interessante é indicar nos sites do governo que contem informação sobre o IVA quem é o contribuinte de fato, ressaltando a neutralidade do imposto sobre os negócios.

Superada essa questão, a definição de contribuinte seguindo a prática internacional e visando atender à neutralidade deveria estar alinhada à prática de atividade econômica, observado um limite mínimo de faturamento anual, evitando custos desproporcionais de cumprimento e fiscalização.

A definição remissiva da legislação australiana indica objetividade (é contribuinte aquele que realiza o fato gerador). Aliada a um bom critério econômico para definição do limite de faturamento anual, provavelmente abrangerá de forma consequencial todos os negócios relevantes ao IBS.

Para citar este trabalho:

CENTRO DE CIDADANIA FISCAL. Desenho Jurídico e Definição do Contribuinte Legal do Imposto sobre Bens e Serviços (IBS) São Paulo: CCiF, julho de 2017. Disponível em: <<https://goo.gl/dWJyaj>>.

Referências

Australian Taxation Office, *GST*, disponível em <https://www.ato.gov.au/Business/GST/How-GST-works/>.

E&Y, *2017 Worldwide VAT, GST and Sales Tax Guide*, disponível em <http://www.ey.com/gl/en/services/tax/worldwide-vat-gst-sales-tax-guide---country-list>.

Federal Register of Legislation [Australia], *A New Tax System (Goods and Services Tax) Act 1999*, disponível em <https://www.legislation.gov.au/Details/C2014C00008>.

Indirect Taxation Authority of Bosnia and Herzegovina, *Law on Value Added Tax*, disponível em http://www.uino.gov.ba/download/Dokumenti/Dokumenti/eng/Porezi/PDV/Law_on_VAT_BiH.pdf.

_____. *General Information on VAT System in Bosnia and Herzegovina*, disponível em http://www.uino.gov.ba/en/Porezi/PDV/Opce_informacije.html.

Inland Revenue, *GST (Goods and Services Tax)*, disponível em <http://www.ird.govt.nz/gst/gst-index.html>.

New Zealand Legislation, *Goods and Services Tax Act 1985*, disponível em <http://www.legislation.govt.nz/act/public/1985/0141/latest/DLM81035.html>.

South African Government, *Value-Added Tax Act 1991*, disponível em <http://www.gov.za/documents/value-added-tax-act-12-may-2015-0846>.

South Africa Revenue Services (SARS), *VAT*, disponível em <http://www.sars.gov.za/TaxTypes/VAT/Pages/default.aspx>.

Taxation and Customs Union [European Commission], *Taxable Persons under EU VAT rules*, disponível em http://ec.europa.eu/taxation_customs/business/vat/eu-vat-rules-topic/taxable-persons-under-eu-vat-rules_en.

The EU's Common System of Value Added Tax (VAT), *Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax*,

disponível em <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006L0112&from=EN>.

Value Added Tax in South Africa,
<http://www.sars.gov.za/TaxTypes/VAT/Pages/default.aspx>. Acesso em 07 de julho de 2016.

Anexo I

Excertos dos dispositivos legais analisados

União Europeia

TITLE III

TAXABLE PERSONS

Article 9

1. 'Taxable person' shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity.

Any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions, shall be regarded as 'economic activity'. The exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity.

2. In addition to the persons referred to in paragraph 1, any person who, on an occasional basis, supplies a new means of transport, which is dispatched or transported to the customer by the vendor or the customer, or on behalf of the vendor or the customer, to a destination outside the territory of a Member State but within the territory of the Community, shall be regarded as a taxable person.

Article 10

The condition in Article 9(1) that the economic activity be conducted 'independently' shall exclude employed and other persons from VAT in so far as they are bound to an employer by a contract of employment or by any other legal ties creating the relationship of employer and employee as regards working conditions, remuneration and the employer's liability.

Article 11

After consulting the advisory committee on value added tax (hereafter, the 'VAT Committee'), each Member State may regard as a single taxable person any persons established in the territory of that Member State who, while legally independent, are closely bound to one another by financial, economic and organisational links.

A Member State exercising the option provided for in the first paragraph, may adopt any measures needed to prevent tax evasion or avoidance through the use of this provision.

Article 12

1. Member States may regard as a taxable person anyone who carries out, on an occasional basis, a transaction relating to the activities referred to in the second subparagraph of Article 9(1) and in particular one of the following transactions:

(a) the supply, before first occupation, of a building or parts of a building and of the land on which the building stands;

(b) the supply of building land.

2. structure fixed to or in the ground.

For the purposes of paragraph 1(a), 'building' shall mean any

Member States may lay down the detailed rules for applying the criterion referred to in paragraph 1(a) to conversions of buildings and may determine what is meant by 'the land on which a building stands'.

Member States may apply criteria other than that of first occupation, such as the period elapsing between the date of completion of the building and the date of first supply, or the period elapsing between the date of first occupation and the date of subsequent supply, provided that those periods do not exceed five years and two years respectively.

3. For the purposes of paragraph 1(b), 'building land' shall mean any unimproved or improved land defined as such by the Member States.

Article 13

1. States, regional and local government authorities and other bodies governed by public law shall not be regarded as taxable persons in respect of the activities or transactions in which they engage as public authorities, even where they collect dues, fees, contributions or payments in connection with those activities or transactions.

However, when they engage in such activities or transactions, they shall be regarded as taxable persons in respect of those activities or transactions where their treatment as non-taxable persons would lead to significant distortions of competition.

In any event, bodies governed by public law shall be regarded as taxable persons in respect of the activities listed in Annex I, provided that those activities are not carried out on such a small scale as to be negligible.

2. Member States may regard activities, exempt under Articles 132, 135, 136, 371, 374 to 377, and Article 378(2), Article 379(2), or Articles 380 to 390, engaged in by bodies governed by public law as activities in which those bodies engage as public authorities.

Bósnia Herzegovina

IV – TAXPAYERS

Article 12 Definitions

A taxpayer shall be any person who independently carries out any economic activity.

Within the meaning of paragraph 1 of this Article "activity" shall be taken to include the activity of a manufacturer, trader or supplier of services performed with a view to generating income, including the activity of exploitation of natural resources, agriculture, forestry and professional activities.

"Economic activity" shall be taken to include the exploitation of property or property rights with a view to generating income

The taxpayer shall be the person in whose name and for whose account goods or services are supplied or goods imported.

The taxpayer shall also be the person who supplies goods or services or imports goods in his own name, but for the account of another.

The State and its authorities, Entity authorities, District authorities and authorities of local self-government, as well as legal entities founded under the law for the purpose of carrying out activities falling within the scope of activities performed by administrative authorities,

shall not be considered taxpayers within the meaning of this Law if they supply goods and services within the activities and transactions in which they engage as administrative authorities.

The bodies referred to in paragraph 6 of this Article shall be considered taxpayers if they supply goods and services, where such supply of goods and services or transactions are carried out in competition with companies in private ownership.

Article 13 Persons liable to pay VAT

The persons who, within the meaning of this Law, are liable to pay VAT shall be:

- 1. taxpayers who perform the supply of goods and services on which VAT is chargeable;*
- 2. a tax representative appointed by a taxpayer who does not have a seat or a permanent business unit in BiH, and who performs the supply of goods or services in BiH;*
- 3. a recipient of services purchased in furtherance of business purposes, if the provider*

of the services, not based in Bih, referred to in point 2 of this paragraph has not appointed a tax representative;

4. any person who shows VAT on an invoice or some other document serving as an invoice (hereinafter: invoice) and who, according to this Law, is not required to calculate and pay VAT;

5. in the case of importations, the recipient of the goods, or the customs debtor determined in accordance with customs regulations; and

6. the recipient of goods and services relating to the construction of immovable property under Chapter XII of this Law.

Nova Zelândia

6 Meaning of term taxable activity

- . *(1) For the purposes of this Act, the term taxable activity means—*
 - . *(a) any activity which is carried on continuously or regularly by any person, whether or not for a pecuniary profit, and involves or is intended to involve, in whole or in part, the supply of goods and services to any other person for a consideration; and includes any such activity carried on in the form of a business, trade, manufacture, profession, vocation, association, or club:*
 - . *(b) without limiting the generality of paragraph (a), the activities of any public authority or any local authority.*
- . *(2) Anything done in connection with the beginning or ending, including a premature ending, of a taxable activity is treated as being carried out in the course or furtherance of the taxable activity.*
- . *(3) Notwithstanding anything in subsections (1) and (2), for the purposes of this Act the term taxable activity shall not include, in relation to any person,—*
 - . *(a) being a natural person, any activity carried on essentially as a private recreational pursuit or hobby; or*
 - . *(aa) not being a natural person, any activity which, if it were carried on by a*

natural person, would be carried on essentially as a private recreational pursuit or hobby; or

- . *(b) any engagement, occupation, or employment under any contract of service or as a director of a company, subject to subsection (4); or: ^[1]_[SEP]*
- . *(c) any engagement, occupation, or employment— ^[1]_[SEP]*
 - (i) pursuant to the Members of Parliament (Remuneration and Services) Act 2013 or the Governor-General Act 2010:*
 - (ii) as a Judge, Solicitor-General, Controller and Auditor-General, or Ombudsman:*
 - (iia) pursuant to an appointment made by the Governor-General or the Governor-General in Council and evidenced by a warrant or by an Order in Council or by a notice published in the Gazette in accordance with section 2(2) of the Official Appointments and Documents Act 1919:*
 - (iii) as a Chairman or member of any local authority or any statutory board, council, committee, or other body, subject to subsection (4); or*
- . *(d) any activity to the extent to which the activity involves the making of exempt supplies.*
- . *(4) Despite subsection (3)(b) and (c)(iii), if a director, member, or other person referred to in those paragraphs is paid a fee or another amount in relation to their engagement, occupation, or employment in circumstances in which they are required to account for the payment to their employer, the payment is treated as consideration for a supply of services by the employer to the person who made the payment to the director, member, or other person. ^[1]_[SEP]*
- . *(5) For the purposes of subsections (3)(b), (c)(iii), and (4), if a person in carrying on a taxable activity, accepts an office, any services supplied by that person as holder of that office are deemed to be supplied in the course or furtherance of that taxable activity. ^[1]_[SEP]*

[...]

Part 8 Registration

51 Persons making supplies in course of taxable activity to be registered

- . *(1) Subject to this Act, every person who, on or after 1 October 1986, carries on any taxable activity and is not registered, becomes liable to be registered—*
 - . *(a) at the end of any month where the total value of supplies made in New Zealand in that month and the 11 months immediately preceding that month in the course of carrying on all taxable activities has exceeded \$60,000 (or such larger amount as the Governor-General may, from time to time, by Order in Council declare): provided that a person does not become liable to be registered by virtue of this paragraph where the Commissioner is satisfied that the value of those supplies in the period of 12 months beginning on the day after the last day of the period referred to in the said paragraph will not exceed that amount:*
 - . *(b) at the commencement of any month where there are reasonable grounds for believing that the total value of the supplies to be made in New Zealand in that month and the 11 months immediately following that month will exceed the amount specified in paragraph (a): provided that any such person shall not become liable where the Commissioner is satisfied that that value will exceed that amount in that period solely as a consequence of—*
 - . *(c) any ending of, including a premature ending of, or any substantial and permanent reduction in the size or scale of, any taxable activity carried on by that person; or*
 - . *(d) the replacement of any plant or other capital asset used in any taxable activity carried on by that person; or ^[17]_[56]*
 - . *(e) the supply, to persons who are non-residents but are physically present in New Zealand, of telecommunications services that are treated as being supplied in New Zealand under sections 8(6) and 8A. ^[17]_[56]*
- . *(1B) For the purposes of determining under subsection (1) the liability of a unit title body corporate to be registered, the value of a supply of a service made by the body corporate to a member is not included in the total value of supplies made in New Zealand by the body corporate.*
- . *(2) Every person who, by virtue of subsection (1), becomes liable to be registered*

shall apply to the Commissioner in the prescribed form for registration under this Act, within 21 days of becoming so liable, and provide the Commissioner with such further particulars as the Commissioner may require for the purpose of registering that person. ^[17]_[SEP]

- . (3) *Notwithstanding subsections (1) and (2), every person who satisfies the Commissioner that, on or after 1 October 1986,—*
 - . (a) *that person is carrying on any taxable activity; or*
 - . (b) *that person intends to carry on any taxable activity from a specified date,— may apply to the Commissioner in the prescribed form for registration under this Act, and provide the Commissioner with such further particulars as the Commissioner may require for the purpose of registering that person.*
- . (4) *Where any person has—*
 - . (a) *made application for registration pursuant to subsection (2), (3), or section 54B, and the Commissioner is satisfied that that person is eligible to be registered under this Act, that person shall be a registered person for the purposes of this Act with effect from such date as the Commissioner may determine; or*
 - . (b) *not made application for registration pursuant to subsection (2), and the Commissioner is satisfied that that person is liable to be registered under this Act, that person shall be a registered person for the purposes of this Act with effect from the date on which that person first became liable to be registered under this Act: provided that the Commissioner may, having regard to the circumstances of the case, determine that person to be a registered person from such later date as the Commissioner considers equitable.*
- . (5) *Notwithstanding anything in this Act, where any taxable activity is carried on by any non-profit body in branches or divisions, that non-profit body may apply to the Commissioner for any such branch or division to be a separate person for the purposes of this section, and if each such branch or division maintains an independent system of accounting and can be separately identified by reference to the nature of the activities carried on or the location of that branch or division, each such branch or division shall be deemed to be a separate person, and not a part of the non-profit body, and, where any such branch or division is a*

separate person pursuant to this subsection, any taxable activity carried on by that branch or division shall, to that extent, be deemed not to be carried on by the non-profit body first mentioned in this subsection.

- . *(5B) A unit title body corporate that is registered under this Act as a result of an application under subsection (3) made on a date (the application date) on or after the date of introduction of the Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Bill must be registered with effect from a date after the application date.*
- . *(6) The provisions of this Act relating to the determination of the value of any supply of goods and services shall apply for the purposes of this section, with the modification that no regard shall be had to any tax charged in respect of any such supply. ^[117]_{SEP}*
- . *(7) An application for registration under this Act purporting to be made by or on behalf of any person shall for all purposes be deemed to have been made by that person or by that person’s authority, as the case may be, unless the contrary is proved.*

51B Persons treated as registered

- . *(1) For the purposes of Parts 3 and 6, and of Part 9 of the Tax Administration Act 1994, the following are treated as registered persons:*
 - . *(a) a person who is not otherwise a registered person but who supplies goods or services, representing that tax is charged on the supply:*
 - . *(b) if goods are treated by section 5(2) as being supplied by a person—*
 - . *(i) the person selling the goods, if subparagraph (ii) does not apply; or*
 - . *(ii) the person whose goods are sold, if the person provides a notice under section 5(2)(a) to the person selling the goods and the Commissioner considers that the notice is incorrect:*
 - . *(c) a person whose registration has been cancelled under section 52(5) with effect from the original date of registration:*
 - . *(d) a non-resident person referred to in section 54B(2).*

- . (2) If a person referred to in subsection (1) represents that tax is being charged on a supply that they make in a taxable period, the person is liable to pay the amount of the tax. ^[L]_[SEP]
- . (3) If a person is treated by subsection (1)(c) as being a registered person, the person is treated as being registered from the original date of registration to the date when the Commissioner cancels the registration. ^[L]_[SEP]
- . (4) For the purposes of this Act, in relation to a supply to which section 11(1)(mb) applies, a recipient who is treated as a supplier under section 5(23)—
 - . (a) is treated as registered from the date of the supply under section 5(23); and
 - . (b) must apply under section 51(2) to the Commissioner for registration.
- . (5) A person who is treated as registered under subsection (4)(b) may ask the Commissioner to cancel their registration under section 52(2) once they have accounted for output tax as required under section 5(23). ^[L]_[SEP]
- . (6) For the purposes of subsection (5), section 5(3) does not apply if— ^[L]_[SEP]
 - . (a) the person seeks cancellation of their registration by the end of the taxable period in which they have accounted for the output tax under section 5(23); or
 - . (b) the Commissioner so determines, on application by the person.

Austrália

Subdivision 9-A—What are taxable supplies?

9-5 Taxable supplies

You make a **taxable supply** if:

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

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

[...]

9-20 Enterprises

- (1) An **enterprise** is an activity, or series of activities, done:
- (a) in the form of a ^{*}business; or
 - (b) in the form of an adventure or concern in the nature of trade; or
 - (c) on a regular or continuous basis, in the form of a lease, licence or other grant of an interest in property; or
 - (d) by the trustee of a fund that is covered by, or by an authority or institution that is covered by, Subdivision 30-B of the ^{*}ITAA 1997 and to which deductible gifts can be made; or
 - (da) by a trustee of a ^{*}complying superannuation fund or, if there is no trustee of the fund, by a person who manages the fund; or
 - (e) by a charity; or
 - (g) by the Commonwealth, a State or a Territory, or by a body corporate, or corporation sole, established for a public purpose by or under a law of the Commonwealth, a State or a Territory; or
 - (h) by a trustee of a fund covered by item 2 of the table in section 30-15 of the ITAA 1997 or of a fund that would be covered by that item if it had an ABN.
- (2) However, **enterprise** does not include an activity, or series of activities, done:
- (a) by a person as an employee or in connection with earning ^{*}withholding payments covered by subsection (4) (unless the activity or series is done in supplying services as the holder of an office that the person has accepted in the course of or in connection with an activity or series of activities of a kind mentioned in subsection (1)); or

Note: Acts done as mentioned in paragraph (a) will still form part of the activities of the enterprise to which the person provides work or services.
 - (b) as a private recreational pursuit or hobby; or
 - (c) by an individual (other than a trustee of a charitable fund, or of a fund covered by item 2 of the table in section 30-15 of the ITAA 1997 or of a fund that would be covered by that item if it had an ABN), or a ^{*}partnership (all or most of the members of which are individuals), without a reasonable expectation of profit or gain; or
 - (d) as a member of a local governing body established by or under a ^{*}State law or ^{*}Territory law (except a local governing body to which paragraph 12-45(1)(e) in Schedule 1 to the Taxation Administration Act 1953 applies).
- (3) For the avoidance of doubt, the fact that activities of an entity are limited to making supplies to members of the entity does not prevent those activities:

- (a) being in the form of a *business within the meaning of paragraph (1)(a); or
 - (b) being in the form of an adventure or concern in the nature of trade within the meaning of paragraph (1)(b).
- (4) This subsection covers a *withholding payment covered by any of the provisions in Schedule 1 to the Taxation Administration Act 1953 listed in the table.

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

[...]

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

9-40 Liability for GST on taxable supplies

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

[...]

23-5 Who is required to be registered

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

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

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

23-10 Who may be registered

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

23-15 The registration turnover threshold

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

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

23-20 Not registered for 4 years

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

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

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

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

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

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

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

Checklist of special rules		
Item	For this case ...	See:
1	Company amalgamations	Division 90
2	GST groups	Division 48
3	GST joint ventures	Division 51
4	Offshore supplies other than goods or real property	Division 84
4A	Non-residents making supplies connected with Australia	Division 83
4B	Representatives of incapacitated entities	Division 58

Checklist of special rules

Ite m	For this case ...	See:
5	Resident agents acting for non-residents	Division 57

África do Sul

Imposition of value-added tax

7. (1) *Subject to the exemptions, exceptions, deductions and adjustments 40 provided for in this Act, there shall be levied and paid for the benefit of the State Revenue Fund a tax, to be known as the value-added tax -*

(a) on the supply by any vendor of goods or services supplied by him on or after the commencement date in the course or furtherance of any enterprise carried on by him; 45

(b) on the importation of any goods into the Republic by any person on or after the commencement date; and

(c) on the supply of any imported services by any person on or after the commencement date, calculated at the prescribed tax rate on the value of the supply concerned or the importation, as the case may be.

(2) Except as otherwise provided in this Act, the tax payable in terms of 5 paragraph (a) of subsection (1) shall be paid by the vendor referred to in that paragraph, the tax payable in terms of paragraph (b) of that subsection shall be paid by the person referred to in that paragraph and the tax payable in terms of paragraph (c) of that subsection shall be paid by the recipient of the imported services.