

**i** This is a reissue of BR Pub 09/04. For more information about earlier publications of this Public Ruling see the Commentary to this Ruling.

## **GOODS AND SERVICES TAX – FISHING QUOTA – SECONDHAND GOODS INPUT TAX DEDUCTIONS**

### **PUBLIC RULING - BR Pub 15/01**

This is a public ruling made under s 91D of the Tax Administration Act 1994.

### **Taxation Laws**

All legislative references are to the Goods and Services Tax Act 1985 unless otherwise stated.

This Ruling applies in respect of s 20(3), the definitions of “goods” and “secondhand goods” in s 2, and the definition of “input tax” in s 3A.

### **Definitions**

In this Ruling, “fishing quota” means:

- (a) individual transferable quota granted under the Fisheries Act 1983; or
- (b) individual transferable quota granted under the Fisheries Act 1996; or
- (c) annual catch entitlements generated by individual transferable quota under s 66 of the Fisheries Act 1996.

### **The Arrangement to which this Ruling applies**

The Arrangement to which this Ruling applies is the supply, by way of sale, of fishing quota situated in New Zealand, where the supply is not a taxable supply, and the supply is made to a GST-registered purchaser who uses the fishing quota, or has it available for use, in making taxable supplies.

### **How the Taxation Laws apply to the Arrangement**

The Taxation Laws apply to the Arrangement as follows:

- Fishing quota is not a good in accordance with the definition of “goods” in s 2. As a result, fishing quota will not be “secondhand goods” for the purposes of the Act.
- The purchaser of such fishing quota will not be entitled under s 20(3) to deduct from the amount of output tax payable in a taxable period any amount of input tax in respect of the supply of the fishing quota.

**The period or tax year for which this Ruling applies**

This Ruling will apply for an indefinite period beginning on 1 July 2014.

This Ruling is signed by me on 10 February 2015.

**Susan Price**

Director, Public Rulings

**i** This is a reissue of BR Pub 09/05. For more information about earlier publications of this Public Ruling see the Commentary to this Ruling.

## **GOODS AND SERVICES TAX – COASTAL PERMITS AND CERTIFICATES OF COMPLIANCE – SECONDHAND GOODS INPUT TAX DEDUCTIONS**

### **PUBLIC RULING - BR Pub 15/02**

This is a public ruling made under s 91D of the Tax Administration Act 1994.

### **Taxation Laws**

All legislative references are to the Goods and Services Tax Act 1985 unless otherwise stated.

This Ruling applies in respect of s 20(3), the definitions of "goods" and "secondhand goods" in s 2, and the definition of "input tax" in s 3A.

### **Definitions**

In this Ruling:

- "coastal permit" means a resource consent in the form of a coastal permit granted under the Resource Management Act 1991; and
- "certificate of compliance" means a certificate of compliance granted under the Resource Management Act 1991.

### **The Arrangement to which this Ruling applies**

The Arrangement to which this Ruling applies is the supply, by way of sale, of coastal permits or certificates of compliance situated in New Zealand, where the supply is not a taxable supply, and the supply is made to a GST-registered purchaser who uses the coastal permits or certificates of compliance, or has them available for use, in making taxable supplies.

### **How the Taxation Laws apply to the Arrangement**

The Taxation Laws apply to the Arrangement as follows:

- A coastal permit or certificate of compliance is not a good in accordance with the definition of "goods" in s 2. Therefore, a coastal permit or certificate of compliance will not be "secondhand goods" for the purposes of the Act.
- The purchaser of a coastal permit or certificate of compliance will not be entitled under s 20(3) to deduct from the amount of output tax payable in a taxable period any amount of input tax in respect of the supply of the coastal permit or certificate of compliance.

**The period or tax year for which this Ruling applies**

This Ruling will apply for an indefinite period beginning on 1 July 2014.

This Ruling is signed by me on 10 February 2015.

**Susan Price**

Director, Public Rulings

## COMMENTARY ON PUBLIC RULINGS BR PUB 15/01 AND 15/02

This commentary is not a legally binding statement. The commentary is intended to help readers understand and apply the conclusions reached in Public Rulings BR Pub 15/01 and BR Pub 15/02 (the Rulings).

Legislative references are to the Goods and Services Tax Act 1985 (GSTA) unless otherwise stated. Relevant legislative provisions are reproduced in the Appendix to this commentary.

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### Summary

1. The Rulings consider whether GST input tax deductions are available to registered persons who acquire fishing quota, coastal permits or certificates of compliance from unregistered persons. For a registered person to claim an input tax deduction, fishing quota, coastal permits and certificates of compliance must be "secondhand goods". The term "goods" is defined as including all kinds of real and personal property, but excludes choses in action.
2. Fishing quota is property. However, fishing quota is also a chose in action. Therefore, fishing quota is excluded from the definition of "goods" and cannot be "secondhand goods" for the purposes of the GSTA.
3. The Resource Management Act 1991 (RMA) makes it clear that coastal permits and certificates of compliance are not personal or real property. Therefore, coastal permits and certificates of compliance are not "goods" and cannot be "secondhand goods" for the purposes of the GSTA.
4. Given fishing quota, coastal permits and certificates of compliance are not "secondhand goods", a registered person cannot claim a secondhand goods input tax deduction for them.

### Background

5. BR Pub 15/01 and BR Pub 15/02 are reissues of BR Pub 09/04 and BR Pub 09/05, which expired on 30 June 2014. These Rulings are essentially the same as BR Pub 09/04 and BR Pub 09/05. However, they have been amended to reflect the new "use, or available for use" test in

the GSTA. The Commissioner considers that this change does not affect the outcome of the Rulings.

6. While most fishing quota, coastal permits and certificates of compliance are held by large organisations that are registered for GST, unregistered persons still hold some of these rights. Some of these unregistered persons may not make supplies in excess of \$60,000 in a 12-month period, so are not required to register for GST under s 51. However, one of these unregistered persons may sell their fishing quota, coastal permits or certificates of compliance to a person who is registered for GST. The Rulings consider whether the registered person may claim a secondhand goods input tax deduction.

### **Application of the GST legislation**

7. The starting place to determine whether a GST input tax deduction is available to a registered person who acquires fishing quota, coastal permits or certificates of compliance from an unregistered person is s 20(3).
8. Section 20(3) provides that a person, in calculating the amount of output tax payable, may deduct input tax paid in relation to the supply of secondhand goods to the extent that a payment in respect of that supply has been made during the taxable period. The GSTA provides similar tests for claiming an input tax deduction for supplies of secondhand goods irrespective of the basis of registration (ie, invoice, payments or hybrid basis).
9. "Input tax" is defined in s 3A. For secondhand goods, the relevant provision is s 3A(1)(c), which refers to subs (2) and (3) of s 3A. Five relevant requirements need to be satisfied under subs (2) before the amount of the input tax deduction for a secondhand good can be calculated under subs (3). These requirements are that:
  - there is a supply by way of sale;
  - the supply is not a taxable supply;
  - the supply is made to a GST-registered person;
  - the supply is of secondhand goods; and
  - the secondhand goods are situated in New Zealand at the time of supply.
10. In addition, under s 20(3C) a person's input tax deduction is limited by "the extent to which the goods or services are used for, or are available for use in, making taxable supplies".
11. All but one of these requirements are specified in the Arrangement considered by the Rulings to ensure they will be satisfied in every instance in which the Ruling applies. The exception is the requirement that the supply be of secondhand goods. The issue considered by these Rulings, therefore, is whether fishing quota, coastal permits and certificates of compliance can be "secondhand goods".

### **"Secondhand goods"**

12. The definition of "secondhand goods" in s 2 does not define the term, but prescribes a list of things that are not included in the meaning of "secondhand goods". Fishing quota, coastal permits and certificates of

compliance are not excluded under the definition. Because the definition gives little indication as to the meaning of the term "secondhand goods", it is necessary to look at the ordinary meaning.

13. "Secondhand goods" is a composite term. It relates to items that are first of all "goods" and then the subset of those goods that can be described as "secondhand".

### **"Goods"**

14. "Goods" is defined widely in s 2 as including all kinds of real and personal property, but excluding choses in action, money and electronic products.

15. The meaning of "property" is discussed in *Garrow and Fenton's Law of Personal Property* (7th ed, vol 1, Lexis Nexis, Wellington, 2010) at 2:

The term "property" has varying usages within the law of Commonwealth countries including New Zealand. One common usage has a narrow meaning – that, in a legal sense, title has passed. ... A related but more general usage signifies a thing owned, that over which title is exercised. For example, when it is said that a person's property includes cars, books, royalty rights, and other property it is frequently the second sense of the word "property" that is intended. In the first sense a person has property in a particular item; in the second sense, it is said that a person owns certain items of property. The context generally indicates which form is used.

16. From this, it can be seen that the term "property" is used to describe a wide variety of things, both tangible and intangible. Its fundamental characteristics are that it is capable of being owned and that the rights of ownership are capable of being transferred. "Property" also needs to be defined and identified, and have a degree of permanence or stability (*National Provincial Bank Ltd v Ainsworth* [1965] 2 All ER 472 (HL) at 494).
17. All "property" can be categorised as real property (ie interests in land) or personal property (see *Garrow and Fenton's Law of Personal Property* (7th ed, vol 1, Lexis Nexis, Wellington, 2010) at 10). As there are only two categories of "property", a determination that an item is "property", will mean that it will satisfy the first part of the definition of "goods" in the GSTA without the need to determine whether it is real or personal property.
18. Once it is determined that an item is "property" it is necessary to determine whether it is excluded from the definition of "goods" in s 2 by virtue of being a "chose in action" (the other exclusions do not apply to fishing quota, coastal permits or certificates of compliance).
19. The term "chose in action" was described in *Torkington v Magee* [1900–3] All ER 991 (KB) at 994:

Chose in action is a known legal expression used to describe all personal rights of property which can only be claimed or enforced by action, and not by taking physical possession.
20. This definition was also stated by the Court of Appeal in *Re Marshall (deceased), CIR v Public Trustee* [1965] NZLR 851 (CA) at 861.
21. The fundamental characteristics of a chose in action, therefore, are that a person cannot take the right into physical possession, and that court action is necessary to enforce the advantages of ownership.

## **"Secondhand"**

22. There have been few cases on the meaning of the term "secondhand goods" in the GST context. In *Case N16* (1991) 13 NZTC 3,142 Judge Barber had to consider whether deer velvet purchased direct from producers by means of commission agents was a secondhand good when it was subsequently acquired by a distributor and exporter of deer velvet.
23. Judge Barber concluded that the deer velvet was not a secondhand good. Judge Barber accepted that the two key concepts underlying whether something is secondhand are previous ownership and previous use. He stated at 3,148:

I agree with counsel that the concept of secondhand relates to pre-ownership or pre-use. I agree ... that the emphasis is on pre-use. I consider that there is quite some commonsense flexibility in ascertaining whether a good is still new or has become secondhand. I do not regard second ownership as necessarily rendering an item secondhand. Many goods pass from manufacturer to wholesaler or retailer to customer or consumer (with other levels of distributors sometimes also involved), and yet are not regarded as secondhand at the consumer purchaser level, even though the item has been used as stock-in-trade at the various distribution levels. The good is not usually regarded as secondhand until it has been used for its intrinsic purpose.
24. Judge Barber considered that previous ownership of goods is not in itself necessarily sufficient to meet the test of secondhand in the GSTA. Usually, a previous owner must have also used the goods for their intrinsic purpose.
25. Subsequently, the Court of Appeal considered the meaning of secondhand goods in *LR McLean & Co Ltd v CIR* (1994) 16 NZTC 11,211. McKay J at 11,219 expressly referred to and agreed with Judge Barber's comments in *Case N16* as to the ordinary meaning of the term "secondhand". Richardson J stated at 11,213:

The short point of the appeal is whether wool purchased by registered persons from unregistered persons is secondhand goods for the purposes of the 1985 Act. If the expression secondhand goods is given its ordinary and natural meaning it is common ground that it is not within that description. In ordinary usage the expression refers to goods which have been used, although depending on the context it may apply to goods which are no longer new or even in some contexts goods which have simply been previously owned. Mr Harley for the appellants did not seek to draw any distinction based on "use" of the wool by the sellers. The argument for the appellants is that to accord with the scheme and purpose of the legislation the expression has to be given the meaning of any goods which have been purchased by a registered person.
26. The judgments of the Court of Appeal state that the term "secondhand" should be given its ordinary or normal meaning. While "secondhand" can mean pre-owned or pre-used, the Court concluded that it is not sufficient that the goods were previously owned. If an item were "secondhand" simply through being previously owned, the term "secondhand" would be deprived of any practical meaning according to Richardson J. Therefore, the Court of Appeal concluded that the more relevant factor is whether the goods have been previously used.
27. The effect of this is that the courts have not extended the meaning of the term "secondhand goods" to goods that have been previously owned but not previously used for their intrinsic purpose.



## **Conclusion**

28. For a secondhand goods input tax deduction to be available to a registered person who acquires fishing quota, coastal permits or certificates of compliance from an unregistered person, the fishing quota, coastal permits or certificates of compliance must:
- be real or personal property;
  - not be choses in action; and
  - be secondhand.
29. The following analysis considers the nature of fishing quota, coastal permits and certificates of compliance to determine whether they satisfy these criteria.

## **Nature of fishing quota**

30. The fishing quota considered by this commentary are individual transferable quota and annual catch entitlements as defined in s 2 of the Fisheries Act 1996 (FA 1996).
31. Individual transferable quota were established and allocated in 1986 under the Fisheries (Quota Management Areas, Total Allowable Catches, and Catch Histories) Notice 1986, which was issued under the Fisheries Act 1983 (FA 1983). They appear to have been allocated based on a person's commercial fishing history. No charge was made for the quota initially allocated. However, individual transferable quota do not provide "free" rights because an annual levy must be paid. These levies are typically significant.
32. Under the FA 1983, the fundamental rights acquired by the holder of individual transferable quota (as determined from the legislation) were that the quota holder had the right to catch and take away for their own purposes:
- a specified quantity,
  - of a particular fish species,
  - from a particular area (the quota management area),
  - in a specific period (in a year, although a quota is issued in perpetuity).
33. These rights could be dealt with in ordinary commercial dealings; they could be bought and sold, used as security and have interests registered against them.
34. The FA 1996 introduced the concept of an "annual catch entitlement". Instead of the individual transferable quota providing a right to catch a specified amount of fish, the individual transferable quota now "generates" an annual catch entitlement on the first day of the fishing year under s 66 of the FA 1996. Section 74 of the FA 1996 provides that the annual catch entitlement confers the immediate right to catch fish in a given year. Sections 132 and 133 of the FA 1996 provide that the individual transferable quota and annual catch entitlement may be transferred. For holders of an individual transferable quota, the annual catch entitlement is separately tradable, so that for a particular year a quota owner may sell their annual catch entitlement while retaining the individual transferable

quota that will generate another annual catch entitlement the following year.

35. Individual transferable quota and annual catch entitlements are not the same, but they are both unique rights that may be bought, be sold and, in the case of individual transferable quota, have interests registered against them.

### ***Is fishing quota "property"?***

36. There is no definitive statement in any of the fisheries legislation as to the nature of fishing quota. The expression "individual transferable quota" was not defined in the FA 1983. Although the term is defined in the FA 1996, the definition appears to have been added to ensure all quota allocated under the different Acts are regarded as fishing quota for the purposes of the FA 1996.
37. Tipping J commented on the nature of fishing quota issued under the FA 1983 in *NZ Fishing Industry Association (Inc) v Minister of Fisheries* (CA 82/97, 22 July 1997) at 16:

While **quota are undoubtedly a species of property** and a valuable one at that, the rights inherent in that property are not absolute. They are subject to the provisions of the legislation establishing them. That legislation contains the capacity for quota to be reduced. If such reduction is otherwise lawfully made, the fact that quota are a "property right", to use the appellants' expression, cannot save them from reduction. That would be to deny an incident integral to the property concerned. [Emphasis added]

38. The Court of Appeal also stated that fishing quota issued under the FA 1996 is a "property right" in *Sanford Ltd v NZ Recreational Fishing Council Inc* [2008] NZCA 160 (CA).
39. The courts have confirmed, therefore, that both individual transferable quota and annual catch entitlements are property. They are definable and identifiable through being granted under a statutory regime. Both are capable of being owned and specific legislative provisions in the FA 1996 deal with the ability of individual transferable quota and annual catch entitlements to be transferred. On this basis, the Commissioner accepts that fishing quota are "property".

### ***Are fishing quota "choses in action"?***

40. Case law indicates that the fundamental characteristic of a chose in action is that a person cannot take the right into physical possession.
41. Both individual transferable quota and annual catch entitlements appear to possess this characteristic. The right to catch fish directly or indirectly cannot be taken into possession. While an argument could be made that a person could simply catch the fish under the quota, this seems to confuse the fish (which could be taken into possession) with the right to catch those fish (which cannot be taken into possession).
42. This conclusion is supported by *Antons Trawling Co Ltd v Smith* [2003] 2 NZLR 23 (HC) where Baragwanath J stated at [5] that individual transferable quota are statutory choses in action:

The root of title is the issue under the quota management system ... of **individual transferable quota (ITQ) which is a statutory chose in action** comprising a fraction of the total of exclusive rights to fish commercially a particular species of fish within one of the ten quota management areas into which the exclusive economic zone is divided. Rights to ITQ are codified by the relevant legislation,

especially the Fisheries Amendment Act 1986 and the Fisheries Act 1996. [Emphasis added]

43. Therefore, both individual transferable quota and annual catch entitlements are choses in action.

### **Conclusion**

44. Given that individual transferable quota and annual catch entitlements are choses in action, they are excluded from being "goods". Because they are not "goods", they cannot be "secondhand goods". Therefore, a registered person who acquires fishing quota from an unregistered person is not entitled to a GST input tax deduction.

### **Nature of coastal permits and certificates of compliance**

45. Section 87 of the RMA defines a "resource consent" to include a consent to do something in a coastal marine area that otherwise would contravene certain provisions of the RMA and calls this kind of consent a "coastal permit".
46. Section 88 of the RMA provides that resource consents are to be obtained from the local or regional council by application. Section 139 of the RMA provides that where an activity may be lawfully carried out without a resource consent, a certificate of compliance must be applied for instead. Section 139(10) of the RMA deems a certificate of compliance to be a resource consent with the result that the provisions of the RMA are to apply accordingly.
47. Section 122(1) of the RMA states that "a resource consent is neither real nor personal property". As noted above, all property is either real or personal property. By making this statement, therefore, Parliament has created a legal fiction. It appears Parliament did not want all of the common law and other rights that would automatically attach to property of this nature to attach to resource consents.
48. The definition in s 122(1) of the RMA is not a standard definition. It is not contained in s 2 of the RMA with the other definitions that apply "for the purposes of this Act". Therefore, it appears Parliament intended s 122(1) of the RMA to have an application wider than simply the RMA.
49. Section 122 of the RMA goes on to deal with the characteristics of resource consents for the purposes of other legislation. After making the initial statement that a resource consent is not real or personal property, the section provides specific exceptions where resource consents are to be regarded as having the characteristics of personal property for the purposes of several specific Acts (including for example the Personal Property and Securities Act 1999) and circumstances. The GSTA is not included as one of the exceptions in s 122 of the RMA. Therefore, the Commissioner considers that s 122(1) of the RMA would apply for the purposes of the GSTA.

### **Conclusion**

50. Under s 122 of the RMA coastal permits and certificates of compliance are deemed not to be "personal or real property". The Commissioner considers this definition is intended to apply for the purposes of other enactments, including the GSTA.

51. Therefore, coastal permits and certificates of compliance are not “goods” for the purposes of the GSTA. Because they are not “goods”, they cannot be “secondhand goods”. Therefore, a registered person who acquires coastal permits or certificates of compliance from an unregistered person is not entitled to a GST input tax deduction.

## References

### Expired Rulings

- BR Pub 03/07 “Fishing quota and secondhand goods input tax credits” in *Tax Information Bulletin* Vol 15, No 12 (December 2003)  
 BR Pub 03/10 “Coastal permits, certificates of compliance, marine farming permits, and secondhand goods input tax credits” in *Tax Information Bulletin* Vol 15, No 12 (December 2003)  
 BR Pub 09/04 “Fishing quota – secondhand goods input tax credits” in *Tax Information Bulletin* Vol 21, No 6 (August 2009)  
 BR Pub 09/05 “Coastal permits and certificates of compliance – secondhand goods input tax credits” in *Tax Information Bulletin* Vol 21, No 6 (August 2009)

### Subject references

- Annual catch entitlements  
 Certificates of compliance  
 Chose in action  
 Coastal permits  
 Fishing quota  
 Goods  
 GST  
 Individual transferable quota  
 Property  
 Secondhand  
 Secondhand goods

### Legislative references

- Fisheries Act 1983

- Fisheries Act 1996, ss 2, 66, 67, 74, 132 and 133  
 Fisheries (Quota Management Areas, Total Allowable Catches, and Catch Histories) Notice 1986  
 Goods and Services Tax Act 1985, ss 3A, 20(3) and (3C), 51, and the definitions of “goods” and “secondhand goods” in s 2  
 Personal Property Securities Act 1999, s 23  
 Resource Management Act 1991, ss 2, 87, 88, 122 and 139

### Case references

- Antons Trawling Co Ltd v Smith* [2003] 2 NZLR 23 (HC)  
*Case N16* (1991) 13 NZTC 3,142  
*LR McLean & Co Ltd v CIR* (1994) 16 NZTC 11,211 (CA)  
*Marshall (deceased), Re, CIR v Public Trustee* [1965] NZLR 851 (CA)  
*National Provincial Bank Ltd v Ainsworth* [1965] 2 All ER 472 (HL)  
*NZ Fishing Industry Association (Inc) v Minister of Fisheries* (22 July 1997, CA 82/97) (CA)  
*Sanford Ltd v NZ Recreational Fishing Council Inc* [2008] NZCA 160  
*Torkington v Magee* [1900–3] All ER 991 (KB)

### Other references

- Garrow and Fenton’s *Law of Personal Property* (7<sup>th</sup> ed, vol 1, LexisNexis, Wellington, 2010)

## Appendix – Legislation

1. The definitions of “goods” and “secondhand goods” in s 2 of the GSTA provide:

**goods** means all kinds of personal or real property; but does not include choses in action, money or a product that is transmitted by a non-resident to a resident by means of a wire, cable, radio, optical or other electromagnetic system or by means of a similar technical system:

**secondhand goods**, does not include—

- (a) Secondhand goods consisting of any fine metal; or
- (b) Secondhand goods which are, or to the extent to which they are, manufactured or made from gold, silver, platinum, or any other substance which, if it were of the required fineness, would be fine metal; or
- (c) Livestock:

2. Section 3A(1)–(3) of the GSTA provides:

- (1) **input tax**, in relation to a registered person, means—
  - (a) tax charged under section 8(1) on a supply of goods or services acquired by the person:
  - (b) tax levied under section 12(1) on goods entered for home consumption under the Customs and Excise Act 1996 by the person:
  - (c) an amount determined under subsection (3) after applying subsection (2).
- (2) In the case of a supply by way of sale to a registered person of secondhand goods situated in New Zealand, the amount of input tax is determined under subsection (3) if—
  - (a) the supply is not a taxable supply; and
  - (b) the supply is not—
    - (i) a supply of goods previously supplied to a registered person who has entered them for home consumption under the Customs and Excise Act 1996, whether the person is registered at the time they enter the goods for home consumption or later; and
    - (ii) a supply of goods made by a non-resident, whether or not they made the earlier supply referred to in subparagraph (i); and
  - (c) the goods acquired by the person for making taxable supplies are either—
    - (i) not charged with tax at the rate of 0% under section 11A(1)(q) or (r); or
    - (ii) charged with tax at the rate of 0% under section 11A(1)(q) or (r) and, before the acquisition, have never been owned or used by the person or an associated person.
- (3) The amount of input tax is—
  - (a) if the supplier and the recipient are associated persons, the lesser of—
    - (i) the tax included in the original cost of the goods to the supplier; and
    - (ii) the tax fraction of the purchase price; and
    - (iii) the tax fraction of the open market value of the supply; or
  - (b) if the supplier and the recipient are associated persons and the supplier is deemed to have made a supply of the goods under section 5(3) that has been valued under section 10(7A), the lesser of—
    - (i) the tax fraction of the open market value of the deemed supply under section 5(3); and
    - (ii) the tax fraction of the purchase price; and
    - (iii) the tax fraction of the open market value of the supply; or

- (c) if the supplier and the recipient are associated persons and the supplier is deemed to have made a supply of the goods under section 5(3) that has been valued under section 10(8), the lesser of—
  - (i) the tax fraction of the valuation under section 10(8) of the deemed supply under section 5(3); and
  - (ii) the tax fraction of the purchase price; and
  - (iii) the tax fraction of the open market value of the supply; or
- (d) if the supplier and the recipient are not associated persons and the supply is not the only matter to which the consideration relates, the lesser of—
  - (i) the tax fraction of the purchase price; and
  - (ii) the tax fraction of the open market value of the supply; or
- (e) in all other cases, the tax fraction of the consideration in money for the supply.

3. Section 20(3)(a) and (b) and (3C)(a) and (b) of the GSTA provides:

- (3) Subject to this section, in calculating the amount of tax payable in respect of each taxable period, there shall be deducted from the amount of output tax of a registered person attributable to the taxable period—
  - (a) In the case of a registered person who is required to account for tax payable on an invoice basis pursuant to section 19 of this Act, the amount of the following:
    - (i) input tax in relation to the supply of goods and services (not being a supply of secondhand goods to which section 3A(1)(c) of the "input tax" definition applies), made to that registered person during that taxable period:
    - (ia) input tax in relation to the supply of secondhand goods to which section 3A(1)(c) of the "input tax" definition applies, to the extent that a payment in respect of that supply has been made during that taxable period:
    - (ii) input tax invoiced or paid, whichever is the earlier, pursuant to section 12 of this Act during that taxable period:
    - (iii) any amount calculated in accordance with any one of sections 25(2)(b), 25(5), 25AA(2)(b) or 25AA(3)(b); and
  - (b) In the case of a registered person who is required to account for tax payable on a payments basis or a hybrid basis pursuant to section 19 of this Act, the amount of the following:
    - (i) input tax in relation to the supply of goods and services made to that registered person, being a supply of goods and services which is deemed to take place pursuant to section 9(1) or section 9(3)(a) or section 9(3)(aa) or section 9(6) of this Act, to the extent that a payment in respect of that supply has been made during the taxable period:
    - (ii) input tax paid pursuant to section 12 of this Act during that taxable period:
    - (iii) input tax in relation to the supply of goods and services made during that taxable period to that registered person, not being a supply of goods and services to which subparagraph (i) of this paragraph applies:
    - (iv) any amount calculated in accordance with any one of sections 25(2)(b), 25(5), 25AA(2)(b) or 25AA(3)(b), to the extent that a payment has been made in respect of that amount; and
- ...
- (3C) For the purposes of subsection (3), and if subsections (3D) or (3L) do not apply,—
  - (a) input tax as defined in section 3A(1)(a) or (c) may be deducted to the extent to which the goods or services are used for, or are available for use in, making taxable supplies:

- (b) input tax as defined in section 3A(1)(b) may be deducted to the extent to which the goods are used for, or are available for use in, making taxable supplies other than—
  - (i) the delivery of the goods to a person in New Zealand:
  - (ii) arranging or making easier the delivery of the goods to a person in New Zealand.

...