

**EXPOSURE DRAFT - FOR COMMENT AND DISCUSSION ONLY | HUKIHUKI HURANGA
- MŌ TE TĀKUPU ME TE MATAPAKI ANAKE**

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INTERPRETATION STATEMENT | PUTANGA WHAKAMĀORI

GST – Arranging and brokering financial products

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This interpretation statement provides guidance about the circumstances in which intermediaries or brokers involved in the supply of financial products will make an exempt supply of financial services for GST purposes by arranging (rather than advising on) any financial services. The statement explains the meaning of “arranging” and how GST applies to the activities of intermediaries and brokers involved in the supply of financial products. This statement operates alongside Interpretation Statement IS0052 (Financial Planning Fees—GST Treatment), which provides guidance on the GST treatment of financial planning fees, and does not replace that statement (or any statement that replaces it).

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

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Summary | Whakarāpopoto

1. The involvement of an intermediary or broker in the supply of a financial product will constitute an exempt supply of “arranging” under s 3(1)(l) of the Goods and Services Tax Act 1985 when their activities form a direct involvement in an integral part of the supply chain that is intended to bring about the supply of a financial service.
2. The involvement must be a precursor to the provision of a financial service that the recipient of that financial service has already decided to use or obtain, that is intended to bring about that supply, and that is not subject to the overriding decision of a party other than the financial service provider. This requirement distinguishes activities directed at implementing a chosen financial service from earlier speculative or promotional activities that are too remote from its provision.
3. Whether the activities of the intermediary or broker are a single composite supply or multiple supplies must be determined first, following the approach in **IS 18/04: Goods and Services Tax – Single supply or multiple supplies**. If the activities are found to be “arranging”, the supply will be exempt; otherwise, it may be taxable unless it is reasonably incidental and necessary to an exempt supply that the intermediary or broker makes.
4. Activities that amount to “advising thereon” are excluded from exemption. Where both exempt and taxable supplies are made for a global consideration, apportionment may be required. Each case must be considered on its own facts.

Introduction | Whakataki

5. The way an intermediary or broker is involved in the supply of a financial product can range from making a simple introduction to being authorised to bind the supplier of the financial product to a transaction with a third party. This interpretation statement considers the circumstances in which the involvement of an intermediary or broker in the supply of a financial product will constitute “arranging” any of the activities specified in s 3(1)(a) to (ka) for the purposes of s 3(1)(l). In this statement, “financial products” means any product falling within the classes of financial services described in s 3(1)(a) to (ka).
6. This issue arises in a variety of commercial contexts, including both finance and insurance. To illustrate how the law applies in different situations, this statement includes a range of practical examples. The analysis has been condensed to focus on these examples, providing targeted guidance on the application of the law to common scenarios that intermediaries and brokers encounter.

7. The subject matter covered by this interpretation statement is inherently complex. Commercial arrangements through which intermediaries and brokers are involved in the supply of financial products vary significantly in practice, and the GST outcome will depend on the specific facts and circumstances of each case. This statement sets out the Commissioner's interpretation of the meaning of "arranging" for GST purposes and provides general guidance on how those principles apply, rather than prescribing exhaustive rules or outcomes for all possible arrangements.

Analysis | Tātari

8. The following analysis outlines the key legal principles relevant to determining when the involvement of an intermediary or broker will constitute "arranging" for GST purposes. It then applies these principles to examples, highlighting how the law operates in practice across different types of financial products and intermediary or broker arrangements.

Single composite supply or multiple separate supplies

9. Intermediaries or brokers involved in the supply of financial products undertake a number of different activities. Before asking whether these activities constitute "arranging" under s 3(1)(l), it is necessary to determine if they constitute a single composite supply or multiple separate supplies. This is done by applying the approach described in [IS 18/04: Goods and Services Tax – Single supply or multiple supplies](#).
10. Following the approach in IS 18/04, to determine if the activities of an intermediary or broker constitute a single composite supply or multiple supplies, it is helpful to ask:
 - What is the "true and substantial nature of what is supplied" to the recipient?
 - What are the "relationships between the elements supplied" – is one element of the transaction merely ancillary or incidental to, or instead a necessary or integral part of, any other element of the transaction?
 - Is it reasonable to sever the elements into separate supplies?
11. The true and substantial nature of what is supplied must be examined from the point of view of the recipient (ie, the person that makes the payment for the supply). The focus is on what the recipient paid for and was supplied with.
12. The question on the relationships between the elements supplied concerns whether one element of the transaction is merely ancillary or incidental to, or a necessary or integral part of, any other element of the transaction. An element will be ancillary, incidental or integral to another element if it is:

- not an aim in itself;
 - a means of better enjoying the dominant supply; or
 - an optional extra that in no real or substantial sense is part of the consideration for which a payment is made.
13. The question of whether it is reasonable to sever the elements into separate supplies focuses on the essential purpose of the transaction and whether the elements are sufficiently distinct. A holistic assessment is required to avoid artificially splitting what, in economic substance, is a single supply. The fact an element is separately priced or can be supplied separately is not determinative.
14. Where a supply is found to be a single composite supply, the GST treatment of any ancillary or incidental element will follow the treatment of the dominant supply. The GST treatment of an integral element will be determined by the overall characteristics of the single composite supply.

Meaning of “arranging” and “advising thereon” used in s 3(1)(l)

15. After determining the nature of the intermediary’s or broker’s activities, it is necessary to ask whether those services constitute “arranging” any of the activities specified in paras (a) to (ka), other than advising thereon for the purposes of s 3(1)(l). They do this using the approach described in [IS 25/05: GST treatment of fees paid in relation to managed funds](#) as discussed below.
16. The word “arranging” is not defined in the Goods and Services Tax Act 1985. Although the courts have not specifically discussed the meaning of that term in the context of s 3(1)(l), some cases indicate that a narrow interpretation of “arranging” should be applied,¹ and an appropriate meaning would be “cause to occur”.²
17. A narrow meaning of “arranging” requires a nexus or close linkage or direct connection to the provision of a financial service.³ To constitute “arranging”, the activity must be a precursor to the provision of a financial service that the recipient of that financial service has already decided to use or obtain, be intended to cause that supply, and not be subject to the overriding decision of a party other than the financial service provider

¹ *CIR v Databank Systems Ltd* (1990) 12 NZTC 7,227 (PC); *Provident Insurance Corporation Ltd v CIR* [2019] NZHC 995.

² *Databank Systems Ltd v CIR* (1987) 9 NZTC 6,213 (HC).

³ *Hargreaves Landsdown Asset Management v C & E Commrs* [1995] BVC 896; *Dogbreeders Associates v C & E Commrs* (1989) VATTR 317.

on whether to proceed.⁴ The requirement to have decided to use or obtain the financial service is directed at excluding speculative, preparatory or promotional activities that are too remote from the provision of a financial service, not activities undertaken to implement a decision by the recipient to pursue a financial service that remains subject to provider approval, conditions, or the completion of a contract. Activities that merely contribute to or facilitate the supply of a financial service, or that are quantified by reference to a financial service, will not be “arranging”.⁵

18. Accordingly, the term “arranging” requires an intermediary or broker to have a direct involvement in an integral part of the supply chain that is intended to bring about the supply of a financial service.⁶ Where the intermediary or broker acts on behalf of the financial service provider, the activity should be one that the financial service provider would otherwise have to do themselves in bringing about the supply of the financial service to the recipient.
19. The exception in s 3(1)(l) for “advising thereon” will be relevant where the intermediary or broker provides advice that is determined at the first step above to be a separate supply for GST purposes (because receiving the advice is an aim in itself for the recipient). To fall within the exception, the “advice” will require a degree of interpretation of information, counsel or opinion relating to the activities in s 3(1)(a) to (ka) and more than the mere notification or dissemination of information.⁷

Apportionment

20. GST liability depends on the true legal character of what is supplied.⁸ Where an intermediary or broker receives a global consideration for making distinct multiple supplies, some of which are exempt supplies of “arranging” under s 3(1)(l) and some of which are taxable supplies, an apportionment of the consideration will be required.⁹ An apportionment will also be required where the “arranging” relates to bundled

⁴ *Hargreaves; Dogbreeders; Donald Ford v C & E Commrs* (1987) VATTR 130.

⁵ *Databank (PC); Hargreaves; Dogbreeders; Donald Ford; Turakina Girls College Board of Trustees v CIR* (1993) 15 NZTC 10,032 (CA).

⁶ *Hargreaves; Dogbreeders; Countrywide Insurance Marketing Limited v C & E Commrs* [1993] VATTR 277; *Civil Service Motoring Association v C & E Commrs* [1996] V & DR 340; *Les Promotions DND Inc v The Queen* [2006] TCC 63.

⁷ *Concise Oxford Dictionary* (12th ed, Oxford University Press, 2011); *J R Moodie Co Ltd v MNR* [1950] 2 DLR 145 at 148 (SCC).

⁸ *Chatham Islands Enterprise Trust v CIR* [1999] 19 NZTC 15,075.

⁹ *CIR v Smiths City Group Ltd* (1992) 14 NZTC 9,140 (HC).

supplies of financial products, some of which are financial services under s 3(1)(a) to (ka) and some of which are not.

21. Where an apportionment is required, the appropriate apportionment method will depend on the circumstances of the particular case.

Meaning of “provision”

22. A feature of the financial services defined in s 3(1)(a) to (ka) is that they relate (among other things) to either the “issue” or “allotment” of a financial product, or the “provision” of the financial product.
23. The terms “issue” and “allotment” describe one-off actions whereas “provision” refers to supplies of services with an ongoing nature that end only when the supplier has fully performed their primary obligation under the contract. For example, the provision of a life insurance contract ends when a life insurance claim is paid or the term expires, and the provision of credit under a credit contract ceases when the credit facility is terminated, typically upon full repayment.
24. Where an intermediary’s or broker’s activities in maintaining a financial product constitute a separate supply, whether those activities amount to “arranging” under s 3(1)(l) will depend on whether the related financial service is defined by reference to an “issue” or “allotment” or a “provision”.

Reasonably incidental

25. Where an intermediary or broker makes a separate supply that is not the supply of a financial service under s 3(1)(l), the supply may still be exempt under s 14(1)(a) if it is reasonably incidental and necessary to a supply of a financial service by the intermediary or broker. Because an intermediary or broker does not themselves make supplies of the financial services specified in s 3(1)(a) to (ka), any application of s 14(1)(a) in this context will depend on the intermediary or broker first making an exempt supply of “arranging” under s 3(1)(l). Accordingly, a separate non-financial service supplied by the intermediary or broker can only be exempt under s 14(1)(a) if it is reasonably incidental or necessary to that arranging service.
26. A supply of non-financial services by the intermediary or broker is reasonably incidental to their supply of financial services if the supply occurs in conjunction with the supply of those financial services and is subordinate to the supply of the financial

services.¹⁰ This requires the non-financial service to support the making of the arranging service rather than follow it. To be “reasonably necessary” to the supply of financial services by the intermediary or broker, it is not enough that the administration services are merely desirable to the supply of the financial services. However, the other goods and services do not have to be essential or absolutely necessary to the supply of financial services (in the sense that the financial services could not be supplied without the other goods and services).¹¹

Examples | Taura

Example | Taura 1 – Broker promoting the sale of shares

Lois Price wants to sell the shares in her company through which she operates a retail business. She approaches a broker, Mark Itman, to help her promote the sale of her shares. Lois will pay Mark an upfront fee to cover marketing costs, and a commission-based fee if a sale of her shares is completed.

Mark accepts the engagement and gets straight to work. Mark provides the following services:

- He meets with Lois to understand her objectives, business profile and target investor type.
- He puts together an information memorandum, one-pager and slide deck to highlight the value proposition of the business and its shares.
- He researches and identifies a list of potential buyers who may be interested in acquiring Lois’s shares and uses his network of industry contacts to source suitable parties.

¹⁰ *Department of Health and Social Security v Envoy Farmers Ltd* [1976] 2 All ER 173; *Canadian National Railway Co v Harris* [1946] SCR 352; *CH Beazer (Holdings) plc v C & E Commrs* (1987) 3 BVC 623; *Mindell v Canadian Northern Shield Insurance Co* [1990] BCJ No 15; *State of Victoria v Commonwealth* [1975] 7 ALR 277; *R v Sundown* [1999] 1 SCR 393; *Doom v Commissioners of Customs & Excise* (1973) VATTR 61.

¹¹ *R v Shayler* [2002] 2 All ER 477; *Re an Inquiry under the Company Securities (Insider Dealing) Act 1985* [1988] 1 All ER 203; *Re H-L (A child)* [2013] EWCA Civ 655; *M v The Queen* (Court of Appeal CA 819/2011; 5 April 2012); *Elcham v Commissioner of Police* [2001] NSWSC 614; *Aiken v Shaw* (1933) SLT 21.

- He then contacts the potential investors identified in his research to present the opportunity and coordinates initial discussions between Lois and interested parties.
- He tracks responses and engagement levels from potential investors and provides feedback to Lois.

Mark's role concludes once serious interest from a potential investor is confirmed. Lois then negotiates directly with the buyer and agrees the sale of the shares.

Lois pays Mark an upfront marketing fee to cover the initial costs of marketing the sale (eg, preparing documents and researching potential buyers), and subsequently a success fee if a sale to an investor introduced by Mark is completed.

Do Mark's services amount to "arranging" the transfer of ownership of an equity security?

Outcome

Mark's services do not amount to "arranging" the transfer of ownership of an equity security. His role is limited to identifying and introducing a potential buyer. Although his services may lead to a sale of the shares, Mark does not negotiate the transaction or bring about the transfer of ownership itself. His services are therefore taxable.

Single supply or multiple supplies?

The starting point is to consider the true nature of the legal arrangements that Mark and Lois entered into. Under the arrangement, Mark supplies market research, marketing, and business introduction services to Lois for two separate fees.

To determine if Mark makes one composite supply or multiple separate supplies of services, it is helpful to consider the true and substantial nature of what Mark has supplied to Lois from the recipient's (in this case, Lois's) perspective.

From Lois's point of view, the essential (dominant) feature of the arrangement is the service of finding a potential buyer who Mark can refer to Lois so she can negotiate with them and agree the sale of her shares. The market research and marketing services Mark provides are ancillary or incidental to the dominant supply in that they facilitate or enable the dominant supply of finding a potential buyer for the shares.

The fact that Lois pays a separate fee for the marketing aspect of the service is not determinative. The essential purpose of the transaction with Mark is to find a potential

buyer for her shares and it would not be reasonable to sever the elements of the transaction into separate supplies.

Arranging service?

In terms of whether Mark is providing an arranging service, his involvement in the transaction is limited to finding a potential buyer for Lois's shares. Lois herself, and not Mark, will negotiate the terms and ultimate price for the shares and enter into a binding agreement with the purchaser.

While Mark's activities may lead to the supply of a financial service (the transfer of ownership of Lois's shares), they are not sufficiently closely connected with the provision of that financial service to be "arranging" under s 3(1)(l). For the services to constitute "arranging", Mark would need to have a direct, active and intentionally causative involvement in bringing about the sale of Lois's shares.

Example | Tauria 2 – Insurance broker selling and maintaining insurance policies

Cash Broker is a life insurance broker who works with multiple insurers. His responsibilities vary depending on the insurer's distribution model and the authority delegated to him.

For example, Cash works with Claim to Fame. Claim to Fame offers a choice of annually renewable policies for term life insurance, trauma cover, private health cover and income protection insurance.

Cash begins each engagement for Claim to Fame by:

- meeting with the client to understand their personal circumstances, financial goals and insurance needs;
- gathering relevant information such as their age, health status, occupation and existing cover;
- explaining the types of insurance products available (eg, term life or income protection); and
- identifying suitable products from the panel of insurers he works with.

If the client selects a Claim to Fame policy, Cash has delegated authority to manage most of the sales process. His steps include:

- matching the client's needs to Claim to Fame's suite of products;

- explaining product features, benefits, exclusions and premium structure;
- providing a product recommendation;
- using Claim to Fame’s underwriting guidelines to assess eligibility;
- collecting medical and lifestyle disclosures;
- requesting additional information if needed within his authority;
- generating a quote using the insurer’s system; and
- preparing a formal proposal and presenting it to the client.

If the client accepts the quote, Cash either:

- binds cover up to the limits of his authority and issues a confirmation of cover and policy documentation directly to the client; or
- if the cover proposed exceeds Cash’s authority to bind, assists the client to complete the proposal and submits it – along with all relevant disclosures – to Claim to Fame’s underwriting team for assessment and decision. Once a decision is made, Cash communicates the outcome to the client.

After the sale, Cash:

- explains the cooling-off period and cancellation rights;
- provides ongoing service, including policy amendments or renewals; and
- receives a full commission from Claim to Fame for the sale.

Claim to Fame charges separate, commercially priced premiums for each type of cover the client takes out, with no cross-subsidisation between the life and non-life components.

Cash receives an upfront initial commission and a yearly renewal (trail) commission (if the client keeps the policy) from Claim to Fame based on the following flat commission structure.

Insurance type	Initial commission (% of first-year premium)	Renewal (trail) commission (% of ongoing premium)
Term life insurance	90%	5%
Trauma cover	120%	5%
Income protection	120%	5%

Private health cover	7%	6%
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Do Cash’s services amount to “arranging” the provision of insurance?

Outcome

Cash makes two separate supplies to Claim to Fame: one relating to the sale or distribution of insurance policies and one relating to the ongoing retention of those policies. Both supplies constitute “arranging” the provision of insurance. However, only the arranging of life insurance contracts is an exempt financial service under s 3(1)(i) and (l). An apportionment of the commissions received is therefore required.

Single supply or multiple supplies?

Cash provides a number of services to Claim to Fame, including advisory, marketing, and sales or distribution services. For these services, Cash receives an upfront initial commission for each policy sold where he has been involved and subsequently an annual renewal commission for each year those policies remain in force.

To decide if Cash makes one composite supply or multiple separate supplies, it is helpful to consider the true and substantial nature of what is supplied from the recipient’s point of view. The recipient in this case is Claim to Fame, which pays Cash for his services, rather than the client who takes out the policy.

From Claim to Fame’s perspective, it is paying for two services. These services involve selling or distributing insurance policies and retaining those policies on its books.

To earn the initial commission, Cash must provide services to the insurer that include marketing the policies to the client and advising the client for the purpose of selling an insurance policy.

To earn the renewal commission, Cash must provide ongoing servicing and advisory support to the client to ensure the client renews the policy on the policy’s anniversary date. The renewal of the policy is important to Claim to Fame as keeping the policy in force is necessary to make writing it profitable. Therefore, from Claim to Fame’s point of view, the sale of the policy and keeping it in force each represent an aim in itself. The related marketing and advisory services, on the other hand, are not aims in themselves for Claim to Fame; instead they are ancillary or incidental to the dominant supply as they facilitate or enable the sale or retention of the insurance policy.

The essential purpose of the transaction with Cash is to sell insurance policies and keep them in force. It is reasonable to sever the transaction into the separate supplies of activities related to selling insurance policies and those related to keeping them on Claim to Fame's books, but no further. The marketing and advisory services will be ancillary or incidental components of the single composite supply of selling or retaining the policy and their GST treatment will follow the treatment of the dominant element of that supply. Accordingly, the "advising thereon" exclusion in s 3(1)(l) will not apply to the advisory content of Cash's activities.

Arranging service?

The next question is whether Cash's activities in relation to the sale or distribution and retention of Claim to Fame's insurance policies amount to "arranging" the provision of insurance.

For the selling or distributing services, Cash's activities go beyond merely promotional and marketing activities to include either issuing a binding cover up to the limit of Cash's authority or assisting the client to complete and submit an insurance proposal. In doing so, Cash is directly and actively involved in activities that are intended to bring about the supply of insurance policies. These activities are an important and integral part of the supply chain for the insurance policies and are tasks that Claim to Fame would otherwise have to do itself to bring about the supply to the client.

Likewise, Cash's ongoing review of the client's policies, proactive engagement and communication with them and facilitation of any policy amendments are intended to help retain policies already on foot with Claim to Fame and bring about a renewal of those policies by reinforcing trust, relevance and ease of renewal. Cash is again directly and actively involved in activities that are an important and integral part of the supply chain for insurance policies. These activities are also activities that Claim to Fame would otherwise have to do itself as part of that supply chain. The activities intentionally cause the ongoing maintenance of the coverage under the policies and therefore the provision of the insurance policies.

Consequently, Cash's activities in bringing about the sale or distribution and retention of insurance policies for which he receives the initial and renewal commissions constitute "arranging" the provision of insurance. However, only "arranging" the provision of life insurance contracts will be the supply of a financial service under s 3(1)(i) and (l). As Cash also sells non-life insurance policies (eg, providing private health and income protection cover) for Claim to Fame, an apportionment of the consideration Cash received will be required.

In the circumstances of the commissions Cash received from Claim to Fame, the Commissioner considers that an apportionment based on the relative annualised premiums for each type of cover written under the policy would be a fair and reasonable method. This is because Claim to Fame:

- remunerates Cash based on a flat commission structure; and
- charges separate premiums for each type of cover the client takes out with no component priced cheaply to incentivise uptake.

As a result, the relative annualised premiums reflect the economic value of the services Cash supplies for each type of cover and the associated commission.

Accordingly, the amount of commissions apportionable on this basis to the sale or distribution of life insurance contracts is consideration for the exempt supply of a financial service under s 3(1)(i) and (l). The amount of commissions apportionable to the sale or distribution of non-life insurance policies is consideration for a taxable supply.

Variation on Example | Taura 2

In a variation on this example, the facts are the same except that Cash has no authority to bind cover with Claim to Fame. He must submit all applications to Claim to Fame's underwriting team for assessment and decision.

Outcome (variation)

Even without authority to bind cover, Cash's activities still constitute "arranging" the provision of insurance. His role in completing and submitting proposals and maintaining policies remains a direct and active involvement in an integral part of the insurance supply chain. The GST treatment and apportionment outcome is unchanged.

Single supply or multiple supplies?

It is still reasonable to sever the transaction with Claim to Fame into two separate supplies of activities related to the sale or distribution of insurance policies and the retention of those policies.

Claim to Fame is still paying Cash for these two services. The marketing and advisory steps Cash undertakes are still ancillary or incidental to these dominant objectives.

The essential purpose of the transaction remains the sale and retention of insurance policies.

Arranging service?

Without any authority to bind, Cash's role in distributing Claim to Fame's insurance policies is limited to:

- advising the client;
- collecting disclosures;
- assisting with proposal completion; and
- submitting the proposal to Claim to Fame.

While binding authority was a strong indicator of arranging in the original example, its absence does not alter the conclusion.

However, the activities that Cash performs still intentionally cause the supply of Claim to Fame's policies – they go beyond mere marketing and promotion. Cash is directly and actively involved in the supply chain for Claim to Fame's policies by bringing about the completion and submission of proposals, which Claim to Fame would otherwise have to do itself.

In terms of the renewal activities, Cash's ongoing engagement with clients and facilitation of policy amendments that encourage them to keep the policy in force also remain the cause of the ongoing maintenance of the coverage under the policies.

Accordingly, Cash's activities in relation to the sale or distribution and retention of insurance policies for which he receives the initial and renewal commissions still constitute "arranging" the provision of insurance.

Cash will apportion the commissions he receives from Claim to Fame between taxable and non-taxable supplies on the basis described above.

Example | Tauria 3 – Insurance broker providing referral service

Cash Broker (who we met in Example | Tauria 2) also works with Risky Business Ltd. Like Claim to Fame, Risky Business Ltd offers a choice of annually renewable policies for term life insurance, trauma cover, private health cover and income protection insurance.

For Risky Business Ltd, Cash also begins a particular engagement by:

- meeting with the client to understand their personal circumstances, financial goals and insurance needs;
- gathering relevant information such as their age, health status, occupation and existing cover;
- explaining the types of insurance products available (eg, term life or income protection); and
- identifying suitable products from the panel of insurers he works with.

If the client selects a Risky Business Ltd policy, Cash plays a limited role and refers the client to the insurer. His steps include:

- identifying that Risky Business Ltd has a suitable product for the client;
- providing basic factual information about the product (eg, type of cover and general benefits);
- referring the client (with their consent) to Risky Business Ltd; and
- assisting with scheduling a meeting or, if needed, submitting an online referral form containing basic client details, their consent to be contacted by Risky Business Ltd, and an indication of the insurance products of interest.

Cash does not:

- assess eligibility;
- provide advice on Risky Business Ltd's products;
- assist with completing the proposal form; or
- participate in underwriting, quoting or policy issuance.

Post-referral, Cash may follow up to ensure that Risky Business Ltd has contacted the client.

Risky Business Ltd charges separate, commercially priced premiums for each type of cover the client takes out, with no cross-subsidisation between the life and non-life components.

Cash receives a referral fee from Risky Business Ltd, calculated as follows.

Insurance type	Referral fee (% of first-year premium)
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Term life insurance	36%
Trauma cover	48%
Income protection	48%
Private health cover	2.8%

Do Cash’s services amount to “arranging” the provision of insurance?

Outcome

Cash’s referral services do not amount to “arranging” the provision of insurance. His activities are limited to promotional and referral functions and lack a sufficient nexus with the provision of insurance policies. The entire referral fee is therefore consideration for a taxable supply.

Single supply or multiple supplies?

As with Claim to Fame in Example | Taura 2, Cash provides a number of services to Risky Business Ltd. However, from Risky Business Ltd’s perspective, the services such as providing basic product information, assisting with scheduling a meeting, submitting the online referral form and following up with clients to confirm contact are likely to be incidental or ancillary to the dominant service of providing the referral. Although essential to providing the referral service, those other services are not an aim in themselves for Risky Business Ltd but rather facilitate or enable the referral to be made.

The referral service is the essential purpose of the transaction between Cash and Risky Business Ltd and it would not be reasonable to sever the various elements of the transaction into separate supplies. Cash, therefore, makes a single composite supply of the referral service to Risky Business Ltd. The other services Cash provides will follow the GST treatment of the dominant element of that supply.

Arranging service?

In terms of the referral service, Cash’s activities do not go beyond promotional and marketing activities and do not have a sufficient nexus with the provision of life insurance contracts or any other insurance products.

As such, Cash's activities in providing the referral services to Risky Business Ltd do not amount to "arranging" the provision of insurance and no part of that supply will be an exempt financial service under s 3(1)(i) and (l).

Accordingly, the entire referral fee Cash receives from Risky Business Ltd is consideration for a taxable supply and there is no need for apportionment.

Example | Taura 4 – Sale of asset management business and distribution agreement

Acme Bank & Trust (ABT), a registered bank, sells its asset management business to Coyote Canyon Capital (CCC), a licensed fund manager. As part of the transaction, ABT and CCC enter into a distribution agreement under which ABT will distribute CCC's managed investment products through ABT's branch network and digital platforms.

CCC's investment products (products) consist of a range of managed funds, such as equity, fixed income and diversified portfolios.

Under the agreement, CCC appoints ABT to promote, offer (ie, assist with the application process) and distribute its products to ABT's customers. This requires ABT to:

- advertise CCC's products and include them in marketing materials and campaigns;
- train and educate staff so they understand CCC's products and can effectively screen customers for suitability;
- present CCC's products to customers and explain product features, investment strategies and associated risks;
- assist customers with completing application forms and gathering supporting documentation;
- submit investment applications to CCC and follow up on account set-up or compliance queries;
- receive and process investment contributions and fund switches;
- notify customers of portfolio reviews and rebalancing opportunities;
- update customer information and investment preferences;
- provide customer service, including responding to enquiries and managing complaints;

- share customer insights and performance data with CCC;
- manage digital tools and systems that support customer interaction and streamline distribution processes; and
- participate in a joint committee with CCC to manage the relationship and strategic alignment.

For providing these services, CCC pays ABT:

- a placement fee based on a percentage of the initial investment amount received from customers;
- a trail commission calculated as a percentage of assets under management (AUM) attributable to ABT's clients;
- reimbursement for agreed marketing and training costs; and
- a fixed service fee for maintaining digital infrastructure and reporting systems.

Do ABT's services amount to "arranging" the issue, allotment or transfer of ownership of a participatory security?

Outcome

ABT makes two separate supplies to CCC: one relating to the sale or distribution of managed investment products and one relating to the retention of assets under management (AUM). The sale or distribution activities constitute "arranging" the issue or allotment of participatory securities and are exempt financial services. The AUM retention activities do not constitute arranging and are taxable.

Single supply or multiple supplies?

ABT provides CCC with a number of services. These include promotional and marketing services, explaining product features to clients, helping clients to fill out forms and submit applications, receiving and handling investment contributions, reporting and maintaining digital tools and systems, and maintaining the client relationship to maximise the retention of AUM.

It is helpful to consider the true and substantial nature of what is supplied from the recipient's (CCC's) point of view to determine if ABT makes one composite supply or multiple separate supplies.

CCC is paying separately for marketing and selling products, retaining AUM and maintaining digital tools and systems. However, the fact that these activities are charged for separately is not determinative.

From CCC's perspective, both the sale or distribution of products and the retention of AUM require ABT to perform discrete activities that are of value to CCC in their own right. Both the sale and the retention of the products are commercially significant to CCC's ability to profit from them. Therefore, objectively CCC contracts for the provision of both the services related to the sale or distribution of the products and those related to the retention of AUM.

ABT's services relating to the sale and distribution of products and those relating to the retention of AUM are, therefore, each an aim in themselves for CCC. By contrast, other activities – such as promotional and market services, explaining product features and maintaining digital and reporting infrastructure – are not aims in themselves for CCC. Rather, they are ancillary or incidental as they facilitate or enable the dominant supply of selling or distributing products, or are a means of better enjoying that supply.

The essential purpose of the transaction with ABT is to sell or distribute products and to retain AUM. It is reasonable to sever the transaction into the separate supplies of activities related to selling products and those related to retaining AUM.

However, the promotional and marketing activities and those activities directed to maintaining the digital and reporting infrastructure will be part of the single composite supply of selling products. Those activities will follow the GST treatment of the dominant element of that supply. As such, the "advising thereon" exclusion in s 3(1)(l) will not apply to any advisory content in ABT's services.

Arranging service?

The next question is whether ABT's activities constitute an arranging service.

For this purpose, the products constitute an interest in a unit trust and are a "participatory security" as that term is defined in s 3(2). Therefore, the question becomes whether ABT is arranging any of the activities specified in s 3(1)(d) (which relates to the issue, allotment, or transfer of ownership of an equity security or a participatory security) for the purposes of s 3(1)(l).

With regard to the selling or distribution of products, ABT's activities go beyond merely promotional and marketing activities. They include presenting CCC's products to clients, explaining product features to them, assisting them to complete application

forms, submitting those application forms to CCC and following up on account set-up. In doing so, ABT is directly and actively involved in activities that are intended to bring about the supply of issuing or allotting participatory securities (ie, the products). These activities are an important and integral part of the supply chain for the products and are tasks that CCC would otherwise have to do itself to bring about the supply to the client. Consequently, ABT's activities in bringing about the sale or distribution of participatory services – for which it receives the placement fee, marketing and training costs reimbursement and service fee – constitute “arranging” the issue or allotment of participatory securities. These fees or reimbursement payments are, therefore, consideration for the exempt supply of a financial service under s 3(1)(d) and (l).

ABT's activities relating to retaining AUM, however, do not arrange the issue, allotment, or transfer of ownership of a participatory security. ABT undertakes these retention activities in relation to products that have already been issued or allotted and are not being transferred. Issuing or allotting the products involved one-off activities that occurred when the products were sold. Therefore, the retention activities are not an arranging service under s 3(1)(d) and (l).

This outcome differs from the treatment of the retention activities in Example | Tauira 2. In that example, s 3(1)(i) applies to the “provision” of a life insurance contract, which has a wider meaning (describing something that happens continuously over time) than the terms “issue or allotment” (describing one-off actions) as used in s 3(1)(d) about a participatory security.

Further, the activities are not reasonably incidental and necessary to the supply of arranging the issue or allotment of the products for the purposes of s 14(1)(a), for the following reasons:

- The retention activities are a separate and dominant supply in their own right and are not secondary to or dependent on the arranging service (ie, arranging to sell or distribute products).
- The retention activities occur after the supply of the arranging service. Therefore:
 - it is not reasonable to expect the supplier to provide the retention activities in the course of undertaking the supply of the arranging service;
 - the retention activities are not supplied together with or as a consequence of the arranging service; and

- the retention activities cannot be seen from the surrounding circumstances to be needed or required for the supply of the arranging service.

Accordingly, ABT receives the trail commissions as consideration for a taxable supply.

Example | Tauria 5 – Loan syndication agent

The Loan Arranger is a syndication agent. He syndicates and negotiates loans for business customers.

Tonto's Tacos Ltd (Tonto's), a food manufacturing company, experiences seasonal fluctuations in cash flow. It needs \$25 million in working capital to cover inventory purchases and operational expenses ahead of its peak production period. Its main bank is willing to provide only \$10 million. To secure the full amount, Tonto's engages The Loan Arranger to structure and syndicate a short-term working capital facility.

The Loan Arranger:

- assesses Tonto's financing requirements, business model and risk profile;
- helps Tonto's to design a loan structure and develops financial models to assess feasibility;
- identifies and screens potential lenders;
- communicates with potential lenders and attends meetings to solicit their interest in providing the loan or part of it;
- assists Tonto's in negotiating terms with potential lenders; and
- coordinates the syndication process by securing commitments, coordinating information sharing, and overseeing the execution of legal documentation to bring the lending group together under agreed terms.

Once the facility is in place, The Loan Arranger manages drawdowns and repayments, ensuring smooth communication between Tonto's and the lending group.

For these services, Tonto's pays The Loan Arranger an upfront fee for preparing and marketing the loan, a success commission if The Loan Arranger arranges a loan acceptable to Tonto's and it is drawn down, and ongoing fees for managing the facility.

Managing the facility includes managing repayments and drawdowns, monitoring compliance, maintaining records and acting as the contact between the borrower and lenders throughout the life of the loan.

Are The Loan Arranger's services an arranging service?

Outcome

The Loan Arranger makes two distinct supplies: a loan syndication and arranging service, and a facility management service. The syndication and arranging service constitutes "arranging" the issue or allotment of a debt security (and potentially the provision of credit) and is exempt. The ongoing facility management service is administrative in nature and is a taxable supply.

Single supply or multiple supplies?

The Loan Arranger provides Tonto's with two types of service – loan syndication and arranging services and loan facility management services. For these services, Tonto's pays The Loan Arranger an upfront fee for preparing and marketing the loan, a success commission if a loan that is acceptable to Tonto's is drawn down, and ongoing fees for managing the facility.

For the fee for preparing and marketing the loan, The Loan Arranger performs the related activities before a loan is provided. However, from Tonto's perspective, the loan preparation and marketing services are not an aim in themselves. Tonto's has made arrangements with The Loan Arranger that it hopes will lead to being granted a syndicated loan.

Tonto's does not contract for the provision of the loan preparation and marketing services. The essential purpose of the transaction is the syndication and arranging service provided by The Loan Arranger. Preparing and marketing the loan is ancillary or incidental to the dominant supply of the syndication and arranging service as these activities facilitate or enable that dominant supply. The distinction between the activities related to the loan preparation and marketing services and those related to the loan syndication and arranging service is not enough to make it reasonable to sever the transaction between them. The GST treatment of preparing and marketing the loan will follow the treatment of the dominant supply.

Therefore, the loan preparation and marketing activities constitute a single composite supply, with the dominant activity being the loan syndication and arranging service. It

is the loan syndication and arranging service that Tonto's has paid for and is supplied with. As such, both the upfront fee for preparing and marketing the loan and the success commission are consideration for this single supply of the loan syndication and arranging service.

In terms of the ongoing fees that The Loan Arranger receives for managing the facility, the related activities occur after a loan has been drawn down. These activities have value to Tonto's as they ensure the syndicated loan operates smoothly, compliantly and efficiently over its life by:

- managing drawdowns and repayments;
- monitoring compliance with covenants; and
- maintaining records and loan balances and coordinating communications with lenders.

At first glance, The Loan Arranger's assistance with managing drawdowns and repayments appears to fall within s 3(1)(ka) and (l) in that it involves arranging the payment or collection of any amount of interest or principal for any debt security or credit contract. However, first it is necessary to consider whether these activities should be treated either as separate supplies or as the dominant activity within a single composite supply.

The essential feature of the facility management activities is that they involve administrative coordination of the syndicated loan and ongoing oversight and assurance of compliance with the terms of the facility. Managing drawdowns and repayments – along with monitoring compliance, maintaining records and loan balances, and coordinating communications – is an essential component of this overall service of syndicated facility coordination and oversight. The customer does not seek these activities independently; instead, these activities are integral components of a single integrated service of facility coordination and oversight. They cannot be meaningfully separated for GST purposes. For this reason, the GST treatment of these activities will be determined by the overall characteristics of the single composite supply.

Arranging service?

In terms of the "arranging" question, the syndicated loan is a debt security as defined in s 3(2) and may also be a credit contract as defined in s 3(2)(3B) and (3C).

The Loan Arranger's activities in providing the loan syndication and arranging services go well beyond bare introductions. These activities include assisting Tonto's to

negotiate loan terms with potential lenders, securing commitments and overseeing the execution of legal documentation. These are steps taken toward obtaining finance for Tonto's that constitute a direct and active involvement in an integral part of the supply chain for the loan, and intentionally cause that supply.

The activities are therefore properly characterised as arranging a syndicated loan, whether a loan acceptable to Tonto's is ultimately drawn down or not. The Loan Arranger is directly and actively involved in activities intended to bring about the supply of the issue or allotment of a syndicated loan to Tonto's or the provision of credit under the loan contract.

Consequently, The Loan Arranger's activities consist of:

- agreeing to make arrangements that are intended to lead to the issue or allotment of a syndicated loan to Tonto's – for which he receives the upfront preparation and marketing fee; and
- if successful in his efforts, bringing about the issue or allotment of a syndicated loan, for which he also receives the success commission.

These activities constitute "arranging" the issue or allotment of a debt security to which s 3(1)(c) and (l) applies, and may also be arranging the provision of credit under a credit contract to which s 3(1)(f) and (l) applies. The preparation and marketing fee and the success commission are therefore consideration for the exempt supply of a financial service under s 3(1)(c) and (l) and potentially s 3(1)(f) and (l).

For the ongoing facility management activities, the overall characteristics of the syndicated facility coordination and oversight service are administrative in nature and do not fall within any of the activities in s 3(1)(a) to (ka). Accordingly, the ongoing fees The Loan Arranger receives for this service are consideration for a taxable supply.

Example | Taura 6 – Broker company established by lending institutions

Broker Than You Think Ltd (BTYT) is a company that was established by several financial institutions to act as a mortgage broker. BTYT solicits customers who require finance and markets the loan products of the lender that offers the best interest rates or incentives. This involves advising the customer of the various loan options available, helping them complete and submit the application forms and engaging with the chosen lender about the loan application. BTYT's engagement with the chosen lender includes:

- responding to lender queries;
- negotiating terms where appropriate;
- tracking the application's progress;
- keeping the customer informed; and
- managing the final steps of the loan process once conditional approval has been granted.

For providing these services, the lender who provides the loan pays BTYT an initial commission, which is calculated on an arm's length basis as a percentage of the approved loan. As the market is competitive, the lender also pays BTYT:

- an annual trail commission calculated as a percentage of the outstanding loan balance if the loan remains on foot with the original lender; and
- a commission whenever a fixed interest rate loan needs refixing.

To help keep the loan on foot with the original lender, BTYT:

- maintains an ongoing relationship with the customer;
- monitors repayment activity to ensure payments are made correctly and on time;
- conducts regular reviews to assess whether the loan continues to meet the customer's needs; and
- provides ongoing support, including refinancing or refixing advice as appropriate.

Do BTYT's services amount to "arranging" the provision of credit under a credit contract?

Outcome

BTYT makes two separate supplies to the lender: a loan origination service and a loan retention service (including refixing). Both supplies constitute "arranging" the provision of credit under a credit contract and are exempt financial services under s 3(1)(f) and (l).

Single supply or multiple supplies?

BTYT provides a number of services to the lender, which can be grouped around loan origination, loan retention and loan refixing services.

The loan originating service includes soliciting customers, advising on loan options, helping customers complete and submit application forms and engaging with the chosen lender. BTYT receives the initial commission from the lender for providing this service.

The loan retention service requires BTYT to maintain ongoing contact with the customer, monitor repayment activity, conduct regular reviews to assess loan suitability, and provide ongoing support and advice. BTYT receives the annual trail commission from the lender for providing this service.

The loan refixing service requires BTYT to advise the customer and facilitate the refixing process with the lender when a fixed interest rate is due for refixing. BTYT receives the commission from the lender upon each refix.

The recipient of each of these supplies is the lender who pays BTYT the commissions.

The essential feature of the arrangement from the lender's perspective is the sale or distribution of loan products (the loan origination activities), and their retention on the lender's books (the loan retention and refixing activities).

All of these activities are of value to the lender in and of themselves. Both the sale or distribution and retention of loan products are commercially significant to the lender's ability to profit from them. Therefore, objectively the lender contracts with BTYT for the provision of all of the services related to the sale or distribution of the loan and those subsequently provided to help keep the loan on foot. BTYT's services relating to the sale and distribution of loans and those relating to their retention are therefore each an aim in themselves for the lender. The distinction between the loan origination and retention activities is sufficient to make it reasonable to sever them.

Refixing occurs at a critical juncture when the borrower is most likely to refinance, and the lender pays BTYT a separate commission to actively manage this risk. In this respect, the refixing activities represent a targeted intervention that could be viewed as a separate economic activity, distinct from BTYT's general retention efforts. However, from the lender's perspective, the key value lies in retaining the borrower – and therefore the revenue stream – regardless of whether the borrower refixes or transitions to a floating interest rate. Borrower retention is thus the dominant activity and an aim in itself for the lender.

The refixing activity is incidental or ancillary to this dominant activity; it is a means of better enjoying the retention service, as it helps prevent churn. While the lender pays a separate commission for the refixing activity, this is not determinative. The refixing activity forms part of a single composite supply of retention activities.

Accordingly, BTYT makes separate supplies for each of the loan origination and retention (which includes refixing) activities. However, there is no need to apportion the consideration between these activities. This is because BTYT is paid separate arm's length commissions for these services so the consideration matches the supply.

Arranging service?

Loan origination

BTYT's activities in assisting the lender to originate a loan go beyond a bare introduction. These activities involve advising on loan options, helping customers complete and submit application forms, responding to lender queries, negotiating loan terms where appropriate and managing the final steps of the loan process.

In undertaking these activities, BTYT is directly and actively involved in activities that are steps taken toward originating a loan between the lender and the customer, which is the intended outcome. BTYT's activities are an integral part of the supply chain for making a loan and are activities that the lender would otherwise have to complete themselves to bring a loan into existence.

BTYT's activities are therefore properly characterised as arranging a loan, whether the lender ultimately approves the loan or not. The loans are a "debt security" and a "credit contract" as those terms are defined in s 3(2). Therefore, BTYT's activities in originating loans will be a financial service of arranging the issue or allotment of a debt security under s 3(1)(c) and (l), and arranging the provision of credit under a credit contract under s 3(1)(f) and (l).

Loan retention

BTYT's loan retention activities occur after a loan has been originated but before it has been repaid. The activities include maintaining ongoing contact with the customer to ensure that the customer is meeting their repayment obligations, that the loan remains fit for purpose, and that the customer does not churn to another lender – including when it becomes time to refix the interest rate under the loan.

These activities go beyond administrative activities such as loan servicing as BTYT is directly and actively involved in activities directed to the ongoing maintenance of the

credit provided under the loan; the activities are intended to ensure the loan remains on foot. The activities are again an integral part of the supply chain for the provision of credit under a loan that the lender would otherwise have to do themselves.

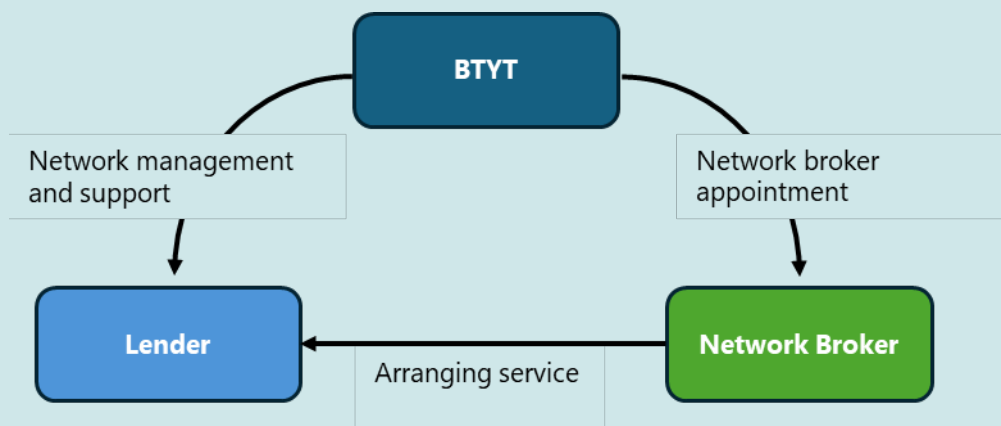
Therefore, BTYT’s loan retention activities constitute arranging the provision of credit under a credit contract and are also exempt under s 3(1)(f) and (l).

Example | Taura 7 – Broker company appointing network brokers

In this example, the facts are the same as in Example | Taura 6 except that BTYT appoints and trains independent brokers within BTYT’s network (network brokers), who engage with the customer and the lender around all aspects of securing a loan for the customer. Each network broker has full authority to act in the role that BTYT had in Example | Taura 6. Following the appointment, BTYT’s role is limited to organising the broker network, quality assurance and training, and administering commissions.

BTYT pays the network brokers a proportion of the commissions (initial, trail and refixing) that it receives from the lenders.

The contractual arrangements are shown in the diagram below:



Do BTYT’s services amount to “arranging” the provision of credit under a credit contract?

Outcome

BTYT’s services do not amount to “arranging” the provision of credit. In this arrangement, BTYT does not have a direct or active role in bringing about individual loan contracts. Its network management and support functions are taxable supplies.

Arranging service?

From Example | Tauria 6, the activities of the network brokers who engage with the customer and lender can be taken to be the supply of arranging the provision of credit under a credit contract, which is an exempt supply under s 3(1)(f) and (l).

In this variation, the lender's objective in contracting with BTYT remains the sale and maintenance of loans. However, BTYT does not itself arrange the sale or maintenance activities, as it is contracted by the lender to procure network brokers who have full authority to bring them about without any involvement from BTYT. The network brokers cannot be said to act as BTYT's agents in providing the arranging service, as they create legal relations between the lender and the borrower but do not bind BTYT to anything.

Accordingly, BTYT's activities lack a clear nexus with the provision of specific loan contracts, which is required to constitute arranging the specific supply of a financial service, and cannot be said to be incidental, ancillary or integral to the arranging service provided by the network brokers. BTYT's services are therefore separate services, limited to broker network management, quality assurance and training, and commission administration.

As such, BTYT is not sufficiently or actively involved in the sale or maintenance of credit under the loans. BTYT's activities – organising the broker network, quality assurance, training, and commission administration – are support functions that occur outside the supply chain for the actual arranging service provided by the network broker.

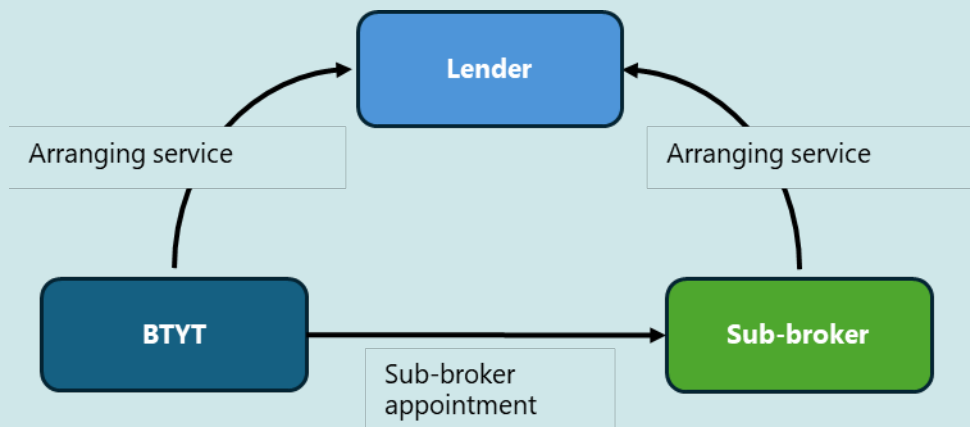
While BTYT's activities may lead to the supply of credit under a loan (which is a financial service under s 3(1)(f) and (l)), they are not sufficiently closely connected with or do not intentionally cause the supply of that financial service. BTYT's activities do not constitute steps that bring about the financial service. They are not precursors to the provision of a loan that the recipient of that financial service has already decided to obtain.

Therefore, the supplies that BTYT makes in this variation are taxable supplies. Given this conclusion, it is not necessary to determine if BTYT's services are regarded as a single composite supply or several separate supplies – the GST treatment remains the same.

Variation on Example | Taura 7

The key feature of this variation is that BTYT is contractually responsible to the lender for providing the arranging service, even though the customer-facing and lender-facing activities are carried out by sub-brokers on its behalf.

The contractual arrangements in this variation are shown in the diagram below:



Outcome (variation)

In this variation, both BTYT and the sub-brokers are arranging.

Arranging service?

BTYT is contracted by the lender to provide the arranging service and, in doing so, appoints and trains sub-brokers to engage with the customer and the lender in securing a loan. Unlike the base example, BTYT remains contractually responsible to the lender for performing that arranging service.

“Arranging” requires a direct and active involvement in an integral part of the supply chain that is intended to bring about the supply of a financial service and that has a sufficient nexus with that supply.

The reasoning in *Countrywide Insurance Marketing Limited v C & E Comms* [1993] VATTR 277 supports this approach. In that case, the taxpayer’s activities went beyond mere publicity, promotion or marketing because it devised products, conducted negotiations and facilitated downstream transactions in a way that established a clear nexus with the provision of specific insurance contracts. That direct involvement in

bringing about the supply was central to the conclusion that the taxpayer was making arrangements for insurance.

Applying those principles here, the fact that BTYT appoints sub-brokers to undertake the customer-facing and lender-facing activities does not prevent BTYT from itself supplying an arranging service. BTYT has assumed contractual responsibility to the Lender to bring about the origination (and, where relevant, retention) of loans, and the sub-brokers perform the operational activities in fulfilment of that obligation on BTYT's behalf. Those acts are authorised by the sub-contract between the sub-broker and BTYT as the means by which BTYT will perform its obligations to the Lender under the head contract. In undertaking them, the sub-broker acts on behalf of BTYT by carrying out acts that are attributable to BTYT and affect BTYT's legal relations with the Lender. On that basis, the sub-broker is acting as BTYT's agent. As the sub-brokers' acts correspond with BTYT's obligations to the Lender, they are treated as BTYT's contractual performance of those obligations (*Suzuki New Zealand Ltd v CIR* (2001) 20 NZTC 17,096 (CA)).

In these circumstances, BTYT's role is more than merely organising or supporting a broker network. By entering into a contract to provide the arranging service and remaining liable for its performance, BTYT is positioned within the supply chain as the party responsible for bringing about the provision of the credit under the loan contracts. The activities of the sub-brokers are the means through which BTYT discharges that responsibility. Accordingly, BTYT's activities have a sufficient nexus with the provision of specific loan contracts to constitute arranging.

At the same time, the sub-brokers will also be supplying "arranging" services. As in Example | Tauira 6, their direct engagement with customers and lenders in completing applications, progressing approvals and bringing loans into existence constitutes direct and active involvement in an integral part of the supply chain for the provision of credit.

Therefore, both BTYT and the sub-brokers in this variation are making supplies of arranging services to the lender. The sub-brokers perform the steps that directly and actively bring about the loan, while BTYT supplies the arranging service by assuming contractual responsibility for that outcome and procuring and deploying the sub-brokers to perform those steps.

This conclusion is consistent with the distinction drawn in the base example. There, BTYT did not undertake or assume responsibility for bringing about a loan and merely procured network brokers who acted in their own right.

Accordingly, BTYT's activities in this variation constitute "arranging" the provision of credit under a credit contract for the purposes of s 3(1)(f) and (l), and the same is true of the activities undertaken by the sub-brokers.

Example | Taura 8 – Car retailer as agent for finance company

Wheely Good Deals (WGD) is a used car retailer. WGD has an arrangement with WheelCred, a finance company that specialises in providing car loans.

When a customer of the car dealership (buyer) wants to buy a car on finance, WGD promotes WheelCred's car loans to them. If the buyer is interested, WGD assists them to complete and submit WheelCred's loan application form and other documents required in support of the application. WGD also runs a credit check on the buyer before providing the loan application documents and results of the credit check to WheelCred.

In addition to assisting with the loan application, WGD:

- explains the loan terms to the buyer, including interest rates, repayment schedules and any fees;
- collects and verifies identification documents and proof of income or employment, as required by WheelCred; and
- provides post-sale support, such as helping the buyer with queries about repayments or communicating with WheelCred if issues arise.

WheelCred pays a commission to WGD for each buyer referral who is approved for a loan.

Do WGD's services amount to "arranging" the provision of credit under a credit contract?

Outcome

WGD's activities constitute a single composite supply of services directed toward originating loans, which amounts to "arranging" the provision of credit under a credit contract. The supply is an exempt financial service under s 3(1)(f) and (l).

Single supply or multiple supplies?

WGD performs a range of activities that support the buyer in applying for a loan and assist WheelCred's decision-making process. These activities include:

- promoting WheelCred's loan products to buyers;
- assisting with loan application documents and their submission;
- performing and forwarding credit checks to WheelCred;
- explaining loan terms to buyers;
- collecting and verifying buyers' supporting documents; and
- providing buyers with post-sale support.

All of these activities are directed toward the single commercial objective of enabling WheelCred to originate loans with buyers. From WheelCred's perspective, the value lies in the sale or distribution of new loans. The sale or distribution of loans is the dominant activity performed by WGD and is an aim in itself for WheelCred.

The commission WheelCred pays is based on successful loan approvals and there is no separate consideration for each individual activity. Although not determinative, this further supports the view that WGD is providing a single composite supply of sale or distribution services to WheelCred.

The post-sale support, while ongoing, is incidental or ancillary to the dominant activity of originating the loan. It helps keep the buyer engaged and compliant with the loan terms, which supports WheelCred's interest in maintaining the loan.

Therefore, WGD's activities constitute a single composite supply of services directed toward originating loans.

Arranging service?

WGD's activities go beyond a bare introduction of the buyer to WheelCred. WGD is directly and actively involved in assisting the buyer with the loan application process. This includes assisting the buyer with preparing and submitting the application, conducting credit checks, explaining loan terms and verifying supporting documents. These activities are steps taken toward the provision of credit under a credit contract between WheelCred and the buyer; they are intended to bring about that outcome even if a loan does not ultimately come into existence.

WGD's involvement is integral to the supply chain for making the loan. The activities are such that WheelCred would otherwise have to perform them itself to bring the loan into existence. WGD's post-sale support, while ongoing, is also directed at maintaining the provision of credit under the loan and ensuring the buyer remains compliant with its terms.

Accordingly, WGD's activities are properly characterised as arranging the provision of credit under a credit contract, which constitutes an exempt financial service under s 3(1)(f) and (l).

Example | Taura 9 – Fintech operating an AI tool

Cashanova is a fintech company that operates an AI tool with a web-based interface designed to match candidates seeking finance with suitable lenders from among those Cashanova has commercial arrangements with. Cashanova is responsible for designing, maintaining and operating the AI tool.

Under its arrangements with lenders, Cashanova is engaged to generate and submit loan applications on their behalf using the AI tool, with the objective of bringing about the origination of loans for those lenders.

Candidates interact with the AI tool via the interface, inputting their personal and financial details. The AI tool verifies and processes this data to assess each candidate's eligibility and match them to lenders.

The AI tool's algorithms assess criteria such as creditworthiness, loan type, requested loan amount, interest rates and approval likelihood. Based on this analysis, the AI tool recommends one or more lenders to the candidate.

If the candidate chooses to proceed, they instruct the AI tool to submit a loan application. The AI tool completes the application using the information that the candidate provided and forwards it to the selected lender.

The lender assesses the application in accordance with its own credit policies and, if satisfied, approves the loan and enters into a formal loan agreement directly with the candidate.

Cashanova is responsible for maintaining the AI tool, which requires ongoing physical effort. This includes regularly updating the AI tool's decision-making system by training it with new data and testing it to ensure it continues to make accurate and fair recommendations. Cashanova also manually reviews outputs, fixes errors and updates

the AI tool's logic when needed. In addition, Cashanova handles sensitive candidate information securely, monitors the tool for issues and ensures it complies with lending and privacy regulations.

Cashanova receives brokerage fees from lenders for each approved loan referral and application submitted through its AI tool. These fees compensate Cashanova for providing matching services, application processing and platform infrastructure.

Does Cashanova perform an arranging service?

Outcome

Cashanova's activities constitute a single composite supply of services that amounts to "arranging" the provision of credit under a credit contract. Its services are directly and actively involved in the loan origination supply chain and are exempt financial services under s 3(1)(f) and (l).

Single supply or multiple supplies?

By integrating the lender's products into its AI tool, Cashanova provides a targeted loan product promotion and candidate referral service to lenders with whom it has commercial arrangements. These activities and those Cashanova provides to maintain the AI tool and securely handle candidate information are geared towards generating qualified loan applications and submitting them to those lenders by:

- promoting loan products to candidates (the AI tool recommends a loan from among the lenders that Cashanova has commercial arrangements with);
- performing credit checks on candidates and forwarding them to the chosen lender;
- explaining loan terms to candidates (in making recommendations to candidates);
- collecting candidates' data; and
- helping to prepare and submit loan application documents.

All of these activities are supplied to the lender, who pays Cashanova a brokerage fee as consideration for the service. The candidate is not the recipient of the supply.

The above activities and those that Cashanova physically carries out to enable the AI tool to perform the activities effectively and securely are directed toward the single

commercial objective of assisting the chosen lender to originate loans. Each activity Cashanova performs is not an end in itself, but part of an overall service package whose dominant element is to bring about the lender's origination of loans. From the lender's perspective, the value for which they pay Cashanova the brokerage fee lies in the sale or distribution of new loans. Its role in the sale or distribution of loans is the dominant activity Cashanova performs and is an aim in itself for the lender.

While some activities such as data handling and maintenance of the AI tool may appear operational, they are essential to the delivery of the core service and cannot be meaningfully separated from the loan origination activity.

Therefore, Cashanova's activities constitute a single composite supply of services directed toward originating loans.

Arranging service?

The activities Cashanova performs go well beyond merely providing the setting by which lenders can enter into loans with candidates. Cashanova regularly trains the AI tool with new data, tests it, manually reviews outputs, and fixes or updates the AI tool's logic as needed. Cashanova also handles candidate information securely and in compliance with regulations. These activities are essential to ensuring the AI tool continues to effectively match candidates to suitable lenders and support the lenders' loan origination process by soliciting and screening candidates, and submitting qualified loan applications.

In providing its services, Cashanova is directly and actively involved in activities that are integral to the supply chain for making a loan and that the lender would otherwise have to do itself to bring about the loan. The activities go beyond a bare introduction and are steps taken toward bringing about the provision of credit under a credit contract between the lender and the candidate. They are intended to bring about that outcome even if a loan does not ultimately come into existence.

Consequently, Cashanova's activities constitute arranging the provision of credit under a credit contract, which is an exempt financial service under s 3(1)(f) and (l).

This conclusion reflects that Cashanova is engaged to bring about the provision of credit, with the AI tool being the means by which that service is performed.

Variation on Example | Taura 9

In a variation on this example, the facts are the same except that Cashanova is engaged by lenders only to provide access to the AI tool. The lenders use the tool in

their own loan origination processes and are responsible for screening candidates, progressing applications and bringing loan contracts into existence, with Cashanova providing only access to the AI tool through which those activities are carried out.

Outcome (variation)

Cashanova's services do not amount to "arranging" the provision of credit. Its services are a taxable supply of a platform or technology service.

Arranging service? (variation)

Although the AI tool may be used in circumstances that lead to loans being issued, "arranging" requires a direct and active involvement in an integral part of the supply chain that is intended to bring about the provision of a financial service. In this variation, Cashanova is not engaged to bring about the origination of loans. Instead, it is engaged only to make the AI tool available for lenders to use in their own processes.

Cashanova's activities in operating and maintaining the AI tool therefore lack a sufficient nexus with the provision of specific loan contracts and do not constitute steps that bring about the provision of credit. Accordingly, its services do not constitute "arranging".

Draft items produced by the Tax Counsel Office represent the preliminary, though considered, views of the Commissioner of Inland Revenue.

In draft form these items may not be relied on by taxation officers, taxpayers, or practitioners. Only finalised items represent authoritative statements by Inland Revenue of its stance on the particular issues covered.

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taxpayer's circumstances and an example in an interpretation statement will not necessarily lead to the same tax result. Each case must be considered on its own facts.