Inland Revenue
Te Tari Taake

INTERPRETATION STATEMENT | PUTANGA WHAKAMĀORI

GST – Arranging and brokering financial products

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IS 26/14

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 represent 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 a person is "arranging" a financial service is determined by reference to the supply they make. Supplies by brokers and intermediaries will generally consist of multiple service elements. In these circumstances, it is first necessary to identify the supply or supplies that are relevant to the analysis. This may require determining whether those different elements constitute a single composite supply or multiple separate supplies 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.

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

9. Whether a person is "arranging" a financial service is determined by reference to the supply they make. Supplies by brokers and intermediaries will generally consist of multiple service elements. In these circumstances, it is first necessary to identify the supply or supplies that are relevant to the analysis. This may require determining whether those different elements constitute a single composite supply or multiple separate supplies. As noted at paragraph 17 below in discussing single composite or multiple separate supplies, these questions are answered by examining what the recipient has paid for and been supplied with from their point of view.

10. Once the relevant supply or supplies have been identified, it is then necessary to ask whether they constitute "arranging" any of the activities specified in paras (a) to (ka), other than advising thereon for the purposes of s 3(1)(l). This question is answered by applying the approach described in **IS 25/05: GST treatment of fees paid in relation to managed funds** as discussed below.

11. 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]

12. 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 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]

13. 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] An intermediary's activities will generally amount to arranging if they contribute in a significant way to the occurrence of the intended supply such that any subsequent activities by other intermediaries that give effect to, or implement, the supply of the financial service are simply a consequence of those activities. 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 itself in bringing about the supply of the financial service to the recipient.

14. 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

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

[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.

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]

Single composite supply or multiple separate supplies

15. Where an intermediary or broker is found to make an exempt supply of arranging, it is then necessary to determine whether all of the elements supplied form part of that arranging service or whether any marketing, advisory or other elements constitute separate supplies with a different GST treatment. This is determined by applying the approach described in **IS 18/04: Goods and Services Tax – Single supply or multiple supplies**.

16. 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?

17. 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.

18. 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.

19. 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,

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

in economic substance, is a single supply. The fact an element is separately priced or can be supplied separately is not determinative.

20. 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.

Apportionment

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

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

Meaning of "provision"

23. 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.

24. 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.

25. 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".

[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).

Reasonably incidental

26. 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.

27. 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 | Tauira

Example | Tauira 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

[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.

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.
- 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.

Arranging service?

Whether a person is arranging a financial service is determined by reference to the supply they make. Therefore, it is first necessary to identify the supply or supplies that

are relevant to the analysis. As noted in paragraph 17 above, this is determined by examining what the recipient has paid for and been supplied with from their point of view. The recipient is Lois, who pays Mark for his services.

In this example, Mark's involvement in the transaction is limited to finding and introducing 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. Mark therefore provides an introduction service.

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. Mark's services are therefore taxable.

Variation on Example | Tauira 1

In a variation on this example, the facts are varied such that Mark also formally lists Lois's shares for sale, puts together more comprehensive financial and operating information about the business, advertises the sale of the shares, and negotiates the structure, terms and price of the sale of the shares with potential buyers. Lois still needs to enter the agreement with the buyer to make it binding. Instead of receiving a marketing and success fee, Mark is paid in instalments as his services are provided.

Outcome (variation)

Although Mark does not have authority to bind Lois to the sale of the shares, his activities constitute "arranging" the transfer of ownership of an equity security for the purposes of s 3(1)(d). His role in bringing Lois together with a fully negotiated buyer provides a clear linkage between Mark's services and the transfer of ownership of the shares. His services under this variation are therefore exempt.

Arranging service?

From Lois's point of view, the essential (dominant) feature of the arrangement is the service of Mark introducing her to a fully negotiated buyer with whom she can enter into an agreement to sell her shares. Mark does not have the authority to bind Lois to an agreement with a potential buyer for the sale of her shares but that is not determinative. Despite not being able to bind Lois, Mark delivers to her a fully

negotiated buyer who wishes to purchase the shares and whose offer she only needs to accept. This causes the successful acceptance of the buyer's offer so that Lois can transfer the ownership of the shares under the resulting agreement, which is a financial service under s 3(1)(d).

Mark's activities go beyond merely promoting the sale of the shares or introducing a potential purchaser. By formally listing the shares for sale, preparing financial and operating information, advertising the sale, and negotiating the structure, terms and price of the transaction, Mark is directly and actively involved in activities intended to bring about the transfer of ownership of the shares.

Mark is therefore sufficiently involved in bringing Lois and the buyer together, being parties to a financial service. Accordingly, Mark's activities in this variation have a sufficiently close nexus with Lois's financial service of transferring ownership of the shares.

The conclusion that Mark supplies an arranging service does not resolve whether all of the activities undertaken by Mark form part of that arranging service or whether some activities are separate supplies with a different GST treatment. It is therefore necessary to consider whether Mark makes a single composite supply or multiple supplies.

Single supply or multiple supplies?

Under the arrangement, Mark carries out market research, marketing and negotiating activities, and introduces Lois to a fully negotiated buyer. Mark is paid for these services in instalments as the services are provided.

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

As established above when asking what Lois has paid for and been supplied with from her point of view, the essential (dominant) feature of the arrangement from Lois's point of view is the service of Mark introducing her to a fully negotiated buyer with whom she can enter into an agreement to sell her shares. The market research and marketing services Mark provides are ancillary or incidental to the dominant supply in that they facilitate or enable Mark to introduce Lois to a fully negotiated buyer.

The essential purpose of the transaction with Mark is for him to introduce Lois to a fully negotiated buyer for her shares. It would not be reasonable to sever the elements of the transaction into separate supplies.

The fact that Mark is paid in instalments as his services are provided does not alter this conclusion. Although the instalments are payable before a sale occurs and regardless of whether a sale is ultimately completed, Lois makes those payments in the hope that Mark's activities will lead to securing a fully negotiated buyer for the shares. From Lois's perspective, the market research, promotional and negotiation activities do not constitute aims in themselves but facilitate and enable that dominant supply. Accordingly, the instalment payments in this variation do not indicate that separate supplies have been made and merely reflect the timing of the consideration for that supply.

The fees paid to Mark in instalments are all consideration for the exempt single composite supply of introducing Lois to a fully negotiated buyer for the shares. Accordingly, there is no need to apportion the fees between the different elements of the supply. Mark's services are exempt.

Example | Tauira 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.

One of the insurers Cash works with is 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%

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.

Arranging service?

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.

As noted in Example | Tauira 1 above, it is helpful to begin by considering what the recipient has paid for and been supplied with from their 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. This conclusion depends on the facts of the arrangement. As illustrated by the Variation on Example | Tauira 4

below, where the intermediary is not required to undertake activities directed at retaining customers or assets and the recipient performs those functions itself, it may

be open to conclude that the recipient is only paying for a single composite supply of sale or distribution services.

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.

Having concluded that Cash's sale or distribution and retention activities constitute arranging services, it is necessary to consider whether the related advisory and marketing activities form part of those arranging services or are separate supplies with a different GST treatment. This requires determining whether Cash makes a single composite supply or multiple supplies.

Single supply or multiple supplies?

Under the arrangement, Cash carries out advisory, marketing, sales or distribution and retention activities. For these services, Cash is paid an upfront initial commission for each policy sold and subsequently an annual renewal commission for each year those policies remain in force.

To determine if Cash makes one composite supply or multiple separate supplies of services, the true and substantial nature of what Cash has supplied to Claim to Fame must be considered from the recipient's (in this case, Claim to Fame's) perspective.

As established above when asking what Claim to Fame has paid for and been supplied with from his point of view, the essential (dominant) feature of the arrangement from Claim to Fame's point of view is the sale of insurance policies and keeping 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 related marketing and advisory services 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. Accordingly, the GST treatment of the marketing and advisory services will follow the treatment of the dominant element of the supply. The "advising thereon" exclusion in s 3(1)(l) will not apply to the advisory content of Cash's activities.

Apportionment

Although Cash's activities in bringing about the sale or distribution and retention of insurance policies constitute "arranging" the provision of insurance, 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 | Tauira 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.

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.

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.

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.

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

Example | Tauira 3 – Insurance broker providing referral service

Cash Broker (who we met in Example | Tauira 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)
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.

Arranging service?

As with Claim to Fame in Example | Tauira 2, Cash provides a number of services to Risky Business Ltd. As noted in Example | Tauira 1, it is helpful to begin by considering what the recipient has paid for and been supplied with from their point of view. The recipient in this case is Risky Business Ltd, which pays Cash for his services.

From Risky Business Ltd's perspective, it is paying Cash to provide a referral service. In terms of this service, Cash's activities do not go beyond promotional and marketing activities. Cash therefore does not have a direct involvement in an integral part of the supply chain that is intended to bring about the supply of a financial service. Consequently, his activities 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 | Tauira 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.

Arranging service?

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.

As noted in Example | Tauira 1, it is helpful to begin by considering what the recipient has paid for and been supplied with from their point of view. The recipient in this case is CCC, which pays ABT for its services.

From CCC's perspective, it is paying for two services. These services involve the sale or distribution of products and the retention of AUM. Both the sale and the retention of the products are each valuable to CCC as they are commercially significant to CCC's ability to profit from the products. 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. CCC pays separately for marketing and selling the products, retaining AUM and maintaining digital tools and systems. However, the fact that these activities are charged for separately is not determinative.

ABT's services relating to the sale and distribution of products and those relating to the retention of AUM are each an aim in themselves for CCC. By contrast, the other activities – including promotional and marketing 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 products constitute an interest in a unit trust and are a "participatory security" as that term is defined in s 3(2). Therefore, the next question is 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 mere 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 the issue or allotment of participatory securities (that is, 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 securities constitute "arranging" the issue or allotment of participatory securities.

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) in relation to a participatory security.

Having concluded that ABT's sale or distribution activities constitute an arranging service, it is necessary to consider whether the other activities undertaken by ABT form part of that arranging service or are separate supplies with a different GST treatment.

Single supply or multiple supplies?

Under the arrangement, ABT carries out product distribution and AUM retention activities, supported by related marketing, customer service and infrastructure activities. For these services, ABT is paid a placement fee, a trail commission, a

reimbursement payment for agreed marketing and training costs, and a fixed service fee.

To determine if ABT makes one composite supply or multiple separate supplies of services, the true and substantial nature of what ABT has supplied to CCC must be considered from the recipient's (in this case, CCC's) perspective.

As established above when asking what CCC has paid for and been supplied with from its point of view, the essential (dominant) feature of the arrangement from CCC's point of view is the sale or distribution of products and the retention of AUM. It is reasonable to sever the transaction into the separate supplies of activities related to selling products and those related to retaining AUM. 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.

The placement fee, reimbursement of marketing and training costs, and service fee are therefore consideration for the exempt supply of a financial service under s 3(1)(d) and (l).

In terms of the retention of AUM, ABT receives the trail commissions as consideration for a taxable supply. The activities that they remunerate do not themselves relate to an exempt supply of arranging. Nor are they 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.

Variation on Example | Tauira 4

In a variation on this example, ABT's role is limited to promoting, offering and distributing CCC's products. ABT advertises CCC's products, explains their features and risks to customers, assists with the application process and submits investment applications to CCC.

Following the customer's investment, CCC is responsible for administering the products, maintaining customer records, handling enquiries and complaints, undertaking portfolio reviews, identifying rebalancing opportunities and managing the ongoing customer relationship.

ABT may from time to time contact customers as part of its broader banking relationship with them, including to check whether they remain satisfied with the services they receive and to identify opportunities to offer other products or services. However, ABT is not required under the distribution agreement to undertake activities specifically directed at retaining AUM attributable to CCC's products.

For providing these services, CCC pays ABT a placement fee based on the initial investment amount received from customers and a trail commission calculated as a percentage of AUM attributable to ABT's clients.

Outcome (variation)

ABT makes a single supply relating to the sale or distribution of CCC's products. The placement fee and trail commission are both consideration for that supply. The supply constitutes "arranging" the issue or allotment of participatory securities and is an exempt financial service under s 3(1)(d) and (l).

Arranging service? (variation)

From CCC's perspective, it is paying ABT to distribute its products and originate investments. The sale or distribution of CCC's products is the essential (dominant) feature of the arrangement and is an aim in itself for CCC.

Unlike the primary example, ABT does not undertake ongoing activities directed at retaining AUM in CCC's products. Following the investment, CCC is responsible for administering the products, managing the ongoing customer relationship and undertaking activities designed to retain the customer's investment. While ABT may

have occasional contact with customers as part of its broader banking relationship with them, those activities are not specifically undertaken for CCC.

The trail commission is payable only because ABT originally arranged the investment. Although the placement fee and trail commission are paid at different times and calculated in different ways, this is not determinative. The arrangement does not require ABT to provide a separate retention service in exchange for the trail commission. Such a service is not an aim in itself for CCC, as CCC performs the customer management and retention activities itself.

Accordingly, from CCC's perspective, it is paying the placement fee and trail commission as consideration for a single supply relating to the sale or distribution of its products. ABT's activities in relation to that supply still intentionally cause the issue or allotment of the participatory securities that constitute those products. The activities go beyond mere promotional and marketing activities. They involve ABT presenting and explaining products to clients and assisting them to complete application forms, which ABT then submits to CCC. 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. ABT's activities constitute arranging the issue or allotment of participatory securities under s 3(1)(d) and (l). On the facts of this variation, both the placement fee and trail commission are consideration for an exempt financial service.

Example | Tauira 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;
- markets the proposed loan to potential lenders by communicating with them and attending 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.

Arranging service?

The Loan Arranger provides Tonto's with a number of services. These include activities directed towards obtaining a syndicated loan facility, securing lender participation, and administering the facility once established. 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.

As noted in Example | Tauira 1, it is helpful to begin by considering what the recipient has paid for and been supplied with from their point of view. The recipient in this case is Tonto's, which pays The Loan Arranger for his services.

From Tonto's perspective, it is paying for two services: a syndication and arranging service, and a facility management service. Both services are aims in themselves for Tonto's.

In terms of the syndication and arranging service, Tonto's has made arrangements with The Loan Arranger that it hopes will lead to being granted a syndicated loan. However, from Tonto's point of view, it does not contract for the loan preparation and marketing services as aims in themselves. Rather, those activities facilitate or enable the syndication and arranging service. This is even though The Loan Arranger performs the activities relating to the fee for preparing and marketing the loan before a loan is provided.

For 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.

The next question is whether The Loan Arranger is arranging any of the activities specified in s 3(1)(a) to (ka). For this purpose, 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), read with subsections (3B) and (3C). Accordingly, s 3(1)(c), (f) and (l) are relevant.

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 are intended to bring about that supply.

The activities are therefore properly characterised as arranging a syndicated loan, whether or not a loan acceptable to Tonto's is ultimately drawn down. 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) apply, and may also be arranging the provision of credit under a credit contract to which s 3(1)(f) and (l) applies.

In terms of the ongoing fees that The Loan Arranger receives for managing the facility, the related activities are not directed specifically to preventing churn and therefore keeping the loan with Tonto's on foot. As such, these activities do not bring about the provision of credit under a credit contract for the purposes of s 3(1)(f) and (l).

Further, The Loan Arranger's assistance with managing drawdowns and repayments appears, at first glance, 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. This is considered next.

Single supply or multiple supplies?

As established above when asking what Tonto's has paid for and been supplied with from its point of view, the arrangement has two essential (dominant) features from Tonto's point of view: the syndication and arranging service, and the facility management service.

In terms of the fee for preparing and marketing the loan, as described in the arranging analysis above, the related activities are not an aim in themselves for Tonto's. Rather, the loan preparation and marketing activities are ancillary or incidental to the syndication and arranging service provided by The Loan Arranger because they 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.

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).

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 the overall service of syndicated facility coordination and oversight. Tonto's 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.

In this regard, the overall characteristics of the syndicated facility coordination and oversight service do not bring about a supply of credit under a credit contract and are administrative in nature. Accordingly, they do not fall within any of the activities listed in s 3(1)(a) to (ka).

This outcome can be contrasted with the retention activities in Examples 2 and 6. In those examples, the intermediary's ongoing activities are directed at retaining the customer and ensuring that the insurance policy or loan remains on foot. Because the relevant financial services are defined by reference to their ongoing provision, those activities constitute arranging that continuing provision. In this example, however, the facility management activities are not directed at retaining the borrower or ensuring that credit continues to be provided. Instead, they are directed at administering and coordinating the facility after it has been established. Accordingly, the ongoing fees The Loan Arranger receives for this service are consideration for a taxable supply.

Example | Tauira 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).

Arranging service?

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

The loan origination 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.

As noted in Example | Tauira 1, it is helpful to begin by considering what the recipient has paid for and been supplied with from their point of view. The recipient is the lender who pays BTYT for its services.

From the lender's perspective, they are paying for two services. These services involve the sale or distribution of loan products (the loan origination activities), and their retention on the lender's books (the loan retention activities). As discussed below in the analysis of single or multiple supplies, the refixing activities form part of the loan retention activities.

The loan origination activities and the loan retention 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. This conclusion depends on the facts of the arrangement. As illustrated by the Variation on Example | Tauira 4

above, where the intermediary is not required to undertake activities directed at retaining customers or assets and the recipient performs those functions itself, it may be open to conclude that the recipient is only paying for a single composite supply of sale or distribution services.

The next question is whether BTYT is arranging any of the activities specified in s 3(1)(a) to (ka) for the purposes of s 3(1)(l). This is answered as follows.

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 itself 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 itself.

Therefore, BTYT's loan retention activities will also be a financial service of arranging the provision of credit under a credit contract under s 3(1)(f) and (l).

Having concluded that BTYT's loan origination and loan retention activities each constitute an arranging service, it is necessary to consider whether the other activities undertaken by BTYT form part of those arranging services or are separate supplies with a different GST treatment.

Single supply or multiple supplies?

As established above when asking what the lender has paid for and been supplied with from their point of view, the arrangement has two essential (dominant) features from the lender's point of view: the loan origination activities and the loan retention activities. The distinction between these two activities is sufficient to make it reasonable to sever them.

The other activity that BTYT is involved with is refixing fixed interest rates on loans. 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. The refixing activity is incidental or ancillary to the dominant loan retention 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 two separate supplies: a loan origination service and a loan retention service, which includes the refixing activities. Both supplies constitute arranging the provision of credit under a credit contract and are exempt under s 3(1)(f) and (l). The loan origination service also constitutes arranging the issue or allotment of a debt security under s 3(1)(c) and (l). There is no need to apportion the consideration between the two supplies because they are both exempt supplies and BTYT receives

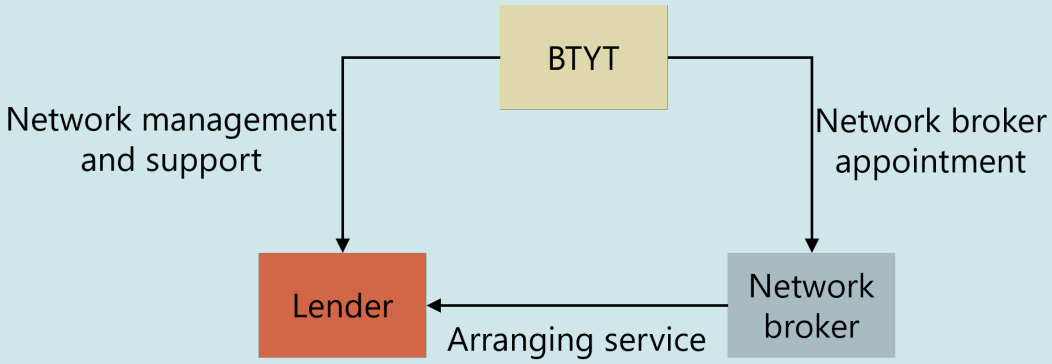
separate arm's length commissions for the services, so the consideration is already attributable to the relevant supply.

Example | Tauira 7 – Broker company appointing network brokers

In this example, the facts are the same as in Example | Tauira 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 | Tauira 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 | Tauira 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 example, 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, and 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

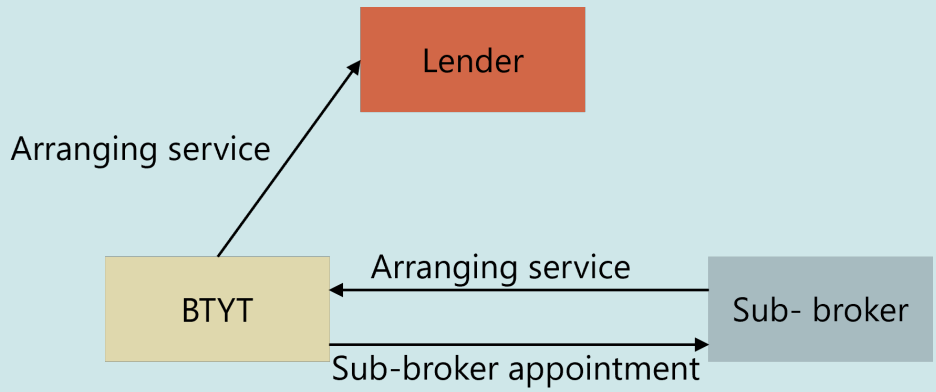
the provision of a loan that the recipient of that financial service has already decided to obtain.

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 | Tauira 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* Commrs [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. Although the sub-brokers contract with BTYT, the activities they perform arrange the provision of credit under a credit contract by the lender to the borrower.

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 | Tauira 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 referred buyer 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).

Arranging service?

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.

As noted in Example | Tauira 1, it is helpful to begin by considering what the recipient has paid for and been supplied with from their point of view. The recipient is WheelCred, which pays WGD for its services.

From WheelCred's perspective, it is paying for a loan origination service. All of WGD's 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 an aim in itself for WheelCred.

The next question is whether WGD is arranging any of the activities specified in s 3(1)(a) to (ka) for the purposes of s 3(1)(l).

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 under s 3(1)(f) and (l).

Having concluded that WGD's loan origination service constitutes an arranging service, it is necessary to consider whether all of WGD's activities described above form part of that arranging service or whether some are separate supplies with a different GST treatment.

Single supply or multiple supplies?

As established above when asking what WheelCred has paid for and been supplied with from its point of view, the essential (dominant) feature of the arrangement from WheelCred's point of view is the loan origination service.

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 loan origination services to WheelCred. The promotional, explanatory, credit checking and document verification activities are not aims in themselves for WheelCred. Rather, they facilitate or enable the loan origination service and are therefore ancillary or incidental to that dominant supply. It would not be reasonable to sever those activities into separate supplies.

The post-sale support, while ongoing, is also 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.

Accordingly, WGD'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).

Variation on Example | Tauira 8

In a variation on this example, WGD's activities are limited to promoting WheelCred's products, explaining the application process and information requirements, and referring the customer to WheelCred. WheelCred then collects and verifies the buyer's supporting documents and completes the application documents with them. WheelCred also provides the buyer with post-sale support.

Outcome (variation)

WGD's activities do not constitute "arranging" the provision of credit under a credit contract. WGD makes a taxable supply of promotional services to WheelCred.

Arranging service? (variation)

WGD performs a range of activities for WheelCred. These activities are limited to promoting WheelCred's loan products, explaining the application process and information requirements, and referring prospective borrowers to WheelCred.

From WheelCred's perspective, it is paying for a promotional service. The value of WGD's activities lies in generating interest in WheelCred's loan products and identifying prospective borrowers who may wish to apply for finance.

Unlike the primary example, WGD does not assist the buyer to complete or submit loan application documents, collect or verify supporting documents, or otherwise participate in WheelCred's loan approval process. Instead, those activities are undertaken by WheelCred itself.

While WGD's activities may generate lending opportunities for WheelCred, they do not involve WGD taking steps that directly and actively bring about the provision of credit

under a credit contract. WGD's role ends when it introduces a prospective borrower to WheelCred. WheelCred then undertakes the activities necessary to assess the application and originate the loan.

Accordingly, WGD's activities are properly characterised as a promotional service rather than arranging the provision of credit under a credit contract. The service does not constitute an exempt financial service under s 3(1)(f) and (l) and is a taxable supply.

Example | Tauira 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).

Arranging service?

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.

As noted in Example | Tauira 1, it is helpful to begin by considering what the recipient has paid for and been supplied with from their point of view. The recipient is the

lender, which pays Cashanova for its services. The candidate is not the recipient of the supply.

From the lender's perspective, it is paying for services directed toward originating loans. The activities noted above 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.

The next question is whether Cashanova is arranging any of the activities specified in s 3(1)(a) to (ka) for the purposes of s 3(1)(l).

The activities Cashanova performs go well beyond merely providing the setting by which lenders can enter into loans with candidates. Cashanova is engaged to generate and submit loan applications on behalf of lenders, with the AI tool being the means by which that service is performed. 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 under s 3(1)(f) and (l). Having concluded that Cashanova's services directed toward originating loans constitute an arranging service, it is necessary to consider whether all of Cashanova's activities described above form part of that arranging service or whether some are separate supplies with a different GST treatment.

Single supply or multiple supplies?

As established above when asking what the lender has paid for and been supplied with from their point of view, the essential (dominant) feature of the arrangement from the lender's point of view is the services that are directed toward originating loans. Cashanova's role in originating loans is the dominant activity that it 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, all of Cashanova's activities form part of a single composite supply of services directed toward originating loans. Consequently, that supply constitutes 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 | Tauira 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".

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