[Interpretation statement IS0052 issued by Adjudication & Rulings in June 2001]

# FINANCIAL PLANNING FEES—GST TREATMENT

This statement sets out the Commissioner’s view on the GST treatment of services provided in relation to financial planning fees charged by financial advisers to plan, implement, and monitor an investment portfolio for their investor clients. This interpretation statement replaces Public Ruling BR Pub 95/11 that appeared in *Tax Information Bulletin* Vol 7, No 7 (January 1996). The Public Ruling ceased to apply from 31 March 1999.

There are seven categories of financial planning fees, which are based on the process of obtaining an initial financial plan, the subsequent monitoring of that plan, and any following adjustments or alterations to the plan. The question of the GST treatment hinges on the actual nature of the services provided rather than the label applied to those services.

The following table summarises the GST treatment of services provided in relation to the various categories of financial planning fees that are charged by financial advisers. The table is a general guide only and should be read in conjunction with the more detailed explanations of each particular category contained in this interpretation statement.

| Fee Category | Services Subject to GST |
|---|---|
| Initial planning fees | Yes |
| Implementation fees | No |
| Administration fees | No |
| Monitoring fees | Yes |
| Evaluation fees | Yes |
| Re-planning fees | Yes |
| Switching fees | No |

## INTRODUCTION

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

This statement considers the GST treatment under sections 3 and 14, of a range of services provided by financial advisers for financial planning fees charged to investors. In this regard, the actual nature of the services provided is important and

will determine the liability to GST of the financial planning fees paid for those services.

The services will be exempt from GST under section 14 (exempt supplies) if:

- the activities undertaken involve the supply of “financial services” in terms of section 3; or

- the services are not in themselves “financial services”, but are supplied together with a supply of “financial services”, and those other services are reasonably incidental and necessary to that supply of financial services, and are not otherwise specifically excluded from being exempt supplies.

Activities that involve the provision of advice are generally excluded from the meaning of “financial services”.

## BACKGROUND

An investor who seeks advice from a financial adviser will be charged for the services provided. Whether these fees are exempt supplies or subject to GST will depend on the nature of the services provided.

When an initial financial plan has been devised, agreed to by the investor and implemented by the adviser, that is not necessarily the end of the matter. Usually systems are in place that require the adviser’s continued involvement. Most financial advisers offer a continuing monitoring service that is generally part of an overall advisory package. The investments are sometimes (but not always) placed in the care of a custodian (commonly for security reasons) who may have also been involved in the acquisition of the investments. The income derived from the investments may pass to the adviser or custodian where it is placed in a trust account before being able to be drawn upon by the investor. The maintenance of these trust accounts by the adviser usually incurs costs that are charged to the investor. As part of the service, the adviser may monitor the portfolio to ensure that the aims of the investor are continually met. For this service the investor will often pay further fees. From time to time as part of this monitoring service the adviser can recommend changes to the investment mix. If the investor accepts these recommendations to change investments, further fees are incurred which may include switching fees.

It is the Commissioner’s view that public ruling BR Pub 95/11 has been useful in respect of the GST treatment of the financial planning fees. However, despite the issue of the ruling there has been occasional uncertainty on how the ruling should be applied. Although some of these were discussed within the commentary definitions of the three categories identified, participants in the financial planning industry may have had difficulty in applying the ruling. It seemed logical to extend and further define the present three categories to make it easier for advisers and others in the financial planning industry to decide whether or not the planning fees were subject to GST. Similar issues arose and the same approach was taken in relation to the previous income tax public rulings (Public Rulings BR Pub 95/10 and 10A) that dealt with the income tax deductibility of financial planning fees charged to investors.

Financial advisers charge for a number of services provided to their clients, sometimes using different names for these component services. The GST tax treatment of the fees depends not on the name given to the service, but on the nature of the service. To determine the correct tax treatment of a service, it is important to identify the exact service a financial adviser provides.

The adoption of the expanded categorisation of fees in this statement is intended to make it easier for financial advisers and others to determine how fees charged and the services provided will be treated for GST purposes. The categories correspond to the process usually followed when an investor seeks the assistance of a financial adviser.

**FEE CATEGORIES**

The fees charged by financial advisers vary from one adviser to another, but generally they can be separated into a number of categories. Financial planners give the fees charged various names, but the crucial point that determines the GST treatment is for what service(s) the fee is actually paid. The nature of the service provided will determine whether the fees paid are for a supply of a "financial service" and thus an exempt supply, or otherwise qualify as a supply of services exempt from GST.

The fees can be summarised as:

(a) *Initial planning fees*: Fees charged in relation to services provided by the adviser for the initial interview where the investor and the adviser discuss the investor's investment goals, savings objectives, cash requirements, and life and general insurance requirements. The adviser then prepares a draft portfolio plan for the investor. Further interviews, discussions, and adjustments to the draft plan may follow until it is acceptable to the investor.

(b) *Implementation fees*: All fees for services associated with implementing the draft plan devised in (a). They will include any one-off up-front fees paid to or made in respect of services or charges to advisers, administrators, executors, fund managers, etc., to purchase or acquire the investments. They include payments to custodians on implementation of the plan or charges by fund managers for entry into the investments.

(c) *Administration fees*: This fee category is generally described by advisers as "annual on-going" fees. They are charged by the adviser to cover the costs of maintaining records of the investor's transactions with the adviser. This category also includes charges relating to the handling of cash for the investor, such as the withdrawal and deposit in the investor's account with an administrator, bank charges, and other administration fees. Also included are any fees or commissions charged by the adviser for collecting income from the investments and arranging for this to be paid to or credited to the investor's account with the adviser or to the investor's own bank account.

(d) *Monitoring fees*: Annual charges for monitoring and reporting to the investor on the performance of the portfolio (including the performance of the fund managers and the adviser) in terms of the investor's goals, and relaying this information to the investor. The adviser will prepare these reports from time

to time.

(e) *Evaluation fees*: Any fees for services relating to an evaluation of an existing portfolio. Typically, these arise where an investor has an existing portfolio of investments and either seeks a financial adviser's advice for the first time, or seeks confirmation that the portfolio's performance is matching the goals originally set by either the investor, or with the assistance of a financial adviser at the initial planning stage. This is a more detailed examination of performance of the portfolio than simply monitoring performance and reporting to the client. It may or may not result in a recommendation from the adviser to make changes to investments within the portfolio to maintain the investor's aims.

(f) *Re-planning fees*: Fees for services relating to the re-planning of a portfolio sometimes arising from category (e) services due to changes to the investor's objectives. This could entail minor changes, or the complete restructuring of investments and a change in investment strategy. Re-planning fees do not necessarily refer to advice supplied by the same adviser. They could be for advice by an adviser to a new client who had previously managed his or her own portfolio or had previously engaged a different adviser. Included in this category are any other fees as described in *Initial planning fees* at (a), when there has been a complete restructuring of investments.

(g) *Switching fees*: Fees related to the costs involved in selling existing investments and/or purchasing new investments arising from a recommendation by the adviser as a result of category (e) or category (f) services. The fees will be charged by the adviser for changing investments within the portfolio. Also included are any fees relating to the withdrawal in whole or in part from an existing portfolio.

If financial planners charge a global fee (that includes fees for more than one of the above categories), it will be necessary for that fee to be apportioned between the categories, based on the particular services provided for the fee, to ensure the fees are correctly treated for GST purposes.

A similar apportionment exercise needs to be undertaken in the case of "performance fees", where an investor may have the option of being able to elect to pay a performance fee instead of fees for some or all of the categories noted above. Performance fees are a form of global fee paid to advisers, based on how well the portfolio of investments selected by the adviser and agreed to by the investor is performing against some pre-determined measure.

The calculation of the seven categories of fees noted above might be based on a standard fee structure, hours of work put in by the adviser, the amount of the investments made by the investor, or a combination of those. Performance fees on the other hand, are calculated under some pre-determined formula based on how well the investor's portfolio, as recommended by the adviser, performs over a period of time. These fees could include a standard amount, plus a percentage based on the extent to which the level of growth or return from the portfolio exceeds previously agreed targets, or the fee could be based solely on a percentage of the returns/agreed targets.

Irrespective of the name given to the fee, or the basis of calculation, the GST treatment of the fees will be determined having regard to the services performed in establishing, administering, and altering the investor's portfolio, based on the seven categories of services mentioned above. It may be that in certain cases the performance fee is paid in respect of all seven categories of services, while in other instances the fee may be only for services coming within some of the categories, e.g. the administration and monitoring fee categories. In view of this, in determining the GST treatment it is not the description (label) the adviser attaches to the fee charged that is relevant, rather it is what service(s) the fee is actually paid for. Performance fees are in reality no different to any other global or multi-service fee charged by an adviser. How the amount is apportioned among the categories of services is a question of fact to be determined in the circumstances of the particular case.

## ISSUES

The question considered in this statement is: in what circumstances will the Commissioner treat the services provided in respect of financial planning fees as an exempt supply of services under section 14 of the Goods and Services Tax Act 1985? This will be determined by:

- The nature of the service provided for the fees charged, and whether these fees are in respect of a "financial service" in terms of section 3.

- In the event that the fees are not in respect of a financial service, whether the services are reasonably incidental and necessary to that supply of financial services. This is subject to the services supplied for those other fees not otherwise being specifically excluded from being exempt supplies.

## LEGISLATION

The legislation relevant to this statement is contained in sections 3 and 14. Section 14 provides a GST exemption for certain supplies, including the supply of financial services, and section 3 defines the term "financial services" for the purposes of the Act.

Paragraph (a) of section 14(1) is relevant for the purposes of this statement and provides:

> The following supplies of goods and services shall be exempt from tax:
>
> (a) The supply of any financial services (together with the supply of any other goods and services, supplied by the supplier of those financial services, which are reasonably incidental and necessary to that supply of financial services), not being—
>
> (i) A supply of financial services which, but for this paragraph, would be charged with tax at the rate of zero percent pursuant to section 11A of this Act; or
>
> (ii) A supply of goods and services which (although being part of a supply of goods and services which, but for this subparagraph, would be an exempt supply under this paragraph) is not in itself, as between the supplier of that first-mentioned supply and the recipient, a supply of financial services in respect of which this paragraph applies:

The parts of the section 3 definition of “financial services” that are relevant for the purposes of this statement are as follows:

(1) For the purposes of this Act, the term “financial services” means any one or more of the following activities:

(a) The exchange of currency (whether effected by the exchange of bank notes or coin, by crediting or debiting accounts, or otherwise):

….

(c) The issue, allotment, drawing, acceptance, endorsement, or transfer of ownership of a debt security:

(d) The issue, allotment, or transfer of ownership of an equity security or a participatory security:

….

(ka) The payment or collection of any amount of interest, principal, dividend, or other amount whatever in respect of any debt security, equity security, participatory security, credit contract, contract of life insurance, superannuation scheme, or futures contract:

(l) Agreeing to do, or arranging, any of the activities specified in paragraphs (a) to (ka) of this subsection, other than advising thereon.

## ANALYSIS

### General requirements of the legislation affecting financial services

In order to determine whether particular services supplied are exempt, it is necessary that the supplies fall into the criteria stipulated in section 14. Section 14(1)(a) requires that there must be either a supply of a financial service or the supply of a good or a service that is “reasonably incidental and necessary” to the supply of a financial service provided by the same supplier.

This raises two interpretation matters:

- What are financial services; and
- What does “reasonably incidental and necessary” mean?

#### *What are financial services?*

Section 3 defines “financial services”. In terms of the issues raised by this statement concerning the treatment of financial planning fees, the relevant subparagraphs of section 3(1) are:

(1) For the purposes of this Act, the term “financial services” means any one or more of the following activities:

(a) The exchange of currency (whether effected by the exchange of bank notes or coin, by crediting or debiting accounts, or otherwise):

….

(c) The issue, allotment, drawing, acceptance, endorsement, or transfer of ownership of a debt security:

(d) The issue, allotment, or transfer of ownership of an equity security or a participatory security:

….

(ka) The payment or collection of any amount of interest, principal, dividend, or other amount whatever in respect of any debt security, equity security, participatory security, credit contract, contract of life insurance, superannuation scheme, or futures contract:

(l) Agreeing to do, or arranging, any of the activities specified in paragraphs (a) to (ka) of this subsection, other than advising thereon. [*Emphasis added*]

The parts of section 3(1) under consideration raise two further interpretative matters: the meanings to be ascribed to the words "arranging" and "advising" as used in paragraph (l). A number of the supplies of services under consideration involve financial advisers providing various levels of advice or arranging for another organisation to implement an investor's financial plan (place investments, etc.) and/or to collect income from the investments and arrange payment or crediting to the investor. A preliminary issue is the position under section 3(1)(l) of persons or organisations who may act as intermediaries between the investor and the person actually undertaking the activities specified in paragraphs (a), (c), (d) or (ka) of section 3(1).

***Intermediaries and section 3(1)(l)***

The agreeing to do or arranging any of the activities listed in section 3(1) in terms of paragraph (l), encompasses the activities of brokers or intermediaries who arrange for the provision of financial services, such as mortgage, superannuation and life insurance brokers. This finding was concluded in Product Ruling BR Prd 96/30 issued by Inland Revenue in respect of section 3(1)(l) (*Tax Information Bulletin* Vol 8, No 8, November 1996).

The adviser often does not actually undertake the activities in section 3(1)(a) to (ka), but is authorised to arrange the activities to be undertaken for and on behalf of another (the investor). In this situation the adviser is acting as an intermediary. In other words, the financial adviser itself does not implement the plan but acts on behalf of its clients and gets someone else to implement the plan. This factor does not take the intermediary's actions outside the ambit of section 3(1)(l).

Similarly, where a custodian is involved, it is the custodian who usually implements the financial plan on instruction from the financial adviser. Even though there is another intermediary besides the financial adviser, the fees incurred for the activities undertaken by the custodian are still within the ambit of section 3(1)(l).

***Meaning of "arranging" used in section 3(1)(l)***

The term "arranging" is not defined in the Act. However, in ordinary use "arranging" is capable of being given a wide or a narrow interpretation.

A wide interpretation would include every step that could result in a financial service being provided to the client, independently of whether a service is actually provided or of any intention of a service being provided. This would include promotions and marketing which do not necessarily lead to any service being provided or research into any areas to which investment may be expanded in the future.

By comparison, a narrow meaning requires a nexus or a close linkage to the provision of the actual financial service to the client. These activities would include brokerage activities or filling out forms for a client. The activities are for a specific purpose, and it is highly probable that the supply of a financial service will occur following those activities. For example, the general monitoring of the debt securities market would not be arranging the issue of a debt security, despite the monitoring being required for the making of a prudent investment.

Although the courts have not specifically discussed the term "advising" in the context of section 3(1)(l), there are cases that indicate that a narrow interpretation such as outlined above should be applied. Davison CJ in *Databank Systems Limited v CIR* (1987) 9 NZTC 6,213 (HC) indicated that an appropriate meaning would be "cause to occur". This suggests that there is also an element of certainty that the financial service will be provided to the client. Equally, Lord Templeman in *CIR v Databank Systems Limited* (1990) 12 NZTC 7,227 (PC) indicated that the exemption did not extend to activities which merely resulted in the supply of financial services thus rejecting the wide interpretation of "arranging". These two judgments indicate the need for a close connection between the activity undertaken and the financial service supplied to the ultimate recipient (the investor) in order for that activity to be the arranging of the financial service.

*Databank* (PC) also illustrates the principle that it is the actual arranging activity being undertaken that is paramount and not the overall nature of the activity comprising the services being supplied to the ultimate recipient. Both the *Databank* (PC) and *Turakina Maori Girls College Board of Trustees v CIR* (1993) 15 NZTC 1,032 (CA) decisions demonstrate the importance of dissecting the transaction involved to determine precisely what activity is being undertaken in order to establish whether a financial service is being provided.

In summary, while the New Zealand courts have not directly considered what constitutes arranging in terms of section 3(1)(l), they have provided some determinative guidelines in establishing the application of arranging. That is, "arranging" is to be interpreted in a narrow sense, and that when considering what is inclusive of arranging, it is important to dissect the transaction involved to determine precisely what activity is being undertaken, and not be swayed by the overall nature of the activity that the recipient or supplier may be involved with. This is in order to establish whether it is a financial service that is being provided (*Databank* (PC), *Turakina Maori Girls College* and *Case Q10* (1993) 15 NZTC 5,061).

Putting this into the context of section 3(1)(l), "arranging" must have a direct connection to the specific supply of the financial service. It is not enough that the arranging may have caused the supply of that financial service, what is necessary is that the activity of arranging intentionally causes the provision of a financial service as defined in section 3(1)(a) to (ka). This interpretation is consistent with how the courts in the United Kingdom have defined the term "making of arrangements" (*Hargreaves Landsdown Asset Management v C & E Commrs* [1995] BVC 896, *Dogbreeders Associates v C of CE* (1989) VATTR 317 and *Donald Ford v The Commissioners* (1987) VATTR 130) and how Revenue Canada has defined the term "arranging" in its policy statement (Ruling No. 11783-2).

In order to establish whether there is an activity of arranging pursuant to section 3(1)(l), it is therefore necessary to establish the following criteria:

- The service to which the arranging relates is a financial service as defined by section 3(1)(a) to (ka) (*Databank* (PC)); and

- The activity is a precursor to the provision of a financial service which the intended recipient of that financial service has already decided to use or to obtain. "Arranging activities" that arise before a decision is made to proceed by the intended recipient, are considered too far removed and the provision of the financial service too uncertain. Therefore, provision of the financial service being arranged must not be subject to another person's overriding decision on whether to proceed. The "arranging" activity is tainted by the financial service's character as it is closely connected and has the purpose of organising the provision of that financial service or causing it to occur (*Dogbreeders Associates*, *Databank* (HC)); and

- The activity undertaken is to intentionally cause the provision of the financial service. This does not mean that no arranging has taken place if the financial service is cancelled or does not proceed. As long as the requisite activity is undertaken with the specific intention of causing the provision of a financial service to a recipient, then it will meet the test of "arranging" (*Databank* (HC), *Dogbreeders Associates* and *Donald Ford*).

***Meaning of "advising thereon" used in section 3(1)(l)***

Section 3(1)(l) expressly excludes the activity of "advising thereon" from the concept of arranging a financial service, and therefore the "financial services" definition. If a service is advisory, then it is not an exempt supply under section 14(1)(a).

The courts in New Zealand (and overseas) have not considered the words "advising thereon". However, the word "advice" has been considered. In *JR Moodie Co Ltd v Minister of National Revenue* [1950] 2 DLR 145 Rand J (at p.148) stated:

> The word "advice" in ordinary parlance means primarily the expression of counsel or opinion, favourable or unfavourable, as to action, but it may chiefly in commercial usage signify information or intelligence.

The *Concise Oxford Dictionary* suggests two types of advising (being consistent with the *Moodie* decision). Advising that involves a degree of counsel or recommendation, and advising that merely involves notification; the dissemination of information.

In one sense, the exclusion for "advising thereon" from the paragraph (l) activity of "agreeing to do, or arranging" other financial services activities, could be said not to apply to the mere provision of information to a client in order for that client to decide where the funds should be invested.

However, it is possible to argue that the reference to "advising thereon" is in fact capable of wider meaning and also excludes (from financial services) the provision of information.

To assist in settling this point it is necessary to consider the meaning of the word "thereon". Comparing the meaning of "thereon" with the word "thereof" may also assist in determining the meaning to be applied to the phrase "advising thereon".

*The Concise Oxford Dictionary* (8th ed.), for example, includes the following definitions:

**thereof** *adv. formal* of that or it.
**thereon** *adv. archaic* on that or it (of motion or position).
**on** … 14. concerning or about …

In the context in which the phrase "advising thereon" is used in section 3(1)(l), it is considered that it bears the more limited of the two possible meanings. That is, the exclusion for "advising thereon" requires more than mere notification of or the dissemination of information regarding the activities in section 3(1)(a) to (ka). Rather it excludes activities involving a degree of interpretation of information, counsel or opinion relating to those activities.

However, in the case of the information and reporting services provided by financial advisers or planners, many such services may well incorporate a range of the varying levels of advice. Given that, careful consideration will be necessary by advisers and planners to determine whether their particular services are, or are not, subject to the exclusion for "advising" on the activities specified in section 3(1)(a) to (ka).

Even if an activity is not "advising", it does not mean that it will automatically be a financial service or a supply of services exempt from GST. The requirement that the activity be itself a financial service or the arranging of a financial service, or "reasonably incidental and necessary" to a supply of an associated financial service (discussed below) must still be met.

***Meaning of "reasonably incidental and necessary" in section 14(1)(a)***

As referred to earlier in this statement, the supply of services that are "reasonably incidental and necessary" to the supply of any financial service and supplied by the same supplier, are also exempt supplies under section 14(1)(a).

The Act does not define the term "reasonably incidental and necessary" and there are no cases on the meaning of this particular phrase. Therefore, it is necessary to consider the ordinary usage of the component parts of this phrase. The Act does however import an element of *reasonableness* to both "incidental" and "necessary", by the inclusion of the word "reasonably" in the phrase "reasonably incidental and necessary" itself. Most of the cases are fact-specific in their interpretations and indicate that what is "necessary" or "incidental" is largely a question to be decided on the particular facts of each case. The following summarises those interpretations.

It can be reasoned that the phrase "reasonably incidental and necessary" is designed to measure two separate although related things:

- Firstly, the level of association or connection between the type of financial services supplied and the type of other goods and services supplied which are under consideration, viz “incidental” (or “reasonably incidental”); and

- Secondly, how essential or “necessary” the other goods or services are for that supply of financial services to occur.

Were that not the case there would have been no need to include both elements in the phrase, as simply including the narrower of the two conjunctive tests would have been all that was needed. Parliament could not have enacted a provision that leads to absurdity or an incongruous result, requiring a lesser degree of connection (“reasonably incidental”) but at the same time be essential (“necessary”) for the supply of the financial service to occur. It is therefore considered that “reasonably” applies to both “incidental” and “necessary”.

*“Reasonably incidental”*

A number of cases have suggested that incidental means ancillary or consequential or provided in subordinate conjunction with something else. From these cases, the word “incidental” suggests that the service must be an associated service that is secondary to and that depends on a financial service as the main or primary service. It must be a consequence of a financial service or provided in conjunction with one of the financial services in section 3(1).

The meaning of the words “reasonably incidental” is something more than that which has a mere casual, accidental, or fortuitous connection with the other item. It also means something more than an item that may only possibly or sometimes be associated with the other item. From the cases, the words suggest a service that it is reasonable to expect will be supplied or offered with the financial service.

In the context of section 14(1)(a) a service that is “reasonably incidental” to the supply of a financial service is an associated service:

- That is ancillary to (*C and E Commissioners v CH Beazer (Holdings) plc* (1989) 4 BVC 121 and *C and E Commissioners v Wellington Private Hospital Ltd* (CA) [1997] BVC 251), or occurs or is provided in subordinate conjunction with (*Department of Health and Social Security v Envoy Farmers* [1976] 1 WLR 1,018, *Canadian National Railway v Harris* [1946] 2 DLR 545, *CH Beazer (Holdings)*, and *Wellington Private Hospital*), the financial service (i.e. is a service that is secondary to and dependent on the financial service as the primary service, and provided in combination or conjunction with that financial service); (see also *Mindell v Canadian Northern Shield Insurance* (1990) 43 CCLI 191, *Re Fahy’s Will Trusts* [1962] 1 All ER 73, *AG v Pontypridd Urban District Council* [1906] 2 Ch 257); and

- That it is reasonable to expect the supplier to provide in the course of undertaking the supply of the financial service (*CIR v Databank Systems Ltd* (1990) 12 NZTC 7,227 (PC)).

Something is not "reasonably incidental" if it is merely desirable or profitable (*Hazell v Hammersmith and Fulham London Borough Council* [1991] 1 All ER 545), or convenient or advantageously provided with the financial service rather than by necessary implication being incidental or accessory to it (*AG v Manchester Corporation* [1906] 1 Ch 643).

*[Reasonably] "necessary"*

The word "necessary" narrows the meaning of the phrase "reasonably incidental and necessary". The word "necessary" can be interpreted as having a wide or a narrow meaning. The *Concise Oxford Dictionary* definition imparts an ingredient of being essential to the activity being performed. However, there is an issue in terms of how essential the performance is in relation to the fulfilment of a specific activity.

The case law is fact specific on this point and it is the actual context in which the term "necessary" appears that indicates in broad terms the degree of essentiality that the term "necessary" is designed to effect.

For example, in *Re an Inquiry under the Company Securities (Insider Dealing) Act 1985* [1988] 1 All ER 203 at 208, Lord Griffiths stated that "necessary" has a meaning that lies somewhere between "indispensable" on the one hand, and "useful" or "expedient" on the other, and suggested "really needed" as the meaning.

In *Europa Oil (NZ) Ltd (No2) v CIR* (1974) 1 NZTC 61,169 the New Zealand Court of Appeal considered the meaning of the word "necessarily" in the context of deductions required to be "necessarily incurred" under the income tax general deductions provision. McCarthy P in the leading judgment, disagreed with the High Court of Australia's interpretation of "necessarily" in *Ronpibon Tin NL & Tongkah Compound NL v FCT* (1949) 78 CLR 47 and held that there was no justification for watering-down the usual meaning of the word. The Court of Appeal commented further on the meaning of "necessarily" in its subsequent decision, *Europa Oil (NZ) Ltd (No.2) v CIR* (1974) 1 NZTC 61,238, stating that the word did not merely mean "clearly appropriate or adapted for" as was suggested in *Ronpibon Tin*.

The Court of Appeal has therefore rejected a wider meaning for the word.

The degree of necessity required for a non-financial service to be "reasonably incidental and necessary" to a financial service, on the basis of the context that "necessary" arises in section 14(1)(a), and also based on the comments of McCarthy P in *Europa Oil (No.2)*, can be taken to mean that the provision of the service must be seen from the surrounding circumstances to be needed or required for the provision of a financial service stipulated in section 3(1).

The meaning to be applied to the word "necessary" (qualified by "reasonably") and the phrase "reasonably incidental and necessary" must also be considered in the context in which the words appear in the Act. That is, as an extension to an exemption, when the prima facie position under the Act is that all supplies are taxable unless made expressly exempt. This also indicates that the words should not be interpreted too widely.

*Summary - "reasonably incidental and necessary"*

In summary, for an additional non-financial service to be "reasonably incidental and necessary" to the provision of a financial service, it must be an associated service that:

- Is of a type that it is reasonable to expect the supplier to provide in the course of undertaking the supply of the financial service, and that is secondary to and dependent on the financial service as the primary service, and supplied together with or as a consequence of that financial service; and

- Can be seen from the surrounding circumstances to be needed or required for the supply of the financial service to the recipient.

**Apportionment of global fees**

Before discussing how the above legislative principles relating to the GST treatment of financial services apply, it is necessary to determine how global fees are to be apportioned.

Where a global or combined fee is charged for several supplies of services, some of which are exempt supplies and some of which are standard-rated services, section 10(18) requires an apportionment of the fee between the taxable and exempt supplies: *CIR v Smiths City Group Limited* (1992) 14 NZTC 9,140. Under section 10(18), if a taxable supply is not the only supply to which a consideration relates, the supply shall be deemed to be for such part of the consideration as is properly attributable to it.

This interpretation statement has categorised the component parts of financial planning fees based on the process of obtaining an initial financial plan, subsequent monitoring of the plan, and any following adjustments or alterations to that plan. It is considered that if fees are charged by financial advisers on the basis of the description of these categories, then determining what amount is subject to GST will be on a more objective basis than the previous public ruling. In the event that a financial planner charges a global fee (e.g. performance fees) for some or all of the different supplies of services provided, an apportionment of that global fee, based on the categories discussed in this statement, will be required. The amount allocated to each category will be a question of fact in each case.

As noted earlier, the label given to such a supply is not necessarily determinative of the nature of the supply. It is a question of fact what services are provided for the fee, and it is the actual services provided that will determine the GST treatment.

***Appropriate apportionment methods***

The object of any apportionment is to identify the part of the consideration that is "properly attributable" to the taxable supply in question. The answer can only depend on the circumstances of the particular case and must be fair and reasonable and not be arbitrary or based on mere speculation: *Ronpibon Tin NL v FC of T; Tongkeh NL v FC of T* (1949) 78 CLR 47; 8 ATD 431; *Buckley & Young Ltd v CIR* (1978) 3 NZTC 61,271.

The onus will be on the adviser to show that a defined part of the consideration is properly attributable to something other than a taxable supply, although absolute precision or scientific calculation of an amount is not required as long as there is some intelligible basis supporting the conclusion: *Buckley & Young*.

Depending on the facts of the case, an appropriate method of apportioning the global fee may be to apply a "time apportionment method" using the adviser's time spent carrying out the activity of each category of service provided. In apportioning such a global fee any clearly identifiable direct expenses (those that clearly relate to a specific category) not specified separately from the global fee, would usually first be deducted and put to that category. The remaining global fee would then be apportioned on the basis of the time spent carrying out the activity of each category of service provided (the *time apportionment method*).

**GST treatment of the particular services in the new categories**

Having discussed the legislative principles relating to the GST treatment of financial services generally, those principles will now be applied in relation to the seven separate financial planning fees categories.

***Initial planning fees***

These fees relate to services provided by the adviser from the initial interview stage up to the finalisation of the portfolio plan for the investor. Events leading up to this point may include the preparation of a draft plan, subsequent discussions with the investor, and adjustments to the draft until it is acceptable to the investor.

Initial planning services do not come within any of paragraphs (a) to (ka) of the definition of "financial services" in section 3(1) and in particular paragraphs (a), (c), (d) or (ka), which are the only ones in this group relevant to this statement. The only possibility is paragraph (l).

In relation to paragraph (l), it is unlikely that initial planning services in this category would fall within the narrow interpretation of "arranging" as set out earlier in this statement. In many cases where an investor seeks initial planning services, it is not until the adviser completes the portfolio plan and it is approved and adopted by the investor that a final decision to invest is likely to be made. Activities undertaken before a decision to invest or a positive intention of entering into the transaction would appear too far removed and the provision of the financial service is too uncertain (not that it is essential for actual provision of a financial service to be the outcome).

Initial planning services in the circumstances outlined would not be an arranging service that is tainted by the character of any other financial service the advisers may provide, as it is not closely connected to nor has the purpose of organising the provision of that financial service. To that extent, therefore, such initial planning activities would not come within the initial section 3(1)(l) requirement that they involve "agreeing to do or arranging" any of the paragraph (a) to (ka) activities. If that happens such activities have failed the first test, and the fact that they may also be

excluded from being financial services by virtue of the subsequent "advising" criterion in paragraph (l) is of little relevance.

Situations may exist where planning services meet the first requirement of agreeing to do or arranging. However, even if meeting the "arranging" requirement in paragraph (l), initial planning services will fall squarely within the ordinary meaning of "advising" and thus the general exclusion for advising activities in paragraph (l). In this connection, the preparation of the portfolio plan will certainly involve to a significant degree the provision of advice and suggestions or recommendations by the adviser.

Initial planning services provided by advisers are not reasonably incidental and necessary to any supply of financial services on the basis outlined earlier in this statement. Services that are reasonably incidental and necessary to the supply of any financial service (i.e. a supply coming within section 3(1)(a) to (l)) are also exempt supplies under section 14(1)(a). As outlined in the next section, where an adviser arranges implementation of an investment plan, once adopted by the investor those implementation services are generally financial services.

However, the initial planning services are not an additional subordinate service arising out of, or provided in conjunction with and ancillary to, any implementation of that advice (i.e. a supply of financial services). The existence of the initial planning services is not dependent on the supply of those implementation services. Initial planning services are therefore not reasonably incidental and necessary to the supply by the adviser of any financial services.

Initial planning services' fees are subject to GST. They do not constitute financial services under any of paragraphs (a) to (ka) of section 3(1), nor do these activities as undertaken by advisers generally constitute the "agreeing to do or arranging" of any of the paragraph (a) to (ka) activities in terms of paragraph (l). The initial planning services do involve advisers in "advising" the investor on an investment programme, and therefore come within the specific exclusion from the definition of a financial service in section 3(1)(l).

### *Implementation fees*

This category relates to all fees for services associated with implementing the initial investment plan devised in the preceding section. They will include any one-off, up-front fees paid to or made in respect of services or charges to advisers, administrators, executors, fund managers, etc., to purchase or acquire the investments. The fees include payments to custodians on implementation of the plan or charges by fund managers for entry into the investments.

These services are provided in relation to the placement of investments. The role played by the adviser in relation to the services may vary. In some cases the adviser may directly undertake the purchase or acquisition of investments whether they be debt securities, equity securities, or participatory securities. However, usually the adviser will engage another organisation (e.g. a broker) to implement the investment plan on the adviser's instructions and place investments on behalf of the investor. This other organisation is often referred to as the "custodian".

As previously noted, the use of one or more intermediaries does not prevent the services provided by them from being financial services in terms of section 3(1)(l).

To the extent that the adviser may directly undertake the purchase or acquisition of investments in the form of a debt security, equity security or participatory security, those implementation services constitute financial services in terms of section 3(1)(c), (d), and/or possibly paragraph (l). As such they are, therefore, exempt supplies. The activity of transferring ownership of such securities is itself a financial service under paragraphs (c) or (d).

On the other hand, the implementation of the investor's investment plan by the adviser organising the placement of the investments constitutes the arranging of that transfer of ownership activities in terms of paragraph (l). Such organising the placement of investments comes within the meaning of "arranging" as outlined earlier in this statement.

In situations where a custodian implements the plan and acquires the particular investments on the instruction of the financial adviser, the fees charged by the adviser to the investor are also for an exempt supply of arranging financial services in terms of section 3(1)(l). The arranging service is tainted by the financial service's character, as it is closely connected to and has the purpose of organising the provision of that financial service or causing it to occur.

If the adviser uses a custodian (or other person or organisation) to place investments and passes on any of that person's charges for this service to the investor as a disbursement, no GST consequences will arise for the adviser if the adviser is acting as the investor's agent.

Section 60(2) deems a taxable supply of goods and services made to an agent on behalf of a principal to be a supply made to the principal. Under this section, a supply of services that the adviser receives as agent for a client investor is deemed to be supplied to the investor client, not to the adviser. If the adviser pays for the supply and the client investor reimburses the adviser for that payment, the reimbursement is not consideration for a supply of services by the adviser. The adviser does not have to account for GST output or input tax on the supply.

The discussion on the GST consequences of disbursements was outlined in the item *Disbursements by professional firms on behalf of clients - GST* on page 5 of *Tax Information Bulletin* Vol 6, No 1 (July 1994).

Where the adviser incurs custodian's charges in the capacity of principal, and on-charges the investor as part of an "implementation fee", no GST output tax is payable by the adviser so long as the services supplied by the adviser in respect of that implementation fee are themselves still financial services. In this respect it is not the name given to the fee that determines the GST treatment but the actual nature of the services provided.

NB. Whether the adviser is acting in the capacity of principal (or agent of the investor) will be established based on the facts. That is, the nature of the contract or arrangements between the parties.

Implementation services will be financial services under section 3(1)(c), (d), and/or (l), and as such they are exempt supplies under section 14(1)(a).

***Administration fees***

These fees are generally described by advisers as "annual on-going" fees. They are charged by the adviser in respect of services provided in, and to cover costs of, maintaining records of the investor's transactions with the adviser. They are also in respect of services and charges relating to the handling of cash for the investor, such as the withdrawal and deposit in the investor's account with an administrator, bank charges, and other administration fees. Any fees or commissions charged by the adviser for collecting income from the investments and arranging these to be paid to or credited to the investor's account with the adviser or to the investor's bank account are also included.

The different activities or services described as falling within the administration fees category are addressed individually.

*Income collection and distribution*

Fees or commissions charged by the adviser for collecting income from the investments and arranging these to be paid to or credited to the investor's account with the adviser or to the investor's bank account, may generally be accepted as falling within the wording of section 3(1)(ka). That is, "the payment or collection of any amount of interest, principal, dividend, or other amount". This is on the basis that the amounts concerned relate to investments in a debt security, equity security, participatory security, credit contract, contract of life insurance, superannuation scheme, or futures contract.

Alternatively, if part of the activities performed by the adviser in collecting investment income and arranging payment or crediting to the investor's account (as described in this fees category) do not fall entirely within section 3(1)(ka), then they usually constitute financial services within paragraph (l). That is, the activities would fall within "arranging" one of the activities specified in the earlier paragraphs of section 3(1). This is on the basis that the particular service involved actively carrying out a service prior to the actual payment of an amount in respect of the investment. There is a direct nexus between the adviser doing this and the actual payment of an amount in respect of the investments, which is a financial service within paragraph (ka) of section 3(1).

If a person other than the adviser (e.g. custodian or investment administrator) performs the income collection and distribution activities under consideration in this part of the statement, those activities would generally be financial services in terms of either section 3(1)(ka) and/or (l).

*Cash handling services and charges*

Services and charges relating to the handling of cash for the investor, such as the withdrawal and deposit in the investor's account with an administrator, bank charges, etc., are also considered initially under section 3(1)(ka) and/or (l). This is on the basis that the "investor's cash" referred to relates to money either arising from investment income, investment sales or withdrawals, or provided by the investor to make initial, additional or new investments. Furthermore, the same person or organisation undertakes both the cash handling services and the associated income collection and distribution services or investment placement services (or the arranging of such services), whether it is the adviser or administrator, etc.

Subject to the money concerned relating to investments of the type specified in paragraph (ka), the activities referred to can be considered to come within the wording in the paragraph:

> … payment or collection of any amount of interest, principal, dividend, or other amount whatever in respect of …

To the extent that it could be argued that part of the cash handling activities referred to may not directly involve "payment or collection of … or other amount whatever", it is considered they could come within section 3(1)(l) as being involved with the arranging of such activities. A direct nexus exists between the adviser or administrator doing this and the actual payment of an amount in respect of the investments. On the other hand, it could be argued that the cash handling activities are not always a precursor to the payment or collection of the investor's interest, principal, dividend or other amount or "cause that collection or payment to occur" and are therefore not "arranging".

However, even if the cash handling activities referred to do not constitute arranging, they would still qualify as an exempt supply under section 14(1)(a). That is on the grounds that they are "reasonably incidental and necessary" to the *Income collection and distribution* services element of the administration fees already stated to be a financial service.

Without the cash handling services and investor accounts, the adviser or administrator would be unable to undertake the financial service of collecting and processing distributions for investors; those distributions being placed in each investor's "cash holding account". Maintaining such investors' accounts is essential to the adviser or administrator being able to supply the service of income collection and distribution for investors. Consequently, cash handling activities are regarded as being reasonably incidental and necessary to the *Income collection and distribution* services element of the administration services that are a financial service supplied by the same person.

On that basis, to the extent there is doubt as to these services qualifying as financial services under section 3(1)(ka) and/or (l), they would still qualify as an exempt supply in terms of section 14(1)(a). That is, they are reasonably incidental and necessary to the *Income collection and distribution* services element of the administration fees already stated to be a financial service.

*Maintaining records of the investor's transactions with the adviser*

To the extent that these activities relate to records of cash transactions between the adviser and investor, the reasoning and conclusions outlined in the previous section will apply equally here. This is on the basis that both the records maintenance activity and the associated income collection and distribution services and/or investment placement services (or the arranging of such activities), to which the cash transactions relate, are undertaken by the same person or company, whether it is adviser or administrator, etc. Where this occurs, this part of the administration fee activities will constitute an exempt supply. That will be either by virtue of being a financial service under section 3(1)(ka) and/or (l) or a supply of a service that under section 14(1)(a) is reasonably incidental and necessary to those other supplies making up the administration fee services as described (which in themselves are financial supplies supplied by the same person or company).

The position may be somewhat different where the maintaining of transaction records' activity referred to is undertaken by someone other than the person or company maintaining and operating the investor's investment cash account (or carrying out income collection and distribution or investment placement services). In that situation, the maintaining of transaction records could not be a supply of services that are reasonably incidental and necessary to another supply of services that are financial services as required by section 14(1)(a).

If the transaction records relate to the placing of investments and/or implementation of an investment plan (the undertaking or arranging of which it is considered is a financial service under section 3(1)(c), (d) and/or (l)), then (subject to the above comments) the keeping of such records is reasonably incidental and necessary to those other services. The keeping of such records would be essential as opposed to merely being a desirable adjunct to such activities.

*Summary*

Based on the activities making up the administration fee category being as described, the services provided in relation to administration fees constitute exempt supplies either:

- by virtue of being financial services coming within one of the paragraphs in section 3(1); or
- by being reasonably incidental and necessary to the supply of those financial services in terms of section 14(1)(a).

***Monitoring fees***

Monitoring fees are the annual charges for services provided in monitoring and reporting to the investor on the performance of the portfolio (including the performance of the fund managers and the adviser) in terms of the investor's goals. The adviser will from time to time prepare reports on the portfolio's performance and relay this information to the investor.

Earlier in this statement, it was concluded that the context in which the word "advising" is used in the phrase "advising thereon" in section 3(1)(l) indicates the more limited of two possible meanings. That is, the exclusion for advising thereon requires more than mere notification of or the dissemination of information regarding the financial service activities in section 3(1)(a) to (ka). Rather it excludes activities involving a degree of interpretation of information, counsel or opinion relating to those activities.

Based on the description of monitoring services outlined, such services will not usually be subject to the "advising thereon" exclusion from financial services within the terms of section 3(1)(l). However, as indicated earlier, some information and reporting services provided by financial advisers or planners may well incorporate levels of advice that fall inside the meaning attributed to the exclusion for advising on the activities specified in section 3(1)(a) to (ka). Careful consideration will, therefore, be necessary to determine whether particular services are, or are not, subject to the exclusion.

As discussed, even if an activity is not "advising" it does not mean that it will automatically be a supply of services that is exempt from GST. The requirement that the activity itself be a financial service or the arranging of a financial service, or reasonably incidental and necessary to a supply of an associated financial service still has to be met.

Based on the earlier criteria in this statement for satisfying the "agreeing to do, or arranging" requirements in section 3(1)(l), the monitoring services do not meet those tests. Neither are monitoring services reasonably incidental and necessary to another supply of services which is itself a financial service.

On this basis, monitoring fees will be regarded as not constituting a financial service in terms of section 3(1) or an exempt supply in terms of section 14(1)(a) and are therefore subject to GST.

***Evaluation fees***

This category includes fees relating to services involving subsequent evaluations of the portfolio's performance, where the investor generally seeks confirmation that an already established portfolio is matching the goals set by either the investor or at the initial planning stage. This is a more detailed examination of performance of the portfolio than simply monitoring performance and reporting to the client. It may or may not result in a recommendation from the adviser to make changes to investments within the portfolio to maintain the aims established in the initial planning stage.

Evaluation fees arise where the investor already has an existing portfolio and seeks advice to make changes to the income producing structure but not to the aims or goals of that structure.

The services covered by these fees can be compared with and are similar in nature to some of those provided under the *Initial planning fee* category discussed earlier, in particular the provision of advice relating to future investment options and preparation of an investment plan. As such the GST treatment of evaluation fees is reasonably

clear and is in line with that applying to *Initial planning fee* services. That is, the services do not come within any of paragraphs (a) to (ka) of the definition of "financial services" in section 3(1) and in particular paragraphs (a), (c), (d) or (ka), which are the only ones in this group relevant to this statement. The only possibility is paragraph (l).

However, to the extent that these evaluation fee services do happen to involve agreeing to do, or arranging any of the activities specified in section 3(1)(a) to (ka), the services would fall squarely within the "advising" exclusion in section 3(1)(l). Evaluation fees are therefore subject to GST.

***Re-planning fees***

The category includes fees relating to services involving a re-planning of a portfolio sometimes arising from *Evaluation fees* services due to changes to the investor's objectives. This could be a minor change or a complete restructuring of investments and a change in investment strategy. Re-planning fees do not necessarily refer to advice supplied by the same adviser. The fees could be for advice by an adviser to a new client who had previously managed his or her own portfolio or had previously engaged a different adviser. The category could include any other fees for services as described in *Initial planning fees* above, when a complete restructuring of investments has occurred.

As the name suggests, a re-planning could involve the restructuring of the current portfolio to meet the investor's existing or changed investment goals and usually includes recommendations or suggestions for future investment.

The services covered by these fees are very similar to those in the *Evaluation fees* category above, except that re-planning fees arise when there is a change in the investor's investment objectives. The distinction is that *Evaluation fees* relate to looking at performance against original objectives whereas re-planning fees involve looking at new objectives and what changes are needed to achieve that. The services covered by re-planning fees do not include those relating to actual implementation of changes, which will come within the *Switching fees* category below. The GST treatment for services in the re-planning fee category is therefore the same as for *Evaluation fees* and the analysis is in line with that applying to *Initial planning fee* services.

That is, the services do not come within any of paragraphs (a) to (ka) of the definition of "financial services" in section 3(1) and in particular paragraphs (a), (c), (d) or (ka), which are the only ones in this group relevant to this statement. The only possibility is paragraph (l). However, to the extent that these services do happen to involve agreeing to do, or arranging any of the activities specified in section 3(1)(a) to (ka), the services would fall squarely within the "advising" exclusion in section 3(1)(l). Re-planning fees are therefore subject to GST.

***Switching fees***

These fees relate to the costs involved in selling existing investments and/or purchasing new investments arising from a recommendation by the adviser as a result

of services suppled in relation to the two preceding fee categories (*Evaluation fees* and *Re-planning fees*). The fees will be charged by the adviser for services provided in changing investments within the portfolio, and will include any fees for services relating to the withdrawal in whole or in part from the then existing portfolio.

The services provided for these fees have close similarities to those in the *Implementation fees* category, and in fact will include many that are the same. In particular up-front fees paid to or made in respect of services or charges to advisers, administrators, executors, fund managers, etc., to purchase or acquire the new investments will arise in both the implementation fees and switching fees categories. The same can be said for payments to custodians (on implementation of any amended plan), or charges by fund managers for entry into new investments.

Section 3(1) will apply to services in the switching fees category, in the same way as it applied to those services in the implementation fees category. The analysis relating to the application of the law to these services is the same.

The activity of transferring ownership of debt, equity, or participatory securities is a financial service under section 3(1)(c) or (d). To the extent that the adviser directly undertakes the sale or purchase of such securities as part of a switching of investments exercise, those switching services constitute financial services in terms of section 3(1)(c), (d) and/or paragraph (l). As such they are, therefore, exempt supplies.

If a custodian implements an amended plan and switches or changes the particular investments on the instruction of the financial adviser, the fees charged by the adviser to the investor are also for an exempt supply of arranging financial services in terms of section 3(1)(l). This is in line with the conclusions drawn earlier as to the meaning of “arranging”.

**Examples**

These examples are included to assist in explaining the application of the law.

***Example 1***

Financial Adviser prepares an initial portfolio plan, and charges Investor $2,000 for it. Investor decides to accept the plan, and asks Financial Adviser to arrange with Custodian for its implementation. Financial Adviser asks, on Investor’s behalf and as Investor’s agent, for Custodian to implement the plan. Custodian’s fee is charged to Investor by an invoice sent to Financial Adviser. Financial Adviser passes the invoice on to Investor. Custodian’s fee is $1,500, additional to the $2,000 charged by Financial Adviser.

The $2,000 Financial Adviser charges Investor is for a taxable supply of initial planning services. The advice falls either outside the agreeing to do or arranging requirement, or within the “advising” exclusion, in paragraph (l) of the section 3(1) definition of “financial services”. Financial Adviser must account for GST output tax on the supply.

Passing on Custodian's invoice to Investor has no GST implications for Financial Adviser, because Financial Adviser is simply the agent of Investor. Custodian's services are exempt supplies of implementation services and no GST output tax needs to be returned by Custodian.

***Example 2***

Six months after implementing the plan, Financial Adviser passes on to Investor dividend income collected on Investor's behalf. Financial Adviser also conducts an evaluation of the investment portfolio's performance. Financial Adviser charges a small commission of $50 for collecting the dividend income and $250 for the evaluation service.

The $50 charge for collecting dividends is consideration for an exempt supply under section 3(1)(ka). Financial Adviser does not need to return GST on the amount. The $250 for the portfolio review is an evaluation service and as such is within the "advising" exclusion in section 3(1)(l) and therefore subject to GST. Financial Adviser must return GST output tax on this amount.

***Example 3***

Financial Adviser has prepared a portfolio plan (involving debt, equity, and participatory securities within the meaning of section 3) that Investor asks Financial Adviser as agent to arrange with Custodian to implement. Financial Adviser maintains a record of transactions between Investor, Financial Adviser and Custodian relating to investment purchases and placement, sales/withdrawals and collection, and distribution of investment income to Investor. Financial Adviser undertakes collection and distribution of investment income and operates a cash account for Investor through which movement of funds is recorded.

Financial Adviser charges an annual on-going fee of $500 for the record administration and maintaining the account for Investor, plus an income collection and distribution commission of 5% of the investment income collected.

The 5% commission for collecting investment income is an exempt supply, being in respect of a financial service under section 3(1)(ka).

The annual on-going fee of $500 for services in administering Investor's records and cash account is not in respect of a financial service under any of the paragraphs of section 3(1). However, those services would be regarded as being reasonably incidental and necessary to the financial service of payment or collection of interest, dividends, principal (section 3(1)) and/or to an extent, the arranging of the investment placement portfolio implementation financial service (section 3(1)(l)), and thus would be an exempt supply under section 14(1)(a).

Financial Adviser does not need to return GST on either of these fee amounts.

**Comments on technical submissions received**

Some comments received in the course of producing this item suggested that the phrase "reasonably incidental and necessary" appearing in section 14(1)(a) should be interpreted as meaning *highly expedient* and that other narrower meanings for the phrase given in the draft item, such as *an integral part of*, were inconsistent with that wider meaning. These comments led us to review the cases used to determine the meaning of the phrase "reasonably incidental and necessary". That review concluded that the previous range of meanings given for the phrase was too wide. The cases, in particular *Databank*, *Re an Inquiry*, and *Europa Oil (No.2)*, together with the context in which the provision incorporating the phrase appears in the Act, show that the meaning of the phrase "reasonably incidental and necessary" is not as wide as the words *highly expedient* suggest. The cases and legislative context also indicate that the meaning of the phrase is not as narrow as the words *an integral part of* suggests. The Commissioner's view of the meaning of the phrase is as set out earlier in the interpretation statement, and is considered to describe more clearly now what the cases have interpreted as the goods and services that come within the phrase "reasonably incidental and necessary".