GSTR 2012/1EC - Compendium

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Ruling Compendium – GSTR 2012/1

This is a compendium of responses to the issues raised by external parties to draft GSTR 2011/D3 – Goods and services tax: loyalty programs.

This compendium of comments has been edited to maintain the anonymity of entities that commented on the draft ruling.

Summary of issues raised and responses

Issue No.	Issue raised	Tax Office Response/Action taken
1	*Paragraph 52 – Accrual of points by members* In paragraph 52 of the draft Ruling, it is stated that the member pays nothing for the points and therefore there is no supply of rights to the member for consideration in the earn transaction. This view implies that the points have no value when initially supplied to the member. However, we note that it is recognised that payments are made by program partners to the operator for points (the points fee), which implies that the points do in fact have a value in a commercial context. Therefore, we consider the better view to be that the points do have a value and, hence, are issued to the member for consideration in the earn transaction. This view would be in accordance with the principles established in Case 6/2007 [2007] AATA 1550 (Food Supplier). Under this alternative view, despite the fact that the points are issued to the member for consideration, we consider that it is still possible and appropriate for the Commissioner to maintain the view (outlined in paragraph 54) that the supply of the points is ancillary and incidental to the principal supply of the eligible goods or services to the member. Hence, the points should be recognised as such and follow the GST	The ATO has made changes from the explanation provided in the draft Ruling, but has taken a different approach than advocated in the submission. The ATO agrees that points do have value, but we consider the issue is whether some of the consideration paid for goods or services at their stated price, needs to be allocated instead to the points, such that the goods or services are treated as having been purchased at a discount. The ATO thinks the consideration paid by the member should be recognised entirely as consideration for the goods or services they acquire rather than apportioned between the goods or services and the points. Therefore, there is no amount paid by the member that is treated as consideration for the supply of points. The approach in the ruling reflects the bargain struck between the parties, and has regard to the features of the arrangement that is covered by the Ruling. It also is consistent with the view of courts in United Kingdom Value Added Tax cases. Accordingly, paragraphs 54 and 55 have been updated to clarify the ATO view, including footnote 15 that makes

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	treatment of the principal supply made to the member.	reference to *Luxottica Retail Australia Pty Ltd [2011] FCAFC 20.* The ATO does not think that characterising the points as ancillary or incidental provides for a complete answer to the issue. In particular, in a range of cases goods or services may be supplied by one party, and points issued by a second party. In this case, we do not think the supply of the points could be described as ancillary or incidental to the supply of the goods or services.
2	*Contribution amounts paid into a Trust* Paragraph 58 of the draft Ruling states that, under arrangements where the points fee is payable by the program partner to an entity nominated by the operator (such as a trust which funds the provision of rewards to members), the points fee is consideration for a supply by the loyalty program operator to the program partner. We note that there will be a range of different structures involving a trust which are adopted by different taxpayers for the operation of loyalty programs. We consider that there will be circumstances where a participation fee payable to the operator is consideration for the administration of the scheme. The participation fees and user-pays fees represent payments in consideration for taxable supplies of administering the program, as there is sufficient nexus between the payments and the supply of services by the operator. Under the same loyalty program arrangement, points fees payable into a trust will not represent consideration for any supply unless sufficient	Accepted. The GST implications of payments (contributions) by program partners pursuant to a participation agreement that are made to entities nominated by the operator (such as trusts) which are then used to fund the provision of rewards to members has been removed from the final Ruling. As recommended in the submission, the GST implications of these arrangements will instead be dealt with on a case by case basis. If a taxpayer wants the Commissioner to provide binding advice about the applicability of the law to their individual circumstances they should apply for a private binding ruling. Changes therefore have been made to example 2 (paragraphs 31-32), deletion of part of paragraph 59 and insertion of third dot point at paragraph 15.

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	nexus can be established between the payment and a supply made by the operator. Points fees may therefore merely represent contributions into a trust, which are then held for the benefit of the program members and not also consideration for a supply by the operator or any other party. The example in paragraph 31 of the draft Ruling, and the comments in paragraph 58, are too general in nature and may not be appropriate in relation to all arrangements involving payments into a trust. Adoption of a generalised approach such as this, based on one example of a loyalty program structure only, could result in an incorrect GST treatment of certain payments in relation to loyalty program structures currently in place. We therefore note that the issue in relation to payments made into a trust would be better dealt with on a case by case basis, considering individual circumstances of specific arrangements, and not be covered by a public ruling dealing with general principles.	
3	*Alignment with GSTR 2002/3 Goods and services tax: prizes* GSTR 2002/3 considers loyalty programs operated by gambling suppliers. In paragraph 191 of GSTR 2002/3, the points are stated to have a monetary value. However, under the draft Ruling points issued are not transferable or redeemable for money. This appears to be one of the key differences between the class of arrangement considered in GSTR 2002/3 and that considered in the draft Ruling. Commentary should, however, be provided to clarify how the draft Ruling interacts with the GSTR 2002/3, to the extent that the rulings discuss points awarded as part of a loyalty program and redeemed for	Paragraph 191 of GSTR 2002/3 refers to points that are redeemed for money whereas the arrangement in the final Ruling (see paragraph 7) only deals with the GST implications of points that cannot be redeemed for money. Accordingly, the views expressed in the two Rulings can be distinguished on the basis of these factual differences. In addition, the views expressed at paragraphs 194-197 of GSTR 2002/3 in relation to the GST consequences of points redeemed for non-monetary are consistent with the views in this final Ruling.

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	monetary and non-monetary prizes. In this regard, it should be considered whether additional commentary should be included into the draft Ruling to deal with issues arising under GSTR 2002/3, or a clarifying statement made in the draft Ruling that GSTR 2002/3 continues to apply in conjunction with the draft Ruling.	Footnotes 4, 6 and 8 have been added to the final Ruling.
4	*Transitional Relief* We consider that transitional relief should be granted to taxpayers with pre-existing commercial arrangements in place.	It is understood that the submissions were concerned, at least in part, with arrangements where a points fee was paid from a program partner to a third party, rather than the operator. This scenario has been removed from the scope of the ruling and therefore it is unnecessary to provide for any transitional relief. Paragraphs 44 to 47 of the final Ruling have been added to provide for some transitional relief in respect of a particular issue, but the ATO has not identified circumstances to warrant any more broad-reaching transitional relief.
5	*Paragraph 103 -Points plus pay scenario* Under some loyalty program arrangements with redemption partners, in a points plus pay situation, while there may be two taxable supplies- one to the operator and one to the loyalty program operator- the nature of the contractual arrangement between the parties may mean that there is a supply of the reward for full consideration by the redemption partner to the operator and a separate supply of the reward for consideration by the operator to the member. This is to be contrasted with the more common scenario where the two taxable supplies - one	Accepted. Paragraphs 99 and 106 in the final Ruling and footnote 37 clarify that the one set of actions, that is the provision of the reward to the member, may give rise to two taxable supplies but that both supplies are not necessarily made by the redemption partner.

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	to the operator - are both made by the redemption partner. Therefore, does paragraph 103 also cover the situation where the provision of the reward to the member gives rise to two taxable supplies – one by the redemption partner to the operator and another by the operator to the member?	
6	*Characterisation of Supply of points from Operator to Program Partner where the points are redeemed for Division 100 Vouchers* Where there is a supply of points by the operator to the program partner and the points are redeemed for Division 100 Vouchers which, in turn, would be redeemed for goods or services that would be GST-free under paragraph 9-30(1)(b) or input-taxed under paragraph 9-30(2)(b), such supply should be GST-free or input-taxed to that extent.	This issue was not specifically dealt with in the draft Ruling. The submission was received shortly before finalisation of the Ruling, and in view of the late receipt of the submission, it has been decided not to deal with the issue specifically in this Ruling. If a taxpayer wants the Commissioner to provide binding advice about the applicability of the law to their individual circumstances they should apply for a private binding ruling.