


GSTR 2001/8DA - Draft Addendum - Goods and services tax: Apportioning the consideration for a supply that includes taxable and non-taxable parts

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This document has been finalised.

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Draft Addendum

Goods and Services Tax Ruling

Goods and services tax: apportioning the consideration for a supply that includes taxable and non-taxable parts

This Draft Addendum, when finalised, will amend Goods and Services Tax Ruling GSTR 2001/8 to reflect the reasoning of the:

- Full Federal Court in *Commissioner of Taxation v Luxottica Retail Australia Pty Ltd* [2011] FCAFC 20; 2011 ATC 20-243; and
- Administrative Appeals Tribunal in *Re Food Supplier and Commissioner of Taxation* [2007] AATA 1550

in respect of the calculation of the value of the taxable part of a mixed supply under section 9-80 of the *A New Tax System (Goods and Services Tax) Act 1999*.

This Draft Addendum provides further guidance and examples on how to apportion the consideration for a mixed supply to enable calculation of the GST payable on the taxable part of the supply.

This Draft Addendum also updates the commentary in GSTR 2001/8 on differentiating between mixed and composite supplies by making reference to recent Australian case law.

GSTR 2001/8 is to be amended as follows:

1. Paragraph 2

Omit the paragraph; substitute:

2. This Ruling describes the characteristics of supplies that contain taxable and non-taxable parts. It refers to these supplies as 'mixed supplies'. This Ruling also describes the characteristics of supplies that appear to have more than one part but that are essentially supplies of one thing. These supplies are referred to as 'composite supplies'.

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2. Paragraph 3

Omit the first sentence; substitute:

This Ruling provides methods and examples that you may use to help you work out how to apportion the consideration for a supply that contains separately identifiable taxable and non-taxable parts.

3. Paragraph 6

Omit 'GSTR 2000/15'; substitute 'GSTR 2006/4'.

4. Paragraph 14

Omit the paragraph; substitute:

14. On the other hand, a supply that may at first appear to be a combination of taxable and non-taxable parts is not such a combination because it is given a specific treatment under the GST Act. For example, a supply consisting of a combination of foods that comes within paragraph 38-3(1)(c) is not a mixed supply (that is, a combination of taxable and GST-free parts) because the whole supply is treated as food that is not GST-free.

5. Paragraph 15

Omit the paragraph.

6. Paragraph 16

Omit the paragraph; substitute:

16. In this Ruling the term 'mixed supply' is used to describe a supply that has to be separated or unbundled as it contains separately identifiable taxable and non-taxable parts that need to be individually recognised.

16A Paragraphs 45 to 54C explain how to identify whether a supply has separately identifiable parts.

7. Paragraph 17

Omit the first sentence; substitute:

In this Ruling, the term 'composite supply' is used to describe a supply that contains a dominant part and includes something that is integral, ancillary or incidental to that part.

8. Paragraph 18

After the paragraph; insert:

18A. You need to consider all of the circumstances of a supply to work out whether the supply is mixed or composite. GST is only payable on the taxable part of a mixed supply. If a composite supply is taxable, then GST is payable on the whole supply. If a composite supply is non-taxable, then no GST is payable on the supply.

9. Paragraph 21

After '(if it were)', insert 'a separately identifiable'.

10. Paragraph 25

(1) Omit the heading; substitute:

Apportionment of the consideration for a mixed supply

(2) In the second sentence after 'non-taxable parts'; insert 'of the supply'.

11. Paragraph 26

Omit the paragraph; substitute:

26. Apportionment must be undertaken as a matter of practical commonsense. You can use any reasonable basis to apportion the consideration. Depending on the facts and circumstances of the supply, a direct or indirect method may be an appropriate basis upon which to apportion the consideration and ascertain the value of the taxable part of the supply. The basis you choose must be supportable in the particular circumstances.

12. Paragraph 27

Omit the paragraph; substitute:

27. You should keep records that explain the basis used to apportion the consideration between the taxable and non-taxable parts of a supply.⁸

⁸ Paragraph 382-5(1)(a) in Schedule 1 to the *Tax Administration Act 1953*.

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13. Paragraphs 29 and 30

Omit the paragraphs; substitute:

29. To work out the value of the taxable part of a supply you identify the parts of the supply and apportion the consideration to each of the parts on some reasonable basis. The value of the taxable part of a supply that does not have GST-free or input taxed parts is determined under section 9-75. The value of the taxable part of the supply is 10/11 of the consideration for the taxable part, and the GST payable is equivalent to 1/11 of that consideration.¹⁰

30. In the case of a mixed supply that has non-taxable parts that are GST-free or input taxed, the value of the taxable supply is determined in accordance with the formula in section 9-80. To determine the value of the taxable supply it is necessary to calculate the taxable proportion, that is, the proportion of the value of the actual supply that the taxable supply represents.

30A. Following the Full Federal Court decision in *Commissioner of Taxation v Luxottica Retail Australia Pty Ltd* [2011] FCAFC 20; 2011 ATC 20-243 (*Luxottica*) that proportion is calculated by the decision maker drawing a conclusion on the facts as to the value of the taxable supply and the relationship that value has with the price of the actual supply.

30B. Paragraphs 114 to 118 explain how you calculate the GST payable on the taxable part of a mixed supply. It is also illustrated that once the GST-exclusive value of the taxable part of the supply is determined, the GST payable is simply 10% of that value. Alternatively the GST payable on the taxable part is 1/11 of the GST-inclusive value of the taxable part of the supply.

14. Paragraph 34

Omit the second sentence of footnote 11; substitute:

Note: This meaning is also affected by sections 49-30, 66-45, 72-5, 78-25, 78-60, 78-65, 78-70, 79-60, 79-85, 80-10, 80-50, 81-10, 90-5, 100-5, 100-18, 110-5, 110-15, 110-20, 110-25, 110-30 and 113-5.

15. Paragraph 35

Omit footnote 13; substitute:

¹³ Subsections 9-75(1) and 9-80(2).

¹⁰ Subsection 9-75(1) provides that the value of a taxable supply is 10/11 of the price of the supply.

16. Paragraph 38

At the end of the paragraph; insert:

In considering whether there is a supply of one thing a commonsense, practical approach to characterisation is to be taken.^{14A}

17. Paragraph 39

Omit footnote 15; substitute:

¹⁵ For example, the supply of spectacles may appear to be the supply of one thing, but in fact, it is comprised of a taxable part (the frames) and a GST-free part (lenses) as a result of a provision of the GST Act that treats lenses for prescription spectacles as GST-free (section 38-45(1)). Examples 2 to 8 and 13A to 18 provide further instances of mixed supplies. Examples 9 to 13 provide instances of composite supplies.

18. Paragraphs 40 and 41

Omit the paragraphs; substitute:

40. Where a transaction comprises a bundle of features and acts, you must consider all of the circumstances of the transaction to ascertain its essential character.

41. By having regard to the essential character or features of the transaction it can be ascertained whether a supply contains separately identifiable taxable and non-taxable parts or is a composite supply of one thing because one part of the supply should be regarded as being the dominant part, with the other parts being integral, ancillary or incidental to that dominant part.

19. Paragraph 42

Omit from the first sentence 'we have used'; substitute 'we use'

20. Paragraph 43

Omit the first sentence; substitute:

A mixed supply has separately identifiable parts if one or more of the parts is taxable and one or more of the parts is non-taxable.

^{14A} *Commissioner of Taxation v Luxottica Retail Australia Pty Ltd* 2011 ATC 20-243 at 15.

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21. Paragraph 44

After the paragraph; insert:

44A. In *Saga Holidays v Commissioner of Taxation (Saga Holidays)*,^{20A} Stone J focussed on the 'social and economic reality' of the supply and found that the accommodation component that included a number of components in addition to the right to occupy a room is a single supply which is properly characterised as a supply of real property.

44B. In *Westley Nominees Pty Ltd v Coles Supermarkets Pty Ltd (Westley Nominees)*^{20B} Ryan, Heerey and Edmonds JJ made an assessment of what the expenditure was calculated to effect from a practical and business point of view. In so doing it was concluded that there was a single supply of a lease and the other benefits were ancillary to that supply.

44C. In *Luxottica*, taking a commonsense and practical approach, the supply was characterised as the supply of one thing, namely spectacles. However, the supply was a mixed supply because of the effect of a particular provision of the GST Act. The supply of lenses for prescription spectacles is GST-free under section 38-45 and Item 155 of Schedule 3.

22. Paragraph 45

Omit the paragraph; substitute:

45. In many circumstances, it will be a matter of fact and degree whether the parts of a supply are separately identifiable, and retain their own identity.

45A. In *Re Food Supplier and Commissioner of Taxation (Food Supplier)*,^{21A} promotional items packaged with food had intrinsic value, would not be consumed with the food and were mostly unconnected with the food. This was so even when, for example, the main item was a jar of coffee and the promotional item was a mug in which coffee might be served. In these circumstances it could not be said that the food component was the dominant part of the supply and the promotional item was ancillary or incidental to the supply of the food.

^{20A} *Saga Holidays v Commissioner of Taxation* 2006 ATC 4841.

^{20B} *Westley Nominees Pty Ltd v Coles Supermarkets Pty Ltd* [2006] FCAFC 115.

²¹ [omitted.]

^{21A} *Re Food Supplier and Commissioner of Taxation* [2007] AATA 1550.

45B. Various overseas cases have considered whether the parts of a supply are separately identifiable or ancillary, integral or incidental to a dominant part of the supply. Some of these cases are discussed below to illustrate that the question is one of fact and degree. However, while illustrative, it is important to recognise the different legislative context.^{21B} Under the United Kingdom and European VAT systems, this question is asked in determining whether there is a single supply or multiple supplies. The concept of a single supply with separately identifiable taxable and non-taxable parts is not found in the United Kingdom or European VAT law. In particular, there is no equivalent of Australia's mixed supply and section 9-80.

45C. In the United Kingdom case of *Sea Containers Ltd v. Customs and Excise Commissioners (Sea Containers)*, day train excursions were provided together with elaborate 'fine wining and dining'.^{21C} Advertising for the excursions placed significant emphasis on the food, wine and attentive service provided.

23. Paragraph 46

Omit from the first sentence '(a mixed supply)'.

24. Paragraph 47

Omit from the second sentence '(a mixed supply)'.

25. Paragraph 48

Omit the second sentence.

26. Paragraph 52

Omit the first sentence; substitute:

The Commissioner's view (and one that is consistent with *Wellington*) is that a supply has separately identifiable parts where the parts require individual recognition and retention as separate parts, due to their relative significance in the supply.

^{21B} Note the comments of the High Court in *Avon Products Pty Limited v Commissioner of Taxation* 2006 ATC 4296; (2006) 227 ALR 398 at [28] about the considerable caution that must be exercised before relying on international authorities that deal with different statutory regimes.

^{21C} *Sea Containers Ltd v. Customs and Excise Commissioners* [2000] BVC 60.

27. Paragraph 53

Omit the paragraph; substitute:

53. Also, a supply may be considered to have more than one part because of the effect of a particular provision of the GST Act, as was the case in *Luxottica* (see paragraph 44D). Other examples are supplies by way of lease of goods or supplies of rights which are treated as having two parts where the goods or rights are used or consumed in Australia (taxable part) and outside Australia (GST-free part).²⁸

28. Paragraph 55

After the paragraph; insert:

55A. The Full Federal Court in *Luxottica* found that while 'supply' is widely defined it 'invites a commonsense, practical approach to characterisation'. Their Honours said:

While "Supply" is defined broadly, it nevertheless invites a commonsense, practical approach to characterisation. An automobile has many parts which are fitted together to make a single vehicle. Although, for instance, the motor, or indeed the tyres, might be purchased separately there can be little doubt that the sale of the completed vehicle is a single supply. Like a motor vehicle, spectacles are customarily bought as a completed article and in such circumstances are treated as such by the purchaser. The fact that either the frame or the lenses may be purchased separately is not to the point. Similarly the fact that one component, the lenses, is GST-free or that one component is subject to a discount does not alter the characterisation.^{29A}

55B. In *Saga Holidays* Stone J focussed on the 'social and economic reality' of the supply and found that there was a single supply of accommodation and the adjuncts to that supply (including the use of the furniture and facilities within each room, cleaning and linen services, access to common areas and facilities such as pools and gymnasiums and various other hotel services such as portage and concierge) were incidental and ancillary to the accommodation part of the supply.

²⁸ Section 38-187 provides that a supply of goods by way of lease is GST-free if the goods are used outside Australia. Where the goods are used partly in Australia and partly outside Australia, section 9-5 applies to ensure that the supply is taxable, but only to the extent that the goods are used in Australia. Similarly a supply, other than a supply of goods or real property, for consumption outside Australia will have more than one part where section 38-190 applies to some extent.

^{29A} *Commissioner of Taxation v Luxottica Retail Australia Pty Ltd* 2011 ATC 20-243 at 15.

55C. In *Westley Nominees* the Full Federal Court considered what the expenditure was calculated to effect from a practical and business point of view in characterising the supply as single supply.

29. Paragraph 59

Omit the second sentence; substitute:

Having regard to all the circumstances, and taking a commonsense and practical approach, indicators that a part may be integral, ancillary or incidental include where:

30. Paragraph 65

(1) Omit the second sentence; substitute:

This means that, for example, in a deal in which 'free' goods, services or things are supplied dependent upon other goods, services or things being purchased, the purchase price is consideration for all of the things supplied, including the 'free' goods, services or things.

(2) After the paragraph; insert:

65A. For example, goods are often offered together in one promotion for a single price, such as buy one and get one free; buy two for the price of one; or buy three for the price of two. The consideration is in connection with all items of the package.

31. Paragraph 66

After the paragraph; insert:

66A. In *Food Supplier* the applicant sold GST-free food products like instant coffee. Sometimes the food product was packaged with a non-food product such as a mug, alarm clock, radio or cricket ball and the package was sold for a single consideration. The promotional items were described on the package as 'free'.

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66B. The Tribunal (constituted by its President, Justice Downes) found that the promotion items formed part of the supply and that the consideration was for the supply as a whole.^{36A} He said at [8]:

The promotion items could only be acquired in packages with the food products. The taxpayer would not supply them free of charge alone. That suggests to me that there was consideration for the supply of the packaged product as a whole, including the promotion item. The consideration for the supply of the two items was the single price paid for the two of them. The purchaser makes a payment "in connection with" the supply as a whole (s 9-15(1)(a)). Words such as "in connection with" have a wide meaning *HP Mercantile Pty Limited v Commissioner of Taxation* 2005 ATC 4571; (2005) 143 FCR 553 at 563). Alternatively, payment is made "in response to or for the inducement of" the supply (s 9-15(1)(b)).

32. Paragraph 68

In the first sentence, omit 'with'; substitute 'with'

33. Paragraph 69

- (1) First dot point, omit 'if'; substitute 'when'
- (2) Second dot point, omit 'discount price'; substitute 'single discount price'.

34. Paragraph 71

Insert before the last sentence:

The consideration is in connection with the supply of all 5 units.

35. Paragraph 81

- (1) At the end of the paragraph; insert:

In this example, all the parts of the supply are taxable and it would therefore be of no consequence if the fitting and balancing of the tyres was a separately identifiable part.

^{36A} *Re Food Supplier and Commissioner of Taxation* [2007] AATA 1550.

- (2) After the paragraph, omit the heading; insert

Apportionment under section 9-80

81A. For supplies that are partly taxable and partly GST-free or input taxed the value of the taxable supply is calculated under section 9-80. That section requires an apportionment. It is necessary to determine the proportion of the value of the actual supply that the taxable supply represents.

81B. Subsection 9-80(1) defines the value of the taxable part of the supply upon which GST is payable. The value of the taxable supply is defined as the proportion of the value of the actual supply that the taxable supply represents. In mathematical terms this can be expressed as:

$$vts = vas \times \frac{vts}{vas}$$

where:

vts = value of taxable supply; and

vas = value of actual supply

81C. The value of the actual supply (vas) is worked out in accordance with the formula in subsection 9-80(2). That formula is as follows:

$$vas = \frac{* \textit{Price of actual supply} \times 10}{10 + \textit{Taxable proportion}}$$

where:

taxable proportion is the proportion of the value of the actual supply that represents the value of the *taxable supply (expressed as a number between 0 and 1)

81D. Taking into account the definition of the taxable proportion the formula can be expressed as follows:

$$Vas = \frac{* \textit{Price of actual supply} \times 10}{10 + \frac{vts}{vas}}$$

81E. In calculating the value of the actual supply, the formula only strips out the GST amount from the taxable component of the supply by means of the taxable proportion.^{44A}

^{44A} As explained by the Full Federal Court in *Luxottica* 'it is necessary to ensure that the non-taxable supplies of the bundled supply do not contribute to the value [of the actual supply]. It is for this purpose that the concept of Proportion is utilised.' The Court commented that section 9-80 as originally enacted failed to differentiate between the taxable element of the actual supply and the non-taxable elements and stripped out the GST from the total consideration for the actual supply (that is, the price of the actual supply). This of course distorted the value of the actual supply.

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81F. In *Luxottica* the Full Federal Court found that the proportion in section 9-80 could not be determined because the method for calculation prescribed in that section involved two unknowns, the value of the actual supply and the proportion.

81G. The Court referred to the decision of the High Court in *IAC (Finance) Pty Limited v Courtenay*,^{44B} and drew a conclusion as to the operation of section 9-80 derived from its intent. It was held that the proportion 'must be determined by the decision maker taking into account the relevant circumstances of the particular case.' The Court added that 'in doing so the decision maker must reach a conclusion as to value and the relationship it has to the price of the supply in question.'^{44C}

81H. Luxottica Retail Australia Pty Ltd (Luxottica) ran various promotions the terms of which were that spectacle frames were offered at a discount from the normal selling price (and the discounts took various forms such as 25% off or \$100 off the normal selling price of the frames) but on condition that the customers purchased a complete pair of spectacles. What was held out to a customer who wished to take advantage of one of these promotions was that the frame was being sold to the customer at a discount, the lenses were sold without any discount, and the price of the complete pair of spectacles was the aggregate of these two amounts.

81I. Frames had increasingly become fashion accessories and not just the means of holding lenses in place. The Administrative Appeals Tribunal (the Tribunal) at first instance found as fact that this commercial significance provided context for Luxottica's sales approach to frames, as opposed to lenses, including the giving of discounts on frames. Customers returned to buy new frames even though their prescription needs had not altered.

81J. The Tribunal found that the value of the taxable frames was, as a matter of practical commonsense, commensurate with their discounted selling price. On the evidence before the Tribunal:

- (a) there were sound commercial reasons for the discounting of frames;
- (b) there was no commercial imperative for the discounting of lenses; and
- (c) there was nothing contrived or artificial about the pricing methodology adopted by the Applicant in its promotional arrangements.

^{44B} *IAC (Finance) Pty Limited v Courtenay* (1963) 110 CLR 550.

^{44C} *Commissioner of Taxation v Luxottica Retail Australia Pty Ltd* 2011 ATC 20-243 at 37.

81K. The proportion was the fraction that the discounted selling price of the taxable frames (less GST) bore to the actual selling price of the spectacles (less GST).

81L. The Tribunal added that the fact that the discounted price was conditional on the purchase of the lenses 'does not undermine the reasonableness of the calculation of the taxable proportion in this way'.

81M. The Full Federal Court considered that the above showed that the Tribunal made a considered decision as to the value of the taxable supply based on findings of fact that it was entitled to make.

81N. To work out the taxable proportion following the Full Federal Court decision, the value of the taxable part of the supply has to be determined by having regard to the facts and circumstances and taking a practical, commonsense approach. The question to be answered is what is a fair and reasonable measure of the value of the taxable supply?

81O. The value of the taxable part of a supply may be synonymous with the selling price of that part as in *Luxottica* or, as in *Food Supplier*, where there was no market for the taxable promotion item, it may be necessary to consider other means of fixing value such as cost plus a margin.

81P. Once that value is determined the proportion is the fraction that value (excluding GST) bears to the consideration for the actual supply (excluding GST).

81Q. Examples illustrating the calculation of the taxable proportion under section 9-80 are found at paragraphs 97A to 108A.

Determining the value of the taxable part

81R. Depending on the facts and circumstances in any particular case a direct or indirect method may be appropriate to determine the value of the taxable supply for the purposes of calculating the taxable proportion. This is discussed at paragraphs 97 to 111.

81S. At paragraphs 92 to 113 guidance is provided as to what is a fair and reasonable measure of value of the taxable part of the supply in different factual situations.

81T. The value should be based on a consideration of all the facts and circumstances including the relationship that component of the supply has with the price of the actual supply and not because it gives you a particular result (see paragraph 95).

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81U. You need to keep records that explain the transaction and the basis of your valuation.^{44D}

The terms of a promotion and the relevance to determining the value of the taxable part of the supply

81W. The Full Federal Court in *Luxottica* said that:

Promotions that offer lower prices or greater value subject to conditions are common practice in many, if not every, arena of retail sale. The offer may be "two for the price of one", or "buy one, get one free", or, as here, a reduction in the price of the frame on condition that the lenses are purchased at the same time. How a promotion is structured is a matter for the commercial judgment of the seller. In the present case it has clearly been decided that the discount offered should be applied to the price of the frames rather than the lenses.^{44E}

81X. There is a view that the decision in *Food Supplier* is inconsistent with this statement. It is said that the terms of the promotion in *Food Supplier* were that the promotional item was supplied 'free' and therefore the value of that item must be zero. However, the decision in *Luxottica* does not stand for the proposition that the terms of a promotion are determinative of the value of the taxable part of the supply. In *Luxottica*, other factors were taken into account in determining the value of the taxable frames.

81Y. Critical to the decision in *Food Supplier* was the finding as a matter of fact that the consideration was paid for the package comprising both the food and promotional items. That is, the consideration was in connection with all parts of the package. In these circumstances some part of the consideration must be apportioned to the taxable item. This requires a conclusion regarding the value of the taxable item.

81Z. While the promotional items were advertised as 'free' this did not dissuade the Tribunal from finding on the facts that the consideration was in connection with both the food product and the promotional item. The Tribunal said at [12]:

To my mind it is dangerous to equate modern use of the word "free" with the absence of consideration. The danger is compounded when the question is not whether "free" is the most appropriate word, but whether it is misleading.....It follows, to my mind, that even if the use of "free" in connection with the promotion items in the present case is not misleading, it does not follow that, as a component of an overall package, they are provided without consideration.^{44F}

^{44D} Paragraph 382-5(1)(a) in Schedule 1 to the *Taxation Administration Act 1953* provides rules for keeping records of indirect tax transactions.

^{44E} *Commissioner of Taxation v Luxottica Retail Australia Pty Ltd* 2011 ATC 20-243 at 39.

^{44F} *Re Food Supplier and Commissioner of Taxation* [2007] AATA 1550 at 12.

and then at [15]

Promotions are sometimes advertised as "buy one, get one free" or "two for the price of one". It could not be the case that there is consideration for both items in the second example but not in the first.^{44G}

81ZA. While the Full Federal Court said in *Luxottica* how a promotion is structured is a matter for the commercial judgment of the seller, it is still necessary to determine the connection between the consideration and the things supplied.

81ZB. For example, consider a situation where the taxable part of a mixed supply is reduced by a dollar discount amount to nil consideration. If, on the facts, the consideration for the actual supply is properly found to be only in connection with the GST-free part of the supply, section 9-80 does not apply. There is only a GST-free supply for consideration.

81ZC. However, if on a proper consideration of the terms and the surrounding circumstances apportionment of the discount wholly to the taxable component is merely a contrivance to reduce the GST otherwise payable, and does not reflect the true commercial position, that would not be a practical, commonsense basis of apportionment. In those circumstances, it would not be accepted that the value of the taxable item is zero. That value would not be a fair and reasonable measure of the value of the taxable part. Section 9-80 applies to determine the value of the taxable part of the supply.

Apportionment under section 9-75

81ZD. Section 9-80 only prescribes a statutory method for calculating the value of a taxable supply that is part of an actual supply that has GST-free or input taxed parts. For other kinds of mixed supplies the calculation of the value of the taxable supply must be made under section 9-75.

81ZE. Under subsection 9-75(1) the value of the taxable supply is:

$$\text{price} \times \frac{10}{11}$$

81ZF. Subsection 9-75(1) provides that the price is the sum of the monetary consideration^{44H} and the non-monetary consideration.^{44I} Price is therefore the total consideration for the supply. The value of the taxable supply is the consideration less GST.

^{44G} *Re Food Supplier and Commissioner of Taxation* [2007] AATA 1550 at 15.

^{44H} Consideration expressed as an amount of money' is consideration that finds expression in money. The distinction between paragraphs 9-75(1)(a) and

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36. Paragraph 82

Omit the fifth sentence.

37. Paragraph 83

Omit paragraph; substitute:

83. Where non-taxable supplies are made separately, no further issue arises. However, where they are parts of a mixed supply that also contains taxable parts, the value of which is determined under section 9-75 (and not section 9-80), the question arises whether the GST Act requires you to apportion the consideration for the supply in the absence of a specific apportionment rule.

38. Paragraph 89

At the end of the paragraph; insert:

Support for this is found in *Food Supplier*. The Tribunal found that the consideration was for the supply of the packaged product as a whole, including the promotion item. The consideration for the supply of the two items was the single price paid for the two of them and the payment was in connection with the supply as a whole.^{50A}

39. Paragraph 91

In the first sentence after 'inherently requires that'; insert 'the'.

9-75(1)(b) is essentially between monetary consideration and what can be broadly described as 'in kind' consideration. See paragraph 32 of GSTR 2001/6.

⁴⁴¹ However, in some limited instances, determining the GST inclusive market value of the supply may be an acceptable method for working out the GST inclusive market value of the consideration. Refer to paragraphs 138 to 158 of GSTR 2001/6 for a discussion of this issue.

^{50A} *Re Food Supplier and Commissioner of Taxation* [2007] AATA 1550 at 8.

40. Paragraph 92

Omit the heading and paragraph; substitute:

Reasonable methods of apportionment

92. Where, as in the case of supplies covered by section 9-75, there is no legislative provision specifying a basis for apportionment, you may use any reasonable method to apportion consideration to the separately identifiable taxable part of a mixed supply. However, the apportionment must be supportable by the facts in the particular circumstances and be undertaken as a matter of practical commonsense.^{51A}

41. Paragraph 95

Omit from the last sentence: ‘, including supplies that are GST-free and input taxed’.

42. Paragraph 97

Omit the paragraph; substitute

97. Direct methods use relevant variables that measure the connection between what is supplied (the taxable and non-taxable parts) and the consideration for the actual supply. A direct method usually gives you the most accurate measure of the consideration for the taxable part of the supply you make (that is, the value of the taxable supply). Such methods may include:

- the price allocation as agreed between the parties to the supply (see paragraphs 97A to 97M);
- the comparative price of each part if it were supplied on its own, relative to the whole payment received (see paragraphs 98 to 103D);
- the relative amounts of rental consideration (see paragraph 103E to 103F);
- the relative amount of time required to perform the supply (see paragraphs 104 to 105); and
- the relative floor area in a supply of property (see paragraphs 106 to 108).

^{51A} *Commissioner of Taxation v Luxottica Retail Australia Pty Ltd* 2011 ATC 20-243 at 40.

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Separately agreed prices

97A. Depending on the facts and circumstances of a mixed supply, the price allocated to the taxable component may be regarded as the most appropriate measure of value of the taxable part of the supply.

Examples of separately agreed prices

Example 13A – spectacles with GST-free lenses – no discount

97B. *Eye Specs sells prescription spectacles. Harry purchases a particular brand of frames for \$165 and prescription lenses for \$89.*

97C. *The price of the frames is a reasonable measure of value upon which to determine the taxable proportion. The price of the frames is their ordinary selling price and the price of the lenses is determined by the complexity of the optical prescription.*

97D. *The price of the spectacles is the aggregate of the price of the frames and the price of the lenses.*

97E. *The selling price of the frames and lenses is \$254. The taxable proportion is 62.76% (the GST-exclusive value of the frames (that is, selling price of \$165 less GST of \$15) divided by the GST-exclusive price of the spectacles the selling price of the spectacles is \$254 less the GST on the taxable component of \$15. Applying the formula in section 9-80(2) the value of the actual supply is \$239 and the value of the taxable supply (as defined in section 9-80(1)) is \$150 (that is, \$239 multiplied by 62.76%.) The GST payable is \$15.*

Example 13B - taxable membership and non-taxable voucher

97F. *Ocean Parks and Vans sells memberships which offer discounts for short term stays at their caravan parks. They offer a membership gift package which includes a 1 year membership and a \$100 voucher for short term stays. The package is sold for \$155. A 1 year membership normally sells for \$55.*

97G. *The package consists of a taxable part (membership) and a non-taxable part (voucher).^{54A}*

97H. *The value of the taxable supply is calculated under section 9-75. The value of the taxable part is \$50 (that is, the price of the membership, \$55 x 10/11). The GST payable is \$5.*

^{54A} The supply of the voucher is not a taxable supply under section 105-5.

97I. *In many cases, you may make a mixed supply that involves a discount promotion. The value of the taxable part must be determined as a matter of practical commonsense having regard to the relevant facts and circumstances of the supply and the relationship that the value of the taxable part has with the price of the actual supply.*

Example 13C – spectacles with GST-free lenses – discount promotion

97J. *Melissa sells prescription spectacles. She normally sells a particular brand of frames for \$160 and prescription lenses for \$89. The frames are an old style and not selling well so Melissa runs a promotion offering an aggregate price of \$199 for the frames and lenses. The \$50 discount is applied to these particular frames but only if they are purchased with a pair of prescription lenses to be fitted into the frames. The discount was not available if frames only were purchased.*

97K. *The discounted price of the frames is a reasonable measure of value upon which to determine the taxable proportion. There is sound commercial reasons for discounting the frames (older style of frames that were not selling well). The frames were a key part of the promotion and this was the offer made to and accepted by the customer.*

97L. *The price of the spectacles is the aggregate of the discounted price of the frames and the undiscounted price of the lenses.*

97M. *The selling price of the frames and lenses is \$199. The taxable proportion is 52.9% (the GST-exclusive price of the frames (that is, \$100) divided by the GST-exclusive selling price of the spectacles (that is, \$189)). The value of the actual supply is \$189 and the value of the taxable supply is \$100 (that is, \$189 multiplied by 52.9%). The GST payable is \$10.*

43. Paragraph 98

Omit the paragraph; substitute

98. In some circumstances it may be appropriate to apportion the consideration for a supply on the basis of the price for which each part would have been supplied if it was supplied separately (for example, the general retail market price for which the goods are sold). If you use this basis, the GST you pay is the same as if you supplied the taxable parts separately in the same market.

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Examples of apportionment using relative prices

Example 14 – goods sold together for single price

98A A tea pot is sold together with 100g of tea for \$25. The tea pot is also sold separately for \$15 and the tea for \$10. It is reasonable in this case to apportion the \$25 based on the normal selling price of the tea pot.

98B. The value of the teapot (the taxable component) is commensurate with its normal selling price. The taxable proportion is 57.69% (the GST exclusive price of the teapot (that is, \$13.64) divided by the GST-exclusive selling price of the package (that is, \$23.64)). The value of the actual supply is \$23.64 and the value of the taxable supply is \$13.64 (that is, \$23.64 multiplied by 57.69%). The GST payable is \$1.36.

44. Paragraphs 100 and 101

Omit the paragraphs; substitute:

100. In many cases, you may make a mixed supply for a package price. The package price for the mixed supply may involve a discount promotion. Apportionment of the consideration must be undertaken as a matter of practical commonsense. This is illustrated in the following examples.

100A. Example 13C can be contrasted with the following examples.

Example 14A – prescription glasses sold for a discount

101. Michael sells prescription spectacles. He runs a promotion offering \$100 off the price of full priced spectacles. John selects a pair of frames that are priced at \$230 and has prescription lenses fitted which cost \$320. The total price of the spectacles after the discount is \$450.

101A. To work out the taxable proportion Michael apportions the discount on a proportionate basis resulting in a price of \$188 for the frames and \$262 for the lenses. The taxable proportion is 39.5% (the GST-exclusive price of the frames (\$171) divided by the GST-exclusive price of the frames plus the price of the lenses (that is, \$433)). The value of the actual supply is \$433 and the value of the taxable supply is \$171 (that is, \$433 multiplied by 39.5%). The GST payable is \$17.10.

101B. *Alternatively, under a different method Michael calculates the taxable proportion also as 39.5% (the GST-exclusive undiscounted price of the frames (\$209) divided by the GST-exclusive undiscounted price of the glasses (that is, undiscounted price of frames plus the undiscounted price of the lenses (that is, \$529)). The value of the actual supply is therefore \$433 (that is, (the price (\$450) x 10) divided by (10 + 0.395 (taxable proportion))). The value of the taxable supply is \$171 (that is, \$433 multiplied by 39.5%). The GST payable is \$17.10.*

45. Paragraph 103

After the paragraph; insert:

103A. *Specifically, in terms of section 9-80, the value of the taxable part is commensurate with the discounted price of each course, that is, \$600 (excluding GST) and the taxable proportion is 60% (calculated as the GST-exclusive price of the taxable units (\$1200) divided by the GST-exclusive price of the taxable units plus the price of the GST-free units (that is, \$2000)). The value of the actual supply is \$2000 and the value of the taxable supply is \$1200 (\$2000 multiplied by 60%) The GST payable is \$120.*

Example 15B – goods sold together for single discounted price

103B. *If in example 14, the tea pot and the tea are sold for a single discounted price of \$20, it would, in the absence of any other more appropriate measure of value, be reasonable to apportion the \$20 based on the normal selling price of the tea pot.*

103C. *To work out the taxable proportion the discount of \$5 is apportioned on a proportionate basis resulting in a price of \$12 for the teapot and \$8 for the tea. The taxable proportion is 57.69% (the GST-exclusive price of the teapot (\$10.91) divided by the GST-exclusive price of the teapot plus the price of the tea (that is, \$18.91). The value of the actual supply is \$18.91 and the value of the taxable supply is \$10.91 (that is, \$18.91 multiplied by 57.69%). The GST payable is \$1.09.*

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103D. *Alternatively, under a different method the taxable proportion is also calculated as 57.69% (the GST-exclusive undiscounted price of the teapot (\$13.64) divided by the GST-exclusive undiscounted price of the package (that is, undiscounted price of teapot plus the undiscounted price of the tea (that is, \$23.64)). The value of the actual supply is therefore \$18.91 (that is, (the price (\$20) x 10) divided by (10 + 0.5769) (taxable proportion)). The value of the taxable supply is \$10.91 (that is, \$18.91 multiplied by 57.69%). the GST payable is \$1.09.*

The relative amounts of rental consideration

103E. Sometimes it may be appropriate to ascertain the value of a taxable part of the supply having regard to rental returns.

Example 15C – commercial and residential premises

103F. *Hilary is registered for GST. She sells a property that consists of commercial premises and residential premises. The property is on a single title and is currently untenanted, although the commercial part was recently rented for \$1,000 per week and the residential part for \$500 per week.^{55A} Hilary may reasonably apportion two thirds of the consideration for the sale to the commercial part and one third to the residential part to ascertain the value of the taxable part.*

46. Paragraph 105

Omit the last sentence; substitute:

This is a reasonable method of apportionment to ascertain the value of the taxable part of the supply.

47. Paragraph 108

After paragraph; insert:

108A. *The taxable proportion is therefore 50%. Applying the formula in section 9-80, the taxable value of the actual supply is calculated as $(\$2000 \times 10)/(10 + 0.5)$. The value of the taxable part is \$952.38 and the GST payable is \$95.23.*

^{55A} The sale of commercial premises is taxable. The sale of residential premises is input taxed under section 40-65.

48. Paragraph 112

Omit the first sentence; substitute:

Some methods may not result in a reasonable basis of apportionment of the consideration for a mixed supply.

49. Paragraphs 115 and 116

Omit paragraphs; substitute:

115. The value of a taxable supply has the meaning given by section 9-75 and 9-80.^{57A} Section 9-75 links the value of the taxable supply to its price so that the value of a supply is 10/11 of its price (or consideration). This also means that the GST payable on a taxable supply is equivalent to 1/11 of the price (or consideration) of the supply. In section 9-80 the value of the taxable supply is a proportion of the value of the actual supply which is similarly linked to the price of the actual supply. However, as the actual supply includes GST-free or input taxed parts the value of the actual supply is not 10/11 of its price. The denominator must be greater than 10 but less than 11.

116. Section 9-80 applies to calculate the value of the taxable part of a supply that has non-taxable parts that are GST-free or input taxed. Section 9-75 applies to calculate the value of the taxable part of a supply that has non-taxable parts that are not GST-free or input taxed. When you have apportioned the consideration for the supply, you can calculate the GST payable as either:

- 10% of the value of the taxable part; or
- 1/11 of the price (or consideration) for the taxable part.

50. Paragraph 117

(1) Omit heading to the paragraph; substitute:

Determining the value of a taxable supply that is part of a mixed supply that has non-taxable parts that are GST-free or input taxed

(2) At end of paragraph; insert:

That formula requires the taxable proportion to be calculated. The value of the taxable supply upon which GST is payable is that proportion of the value of the actual supply.

^{57A} Section 195-1.

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51. Paragraph 118

Omit paragraph; substitute:

118. To work out the taxable proportion a conclusion as to the value of the taxable part of the supply has to be made (see paragraphs 81G to 81P). Once that conclusion is made and you have established the value of the taxable part of the supply, you can simply calculate the GST payable as either:

- 10% of the GST-exclusive value of the taxable part; or
- 1/11 of the GST inclusive value for the taxable part.

52. Paragraph 119

(1) Omit heading to the paragraph; substitute:

Determining the value of a taxable supply that is part of a mixed supply that has non-taxable parts that are not GST-free or input taxed

(2) Omit 'mixed' from first sentence.

53. Paragraphs 120 and 121

Omit the paragraphs; substitute:

120. Subsection 29-70(1) specifies the information to be contained in a tax invoice.

121. The GST payable on a mixed supply you make will be less than 1/11 of the price of the supply. Where you make a mixed supply, the taxable part of the supply is a taxable supply and the requirements for issuing a tax invoice are as stated in subsection 29-70(1). To show the correct amount of GST, the tax invoice for a mixed supply must contain enough information to clearly ascertain:

- what is supplied including the quantity and price;
- the extent to which supplies are taxable; and
- the amount of GST payable.

54. Detailed contents list

(1) Omit:

Apportioning a mixed supply	25
Apportionment	82

⁵⁹ [omitted]

	Reasonable methods of apportionment	92
	<i>Examples of apportionment using relative price</i>	101
	<i>Example 14 – commercial and residential premises</i>	101
	<i>Valuing the taxable part of a mixed supply where the non-taxable parts are GST-free or input taxed</i>	117
	<i>Valuing the taxable part of a mixed supply where the non-taxable parts are not GST-free or input taxed</i>	119
(2)	Substitute:	
	Apportionment of the consideration for a mixed supply	25
	Apportionment under section 9-80	81A
	<i>Reasonable methods of apportionment</i>	92
	<i>Examples of apportionment using relative price</i>	98A
	<i>Example 14A – prescription glasses sold for a discount</i>	101
	<i>Determining the value of a taxable supply that is part of a mixed supply that has non-taxable parts that are GST-free or input taxed</i>	117
	<i>Determining the value of a taxable supply that is part of a mixed supply that has non-taxable parts that are not GST-free or input taxed</i>	119
(3)	Insert:	
	<i>Determining the value of the taxable part</i>	81R
	<i>The terms of a promotion and the relevance to determining the value of the taxable part of the supply</i>	81W
	Apportionment under section 9-75	81ZD
	<i>Separately agreed prices</i>	97A
	<i>Examples of separately agreed prices</i>	97B
	<i>Example 13A – spectacles with GST-free lenses – no discount</i>	97B
	<i>Example 13B- taxable membership and non-taxable voucher</i>	97F
	<i>Example 13C – spectacles with GST-free lenses – discount promotion</i>	97J
	<i>Example 14 – goods sold together for single price</i>	97A
	<i>Example 15B – goods sold together for single discounted price</i>	103B

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<i>The relative amounts of rental consideration</i>	103E
<i>Example 15C – commercial and residential premises</i>	103F

55. Related Rulings/Determinations

Delete: GSTR 2000/15; insert: GSTR 2006/4

56. Legislative references

Delete:

- TAA 1953 70
- TAA 1953 70(1)(d)

Insert:

- TAA 1953 Sch 1 382-5(1)(a)

57. Case references

Insert:

- Avon Products Pty Limited v Commissioner of Taxation [2006] HCA 29; 2006 ATC 4296; (2006) 62 ATR 399
- Commissioner of Taxation v Luxottica Retail Australia Pty Ltd [2011] FCAFC 20; 2011 ATC 20-243
- IAC (Finance) Pty limited v. Courtenay (1963) 110 CLR 550
- Re Food Supplier and Commissioner of Taxation [2007] AATA 1550; 2007 ATC 157; (2007) 66 ATR 938
- Saga Holidays v Commissioner of Taxation [2006] FCAFC 191; 2006 ATC 4841; (2006) 64 ATR 602
- Westley Nominees Pty Ltd v Coles Supermarkets Pty Ltd [2006] FCAFC 115; 2006 ATC 4363; (2006) 62 ATR 682

58. Appendix A

(1) Before '*Supply by an amalgamating company to an amalgamated company in the course of amalgamation*'; insert:

Supplies made by an operator of a compulsory third party scheme

[Subsection 79-60(2)] If an *operator of a *compulsory third party scheme makes a supply under the scheme:

- it is not a *taxable supply; and
- it is not treated as *consideration for an acquisition made by the operator; and
- it is not treated as *consideration for a supply made to the operator by the entity to whom the supply was made; to the extent that the supply is a *CTP compensation or ancillary payment or supply.

Supplies of goods to operators of a compulsory third party scheme in the course of settling claims

[Subsection 79-85(1)] A supply of goods is not a *taxable supply if it is solely a supply made under a *compulsory third party scheme to an *operator of the scheme in the course of settling a claim for compensation made under the scheme.

Supplies by an operator of a compulsory third party scheme of becoming a party to industry deeds or entering into settlement sharing arrangements

[Subsection 80-10(1)] An *operator of a *compulsory third party scheme does not make a *taxable supply by:

- (a) entering into, or becoming a party to, an *insurance policy settlement sharing arrangement; or
- (b) becoming a party to a deed created by or under a *State law or a *Territory law establishing a *compulsory third party scheme, that provides for an insurance policy settlement sharing arrangement.

Supplies by an operator of a compulsory third party scheme of becoming a party to industry deeds or entering into nominal defendant settlement sharing arrangements

[Subsection 80-50(1)] An *operator of a *compulsory third party scheme does not make a *taxable supply by:

- (a) entering into, or becoming a party to, a *nominal defendant settlement sharing arrangement to which this Subdivision applies; or
- (b) becoming a party to a deed created by or under a *State law or a *Territory law establishing a compulsory third party scheme, that provides for a nominal defendant settlement sharing arrangement to which this Subdivision applies.

(2) After '*Supplies of vouchers stating monetary value*' omit paragraphs (a) and (b); insert:

- (a) on redemption of the voucher, the holder of the voucher is entitled to supplies up to the *stated monetary value of the voucher; and
- (b) the *consideration for supply of the voucher does not exceed the stated monetary value of the voucher.

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Supplies of arranging for the supply of a voucher

[Subsection 100-18(2)] If, under the arrangement, the supplier pays, or is liable to pay, an amount, as a commission or similar payment, to the other entity for the other entity's supply, the supply by the other entity to the supplier, to which the supplier's payment or liability relates, is treated as if it were not a *taxable supply.

- (3) Before '*Supply of work or services, under an arrangement, and a voluntary agreement to withhold is in place*'; insert:

Supply of the transfers of a tax loss or net capital loss

[Subsection 110-5(1)] A supply is not a *taxable supply if the supply is:

- (a) the transfer of a *tax loss in accordance with Subdivision 170-A of the *ITAA 1997; or
- (b) the transfer of a *net capital loss in accordance with Subdivision 170-B of the ITAA 1997.

Supply under the operation of the consolidated group regime

[Subsection 110-15(1)] A supply is not a *taxable supply to the extent that it occurs because of the operation of these provisions:

- (a) Part 3-90 of the *ITAA 1997;
- (b) Part 3-90 of the Income Tax (Transitional Provisions) Act 1997.

Supply of entering into a tax sharing agreement

[Subsection 110-20(2)] The supply is not a *taxable supply to the extent that it relates to the fact that the agreement satisfies those requirements.

Supply of the release from an obligation relating to a contribution amount made to a TSA contributing member who has left the group clear of group liability

[Subsection 110-25(1)] A supply made to a *TSA contributing member of a *consolidated group or a *MEC group is not a *taxable supply if:

- (a) the supply is a release from an obligation relating to a *contribution amount in relation to a *group liability of the *head company of the group; and

Example: The obligation could be a contractual obligation created by the agreement under which the contribution amount was determined.

(b) the TSA contributing member has, for the purposes of subsection 721-30(3) of the *ITAA 1997, left the group clear of the group liability.

Note: See section 721-35 of the ITAA 1997 for when a TSA contributing member has left a group clear of the group liability.

Supply made under a tax funding agreement to the extent that it relates to the distribution of economic burdens and benefits directly related to tax-related liabilities

[Subsection 110-30(2)] The supply is not a *taxable supply to the extent that it relates to the fact that the agreement deals with the distribution mentioned in paragraph (1)(b).

This draft Addendum is intended to reflect the law as enacted at the time of issue.

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Your comments

You are invited to comment on this draft Addendum.

Please forward your comments to the contact officer by the due date.

A compendium of comments is prepared for the consideration of the relevant Rulings Panel or relevant tax officers.

An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments; and
- publish on the Australian Taxation Office website at www.ato.gov.au

Please advise if you do not want your comments included in the edited version of the compendium.

Due date: 25 November 2011
Contact officer: Nigel Goodwin
E-mail address: nigel.goodwin@ato.gov.au
Telephone: (02) 6216 2315
Facsimile: (02) 6216 1247
Address: Australian Taxation Office
PO Box 9977
Civic Square
Canberra ACT 2608

Commissioner of Taxation

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ATO references

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