GSTR 1999/D12 - Goods and Services Tax: transitional arrangements: supplies of a right made on or after 2 December 1998 but before 1 July 2000 and the extent to which such supplies are taken to be made on or after 1 July 2000

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Draft Goods and Services Tax Ruling

Goods and Services Tax: transitional arrangements: supplies of a right made on or after 2 December 1998 but before 1 July 2000 and the extent to which such supplies are taken to be made on or after 1 July 2000

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Preamble

This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered views of the Australian Taxation Office. This draft may not be relied on by taxation officers, taxpayers and practitioners, as it is not a ruling or advice in terms of section 37 of ***the Taxation Administration Act 1953****. When officially released it will be a public ruling for the purposes of section 37 and may be relied upon by any person to whom it applies.*

What this Ruling is about

1. This Ruling considers the application of sections 11 and 12 of the *A New Tax System (Goods and Services Tax Transition) Act 1999* ('the Transition Act') to a supply of a right on or after 2 December 1998 but before 1 July 2000, where that right could reasonably be expected to be exercised on or after 1 July 2000. All legislative references are to the Transition Act unless otherwise stated.

2. The Ruling also sets out methods for determining the extent to which such a right could reasonably be expected to be exercised on or after 1 July 2000 for the purposes of subsection 11(1), where that extent is not readily ascertainable.

3. This Ruling does not deal with a supply of a right where that supply is not a taxable supply.

4. This Ruling does not deal with the interpretation of section 13, which, in broad terms, considers the extent to which supplies may be free of Goods and Services Tax ('GST') where you, as the supplier, have an existing written agreement covering a period that spans 1 July 2000 which does not provide you with an opportunity to review the consideration specified in the agreement because of the imposition of GST.

5. This Ruling also does not deal with the GST consequences of a supply of a right where section 13 applies.

6. The Ruling also does not consider whether GST is payable in respect of supplies specifically dealt with by the following sections in the Transition Act:

(a) section 14 (which looks at whether GST is payable in respect of a supply of services or any other thing for life made under an agreement entered into prior to 1 July 2000);

(b) section 15 (which considers whether GST is payable with respect to a supply made under certain funeral arrangements);

(c) section 19 (which deals with the extent to which GST is payable in respect of certain supplies made available after 1 July 2000 in accordance with a construction agreement made before 1 July 2000); and

(d) certain terms used in this Ruling are defined or explained in the definitions section of the Ruling. These terms, when first mentioned elsewhere in the body of the Ruling, appear in **bold** type.

Date of effect

7. This Ruling, when finalised, will take effect on and from 8 July 1999 (the date of commencement of the Transition Act).

Context

Transition to a GST

8. The GST is only payable on a taxable supply or taxable importation to the extent that it is made on or after 1 July 2000.[1] The general rules for determining whether a supply or importation is made on or after 1 July 2000 are to be found in section 6 ('the general time of supply rules). The rules are as follows:

(a) a supply or acquisition of **goods** is made:[2]

(i) when the goods are removed; or

(ii) if the goods are not to be removed – when the goods are made available to the recipient; or

[1] Section 7.
[2] Subsection 6(2).

(iii) if the goods are removed before it is certain that a supply will be made (for example, if the goods are given or taken on approval, sale or return, or similar terms) – when it becomes certain that a supply has been made.

(b) a supply or acquisition of real property is made when the property is made available to the recipient.[3]

(c) a supply or acquisition of services is made when the services are performed.[4]

(d) a supply or acquisition of any other thing is made when the thing is performed or done.[5]

9. Under these general time of supply rules, a supply consisting of the creation or grant of a right is made when the right is created or granted. Without a modification to these rules, rights created or granted prior to 1 July 2000 could be totally outside the ambit of the GST, notwithstanding that those rights might be exercised in whole or in part on or after 1 July 2000. Such a situation would clearly contravene the government's policy objective that seeks to have GST applied to expenditure on private consumption occurring on or after 1 July 2000.

10. These general time of supply rules are, therefore, modified in certain prescribed situations by other provisions in the Transition Act. Sections 11 and 12 are two such provisions.

Section 11

11. Section 11 covers the situation where there is a supply of a right that has been granted or is granted on or after 2 December 1998 but before 1 July 2000, which could reasonably be expected to be exercised on or after 1 July 2000.

12. Subsection 11(1) provides that a supply of a right is taken to be a supply made on or after 1 July 2000 if, and to the extent that, the right could reasonably be expected to be exercised on or after 1 July 2000, notwithstanding that it was or is granted on or after 2 December 1998, but before 1 July 2000. There are, however, certain exceptions to this rule and they are in subsections 11(1A) and 11(1B). Those exceptions cover such circumstances as a supply of a right under a hire purchase agreement that is an option to purchase goods hired under that agreement, the supply of a right to use software in certain circumstances and the supply of a long-term lease made before 1 July 2000.

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[3] Subsection 6(3).
[4] Subsection 6(4).
[5] Subsection 6(5).

13. To assist in making the apportionment contemplated by subsection 11(1), subsection 11(2) specifically confers power on the Commissioner to make a written ruling setting out methods for working out the extent to which a right could reasonably be expected to be exercised on or after 1 July 2000 where that extent is not readily ascertainable. This Ruling, when finalised, will be an exercise of such power.

14. The types of rights to which section 11 could apply include certain types of public transport tickets, public transport travel-cards that entitle the holder to undertake a fixed number of trips, booklets of movie tickets, vouchers that entitle the holder to a future service where no monetary value is stated on the voucher, and certain types of internet access agreements.

Section 12

15. Section 12 deals with the situation where an agreement is entered into prior to 1 July 2000 and provides that the thing supplied under the agreement is to be supplied either for a period which begins before 1 July 2000 and ends on or after 1 July 2000, or is to be supplied progressively over such a period. Subsection 12(2) provides that, in such circumstances, the supply is taken to be made continuously and uniformly throughout the period. This, in effect, means that the proportion of the supply attributed to the part of the period before 1 July 2000 is not subject to GST, but the proportion of the supply attributed to the part of the period on or after 1 July 2000 is.

16. The types of rights to which section 12 could apply include public transport tickets issued for travel over a specific period, internet access agreements where the recipient is entitled to access rights over a specific period and agreements whereby the recipient of the right is entitled to receive a service for a specific period or progressively over that period.

Ruling

17. Except where section 13 applies,[6] where the supply of a right is made on or after 2 December 1998 but before 1 July 2000, and the right is capable of being exercised for the duration of a period which begins before 1 July 2000 and ends on or after 1 July 2000, section 12 applies, GST is payable in respect of the proportion of the supply attributable to the part of the period occurring on or after 1 July 2000.

[6] Section 13 applies …

18. Except where section 13 applies, where a supply of a right of unlimited duration is made on or after 2 December 1998 but before 1 July 2000, section 11 applies. GST is payable on the supply if, and to the extent, that the right could reasonably be expected to be exercised on or after 1 July 2000.

19. Except where section 13 applies, where the supply of a right is made on or after 2 December 1998 but before 1 July 2000, and the right entitles the recipient to exercise it on a fixed number of occasions without any time limitation on when it might be exercised, section 11 applies. GST is payable on the supply if, and to the extent, that the right could reasonably be expected to be exercised on or after 1 July 2000.

20. Except where section 13 applies, where the supply of a right is made on or after 2 December 1998 but before 1 July 2000, and the right is supplied on the basis that it is only able to be exercised on a fixed number of occasions within a designated time period, section 11 applies. GST is payable on the supply if, and to the extent, that the right could reasonably be expected to be exercised on or after 1 July 2000. Both sections 11 and 12 provide general principles for determining when supplies should be accounted for over the transition period. Neither is more specific than the other. That being the case we need to go back to the broad policy for the Transition Act and that is to only apply GST to supplies occurring on or after 1 July 2000. In this example we know when specific events occur therefore it is most appropriate to apply section 11 rather than the time based approach in section 12.

21. For the purposes of section 11, for there to be a 'reasonable expectation' that a right could be exercised on or after 1 July 2000, there must be about an even chance that the right in question could be exercised on or after that date.

22. The test of 'reasonable expectation' contemplated by section 11 is an objective test.

23. In circumstances where there is no readily ascertainable method for determining the extent to which a right could reasonably be expected to be exercised on or after 1 July 2000, the Commissioner will accept the following methods as a basis for determining whether an apportionment is necessary under subsection 11(1) and the extent to which such an apportionment should be made:

(a) '**the client usage method'** in relation to each product that involves the grant of a right to which section 11 applies, the supplier may choose to apply the trends established by statistics it has collected on past product usage patterns by specific clients to determine if, and the extent to which, those clients can be reasonably

expected to exercise such a right on or after 1 July 2000; and

(b) **'the product usage method**' in relation to each product that involves the grant of a right to which section 11 applies, the supplier may choose to apply the trends established by statistics it has collected on past product usage patterns to determine if, and the extent to which, recipients of the right can be reasonably expected to exercise such a right on or after 1 July 2000;

(c) '**the industry statistics method**' in relation to each product that involves the grant of a right to which section 11 applies, the supplier may choose to apply the trends established by statistics collected by an independent industry body on past product usage patterns for products substantially equivalent to the supplier's product to determine if, and the extent to which, recipients of the right can be reasonably expected to exercise such a right on or after 1 July 2000.

24. A supplier must use the method which most accurately reflects the circumstances. For example if particular average statistics are available method (a) above should be used.

Explanations (this forms part of the Ruling)

Supply of a right and the Transition Act

25. Section 11 covers the situation where there is a supply of a right that has been granted, or is granted, on or after 2 December 1998 but before 1 July 2000, which could be exercised on or after 1 July 2000. In these circumstances, it provides that the supply of the right is taken to be a supply made on or after 1 July 2000 if, and to the extent that, the right could reasonably be expected to be exercised on or after 1 July 2000.

26. By contrast, section 12 looks at the situation where you make a supply of a right, amongst other things, under an agreement or an enactment that provides that the right is to be supplied for a period, or is to be supplied progressively over a period, where that period begins before 1 July 2000 and concludes on or after 1 July 2000. In those circumstances, the provision stipulates that the supply is taken to be made continuously and uniformly over the period. In effect this provides a simple time apportionment as the appropriate method for determining the extent to which the supply is made on or after 1 July 2000. It does this by looking at how much of the supply should be

attributed to the part of the period before 1 July 2000 and how much should be attributed to the part of the period on or after 1 July 2000.

27. Section 12 also has a potential application to the supply of a right in the circumstances contemplated by this Ruling. For there to be such an application, the right needs to be supplied for a period, or to be supplied progressively over a period, where that period spans 1 July 2000. This raises the question of how to determine whether section 11 or section 12 applies to such a supply.

Section 12

28. We are of the view that section 12 applies where the right is supplied for a period which begins before 1 July 2000 and concludes on or after 1 July 2000, or is supplied progressively over such a period. As the words 'for', 'over' and 'period' are not defined in the legislation, we interpret those words as having the meanings given to them, in contexts similar to the present, in *The Macquarie Dictionary*, *2nd edition.*[7] Those meanings are as follows:

(a) 'for':[8] '8. with regard or respect to: *pressed for time, too warm for April*. …'

(b) 'over':[9] '17. throughout the duration of: *over a long term of years*. …'

(c) 'period':[10] '2. any specified division or portion of time. …'

29. This means that, section 12 applies where the right is supplied with regard to or with respect to a specified division or portion of time which begins before 1 July 2000 and concludes on or after 1 July 2000, or is supplied progressively throughout the duration of such a specified division or portion of time.

30. On this interpretation, we consider the following types of supplies of rights are within the ambit of section 12, provided they relate to a period commencing before 1 July 2000 and ending on or after that date:

(a) public transport tickets issued for a specified period (e.g., a monthly train, tram or bus ticket issued on 20 June 2000);

(b) the granting of a right which will entitle the recipient to receive specified services for, or over, a specific period

[7] *The Macquarie Dictionary*, 2nd Edition, (the Macquarie Library Pty Ltd, Macquarie University).
[8] op.cit. at 679.
[9] op.cit. at 1263.
[10] op.cit. at 1318.

(e.g., a right granted in an agreement which sees a cleaning company agree to clean the business premises of another company for twelve months from 1 May 2000);

(c) a right created under a statute, or by an agreement between a power supply entity and a consumer, whereby the power supply entity agrees to provide the consumer with a power supply for a designated period (e.g., GAS Power Co. agrees to provide Maree with an electricity supply for a period of three months commencing on 15 May 2000).

Section 11

31. Where there is a supply of a right that has been granted, or is granted, on or after 2 December 1998 but before 1 July 2000, which could be exercised on or after 1 July 2000, and the supply does not come within the ambit of section 12, we consider section 11 governs the GST consequences attaching to that supply.

32. If section 11 applies to such a supply, the supplier must know whether the right could reasonably be expected to be exercised on or after 1 July 2000.

Reasonable expectation

33. The phrase 'could reasonably be expected' is not defined in either the Transition Act or the GST Act. To find the meaning, you must look to the ordinary plain meaning of the words in the phrase. You must also take into account both the legislative context in which the phrase appears and any comments made by judges interpreting statutes that have provisions which incorporate the concept of 'reasonable expectation'.

34. *The Macquarie Dictionary* defines the words, 'reasonable', 'reason' and 'expectation', in contexts similar to the present, as follows:

(a) 'reasonable':[11] '3. not exceeding the limit prescribed by reason; not excessive: *reasonable terms*. …'

(b) 'reason':[12] '4. sound judgment or good sense. …'

(c) 'expectation':[13] '7. The degree of probability of the occurrence of something' …'

[11] op.cit. at 1468.
[12] op.cit. at 1468.
[13] op.cit at 610.

35. The legislative context in which the phrase is found is that it is in a provision in a statute which sets out rules for the transition to a new indirect taxation system. The provision in which the phrase is found is not an anti-avoidance provision, but it is a provision inserted into the Transition Act to make sure that the government's policy on the taxation of final private consumption expenditure is implemented.

36. The courts, in interpreting the concept of 'reasonable expectation', have always been careful to interpret it in the precise statutory context in which it is found. Although there is no existing body of case law on the interpretation of the GST law, it is nevertheless helpful to examine what was said about the concept in two relatively recent cases involving the interpretation of two different pieces of Commonwealth legislation.

37. The first case is *News Corporation Ltd and Others v. National Companies and Securities Commission* (1984) 5 FCR 87 ('News Corporation'), a case before the Full Federal Court. It involved an appeal by the applicants against a decision of the Administrative Appeals Tribunal ('the AAT') refusing them access under the *Freedom of Information Act 1982* ('the FOI Act') to certain documents obtained and compiled by the respondent in the course of an investigation it was carrying out with respect to certain alleged activities of the applicants. The AAT's decision was based on its interpretation of paragraph 37(1)(a) of the FOI Act, which was framed in the following terms:

38. (1) 'A document is an exempt document if its disclosure under the Act would, or **could reasonably be expected** to-

> (a) prejudice the conduct of an investigation of a breach, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance.'

39. In dismissing the applicants' appeal, Woodward J, one of the majority judges, said at 101:

> 'I think that the words "would, or could reasonably be expected to … prejudice" mean more than "would or might prejudice". A reasonable expectation of an event requires more than a possibility, risk or chance of the event occurring. On the other hand, if the legislature had required a probability of prejudice it could have easily have said so. In my view it is reasonable to expect an event to occur if there is about an even chance of its happening and, without attempting to suggest words alternative to those chosen by the draftsman, it is in that general sense that the phrase should be read.'

40. The second case is *FC of T v. Peabody* (1994) 181 CLR 357; 94 ATC 4663, a decision of the Full High Court. In that case, the

court was called upon to determine whether Part IVA of the *Income Tax Assessment Act 1936* ('ITAA 1936'), the general anti-avoidance provision in the ITAA 1936, applied to cancel certain alleged tax benefits that were identified by the Commissioner in relation to a reorganisation of the ownership interests of a business in which the Peabody family held equity interests. In the course of its deliberations, the court was called upon to determine whether the purchaser of certain shares might reasonably be expected to have been a company that acted as trustee of the Peabody Family Trust. It answered the question in the negative, and in the process, made the following comments on the concept of 'reasonable expectation':

> '… A reasonable expectation requires more than a possibility. It involves a prediction as to events which would have taken place if the relevant scheme had not been entered into or carried out and the prediction must be sufficiently reliable for it to be regarded as reasonable.'[14]

41. The message to be derived from both cases is that the concept of 'reasonable expectation' requires more than a possibility that an event take place. Woodward J in *News Corporation* elaborates further. He makes the point that the standard required by the concept does not extend to there having to be a probability that the event take place. He set the bench-mark in the middle of the two parameters mentioned above and said that 'it is reasonable to expect an event to occur if there is about an even chance of its happening'.[15] Both cases also confirm that the test of reasonable expectation is an objective one.

42. We consider, for the purposes of section 11, for there to be a reasonable expectation that a right could be exercised on or after 1 July 2000, there must be about an even chance that the right in question could be exercised on or after that date. The Commissioner believes that this interpretation is consistent with the ordinary plain meaning of the words in the phrase, the nature of the provision and the sentiments expressed in the above two cases (in particular News Corporation which deals with the concept in an environment not too dissimilar to that provided by the Transition Act).

Apportionment

43. If a supplier reasonably expects a right granted in circumstances contemplated by section 11 to be exercised on or after 1 July 2000, then it will be necessary to apportion the value of that supply into:

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[14] *FC of T v. Peabody* (1994) 181 CLR at 385; 94 ATC at 4671.
[15] *The News Corporation Ltd and Others v. National Companies and Securities Commission* (1984) 5 FCR at 102.

(i) a part that reflects a reasonable expectation as to the extent of the exercise of the right before 1 July 2000; and

(ii) a part that reflects a reasonable expectation as to the extent of the exercise of the right on or after 1 July 2000.

44. Some suppliers may grant rights to which section 11 applies which are exercisable on specific future dates, some of which occur prior to 1 July 2000, and some of which occur on or after 1 July 2000. In these circumstances, there is a readily ascertainable method for making the apportionment required by subsection 11(1) which easily meets the reasonable expectation criterion referred to in the preceding paragraph.

45. You simply make the apportionment based on applying the fraction, represented by the number of occasions that the right can be exercised before 1 July 2000 divided by the total number of occasions that the right can be exercised, to the value of the supply. The figure derived from this calculation will represent the proportion of the total value of the supply attributable to the period prior to 1 July 2000. You can calculate the proportion of the amount attributable to the period on or after 1 July 2000 by simply subtracting the proportion of the total value of the supply attributable to the period prior to 1 July 2000 from the total value of the supply.[16]

No readily ascertainable method of apportionment

46. There may be instances where a supplier grants a right and there is no readily ascertainable method for determining if, and the extent to which, the right could reasonably be expected to be exercised on or after 1 July 2000. In these circumstances we will accept the following methods as a basis for determining whether an apportionment is necessary and the basis of that apportionment:

(a) the product usage method;

(b) the client usage method; and

(c) the industry statistics method.

47. A supplier may choose any one or more of the methods referred to in the preceding paragraph when deciding if, and the extent to which, an apportionment is required under subsection 11(1) where there is no readily ascertainable basis for making such an assessment.

[16] The ATO will shortly be issuing a fact sheet explaining how to work out these values from a total GST inclusive price of a supply.

Definitions

Taxable importations[17]

48. An importation of goods into Australia, but only to the extent that it is not a non-taxable importation.

Input tax credit[18]

49. You are entitled to an input tax credit for any creditable acquisition that you make.

Creditable acquisition[19]

50. You make a creditable acquisition if:

(a) you acquire anything solely or partly for a creditable purpose; and

(b) the supply of the thing to you is a taxable supply; and

(c) you provide, or are able to provide, consideration for the supply; and

(d) you are registered, or required to be registered.

Creditable importation[20]

51. You make a creditable importation if:

(a) you import goods solely or partly for a creditable purpose; and

(b) the importation is a taxable importation; and

(c) you are registered, or required to be registered.

Consideration[21]

52. Consideration for a supply or acquisition, means any consideration within the meaning given in section 9-15, in connection with the supply or acquisition. The meaning in section 9-15 includes:

(a) any payment, or any act or forbearance, in connection with a supply of anything; and

[17] Sub-section 13-5(1) of the GST Act.
[18] Section 11-20 of the GST Act.
[19] Section 11-5.
[20] Section 15-5 of the GST Act.
[21] Sections 9-15 and 195-1 of the GST Act.

(b) any payment, or any act or forbearance, in response to the inducement of a supply of anything.

Enterprise[22]

53. An enterprise is an activity, or series of activities, done:

(a) in the form of a business; or

(b) in the form of an adventure or concern in the nature of trade; or

(c) on a regular or continuous basis, in the form of a lease, licence or other grant of an interest in property; or

(d) by the trustee of a fund that is covered by, or by an authority or institution that is covered by, Subdivision 30-B of *the Income Tax Assessment Act 1997* and to which deductible gifts can be made; or

(e) by a charitable institution or by a trustee of a charitable fund; or

(f) by a religious institution; or

(g) by the Commonwealth, a State or a Territory, or by a body corporate, or corporation sole, established for a public purpose by or under a law of the Commonwealth, a State or a Territory.

However, enterprise does not include an activity, or series of activities where they are specified in subsection 9-20(2) of the GST Act.

Supplies connected with Australia[23]

54.

(1) A supply of goods is connected with Australia if the goods are delivered, or made available, in Australia to the recipient of the supply.

(2) A supply of goods that involves the goods being removed from Australia is connected with Australia.

(3) A supply of goods that involves the goods being brought to Australia is connected with Australia if the supplier either:

(a) imports the goods into Australia; or

(b) installs or assembles the goods in Australia.

[22] Section 9-20 of the GST Act.
[23] Section 9-25 of the GST Act.

(4) A supply of real property is connected with Australia if the real property is in Australia;

(5) A supply of anything other than goods or real property is connected with Australia if either:

(a) the thing is done in Australia; or

(b) the supplier makes the supply through an enterprise that the supplier carries on in Australia.

Registered[24]

55. Registered means registered under Part 2-5 of the GST Act. You are required to be registered under the GST Act if:

(a) you are carrying on an enterprise; and

(b) your annual turnover meets the registration turnover threshold which is set out in section 23-15 of the GST Act.

GST-free[25]

56. GST-free has the meaning given by subsection 9-30(1) and Division 38. Division 38 sets out the supplies that are GST-free. If a supply is GST-free, then:

(1) no GST is payable on the supply;

(2) an entitlement to an input tax credit for anything acquired or imported to make the supply is not affected.

Input-taxed[26]

57. Input-taxed has the meaning given by subsection 9-30(2) and Division 40. If a supply is input-taxed, then:

(a) no GST is payable on the supply;

(b) there is no entitlement to an input tax credit for anything acquired or imported to make the supply.

Real property[27]

58. Real property includes:

[24] Part 2-5 of the GST Act.
[25] Section 195-1 and section 38-1 of the GST Act.
[26] Section 195-1 and section 40-1 of the GST Act.
[27] Section 195-1 of the GST Act.

(a) any interest in or right over land; or

(b) a personal right to call for or be granted any interest in or right over land; or

(c) a licence to occupy land or any other contractual right exercisable over or in relation to land.

Financial supply[28]

59. Financial supply has the meaning given by the regulations.

Goods[29]

60. Goods means any form of tangible personal property.

Examples

Section 12

Supply of a right for a period that spans 1 July 2000

61. Clean your Room Ltd. proposes to enter into a cleaning contract with Web Inc to provide twice daily cleaning services for a GST inclusive value of $3,000. The contract will be signed on 1 May 2000 and will run for 3 months from the date of signing the contract. Clean your Room Ltd proposes to elect to have a monthly tax period under the GST Act. As there will be a supply of a right for a specific period (1 May to 31 July 2000) which spans the introduction date for the GST (1 July 2000), Clean your Room Ltd will need to apportion the supply in accordance with section 12. The value of the supply will need to be apportioned on a time basis. The proportion of the supply which will be subject to GST will be 31/92 x $3,000= $1,010.87, as there are 92 days in the period covered by the contract, 61 of which will occur before 1 July 2000 and 31 will occur on or after 1 July 2000. The GST payable on the $1,010.87 will be 10% of $1,010.87 being $101.09 giving a total price of $3,101.09. This will need to be remitted to the Australian Taxation Office ('ATO') by Clean your Room Ltd with its first GST return after 1 July 2000.

[28] Section 195-1 and subsection 40-5(2) of the GST Act.
[29] Section 195-1 of the GST Act.

Section 11

Supply of a railway ticket that can be used anytime in the future

62. Broome Railways ('Broome') sells Dora a single trip ticket in April 2000. The ticket can be used anytime and has no expiry date. As this is not a supply of a right for a period or progressively over a period, section 12 does not apply. Broome does not know when Dora is likely to exercise her right of travel. It has no statistics showing trends on past usage of its single ticket product, but it does have access to industry statistics which show that single railway tickets issued by railways similar to Broome, and on similar conditions to those issued by Broome, are utilised on average within 5 days of purchase. No GST will be payable on the supply of the railway ticket to Dora as the Commissioner will accept that Broome could not reasonably expect that the right represented by the issue of the ticket would be used on or after 1 July 2000. This is an example of the 'industry statistics' method of apportionment referred to in this Ruling.

63. If Harry was to purchase the same ticket Broome on 30 June 2000 under the same conditions as those mentioned in example 2, and if Broome had access to the same industry statistics as those mentioned in example 2, it would be reasonable to expect that the right of travel represented by the ticket would be exercised on or after 1 July 2000. In these circumstances, the Commissioner would expect Broome to remit GST on the supply of the ticket in its first tax period after 1 July 2000.

Supply of a travel-card with entitlements to a fixed number of trips that can be taken anytime in the future

64. Caroline purchases a multi-trip travel card on 1 May 2000 from Connie's Trams ('Connie's) which entitles her to take 10 short trips anytime. There is no period attached to the travel right and there is no expiry date attached to the product which stipulates that the travel must be completed by a given date. Connie's has no idea when Caroline is likely to exercise her right to travel under the travel-card, but it has collected data over the years that it has offered this product which shows that all trips are usually completed within 3 weeks of purchase. The Commissioner will accept that, for the purpose of section 11, the right represented by the issue of the travel-card could not reasonably be expected to be used on or after 1 July 2000 and that, therefore, there will be no GST payable in respect of the supply of the travel-card. This is an example of the 'product usage' method of apportionment mentioned in this Ruling.

Supply of single ticket that can be exercised anytime, provided it is exercised within twelve months of the date of purchase

65. On 5 February 2000, Josef purchases a single ticket from Brisbane to Noosa Heads on the Chermhouse Bus Company ('Chermhouse'). The ticket has no fixed date of travel attached but there is a condition attached that requires that the trip must be completed by 5 February 2001. The Commissioner is of the view that the imposition of a 'use by date' condition to a supply of a right does not constitute a thing supplied for a period or progressively over a period. Accordingly, he believes that section 12 has no application to a case like this, and that section 11 is the appropriate section to consider in these circumstances. Chermhouse can use the apportionment methods referred to in this ruling to determine if, and the extent to which, the ticket could reasonably be expected to be exercised on or after 1 July 2000.

Supply of a booklet of movie tickets which entitles the purchaser to attend a fixed number of movies in the future, subject to the condition that the rights must be exercised within twelve months of date of purchase of the ticket booklet

66. Bright Lights Cinema's ('Bright Lights') sells a movie ticket booklet to Violet on 21 April 2000. The booklet entitles Violet to attend 10 movies in the future, provided she attends those movies by 21 April 2001. The package is specially targeted at Senior citizens and entitles them to attend special screenings. As these events are staged regularly for these purposes, Bright Lights has statistics which show how long it takes Violet and other like patrons to redeem a full book of tickets. Using this information, Bright Lights reasonably expects that, by 1 July 2000, Violet will only have redeemed 6 of her movie booklet entitlements. Bright Lights can use these client usage statistics to apportion the supply of the movie ticket booklet it sold to Violet on the basis that 60% of the entitlements would be attributable to the period before 1 July 2000 and 40% attributable to the period on or after 1 July 2000. GST would be payable on the proportion attributable to the period on or after 1 July 2000. This is an example of the 'client usage' method of apportionment referred to in this Ruling.

Supply of a voucher that is a taxable supply

67. This year, as every year, Madelaine received a voucher for her birthday from Helen for a facial from 'Myra's Beauty Parlour' ('Myra') in the city. This voucher is a taxable supply and is not covered by Division 100 of the GST Act because it is not a voucher that carries an entitlement on redemption to have supplies provided up

to a monetary value stated on the voucher. The voucher contains a condition that it must be used within 12 months from the date of purchase, namely, 15 October 1999. As the Commissioner is of the view that the imposition of a 'use by date' condition to a supply of a right does not constitute a thing supplied for a period or progressively over a period, section 12 has no application to this case. As a result, Myra has to consider the implications of section 11. As Myra keeps statistics which show that every year Madelaine uses the voucher within a week after she receives it, it is reasonable for Myra to expect that the supply of the right will not be exercised on or after 1 July 2000. The Commissioner will accept that, in these circumstances, no GST will be payable in respect of the supply of the facial voucher. This is an example of a supplier using the 'client usage' apportionment method mentioned in this Ruling.

Supply of internet access rights for a designated number of hours

68. Web Inc ('Web') is an internet service provider which is offering its customers 50 hours of 'surfing' for $40. There is no expiry date attached to this offer. Steve signs up for the package on 1 June 2000. The Commissioner is of the view that section 12 does not apply to such a case as the right supplied is not supplied for a period that begins before 1 July 2000 and ends on or after 1 July 2000 or supplied progressively over such a period. Accordingly, the Commissioner requires that Web will need to apply section 11 to the circumstances of the supply to determine whether GST is payable on the supply. In applying section 11, Web has to ask itself whether it could reasonably expect the internet access to be exercised on or after 1 July 2000. Web knows, from the statistics that it holds in relation to past usage patterns for this product, that users exhaust their access entitlements within 6 weeks of purchase. The Commissioner would accept an apportionment based on a time apportionment. As 14 days out of the total 44 days in the average user period occur after 30 June 2000, 31.8% of the supply should be attributed to the period after 1 July 2000. This is an example of the 'product usage' method of apportionment mentioned in this Ruling.

Your comments

69. If you wish to comment on this draft Ruling, please send your comments promptly by **18 February 2000** to:

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Detailed contents list

70. Below is a detailed contents list for this draft Ruling:

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Commissioner of Taxation
24 December 1999

Previous draft:

Not previously issued in draft form.

Related Rulings/Determinations:

Subject references:

- Goods and Services Tax
- transitional
- supply of rights
- progressive or periodic supplies
- reasonable expectation

Legislative references:

- ANTS(GST)A 9-5
- ANTS(GST)A 9-15
- ANTS(GST)A 9-20
- ANTS(GST)A 9-25
- ANTS(GST)A 11-5
- ANTS(GST)A 11-20
- ANTS(GST)A 13-5(1)
- ANTS(GST)A 15-5
- ANTS(GST)A 38-1
- ANTS(GST)A 40-1
- ANTS(GST)A 40-5(2)
- ANTS(GST)A 195-1
- ANTS(GSTT)A 6
- ANTS(GSTT)A 6(1)
- ANTS(GSTT)A 6(2)
- ANTS(GSTT)A 6(3)
- ANTS(GSTT)A 6(4)
- ANTS(GSTT)A 6(5)
- ANTS(GSTT)A 7
- ANTS(GSTT)A 11)
- ANTS(GSTT)A 11(1)
- ANTS(GSTT)A 11(1A)
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- ANTS(GSTT)A 13
- ANTS(GSTT)A 14
- ANTS(GSTT)A 15
- ANTS(GSTT)A 19
- FOIA 1982 37(1)(a)
- ITAA 36 Part IVA

Case references:

The News Corporation Ltd and Others v. National Companies and Securities Commission (1984) 5 FCR 88;
FC of T v. Peabody (1994) 181 CLR 357; 94 ATC 4663

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