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

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There is a Compendium for this document: **GSTR 2001/8EC** .

From 1 July 2015, the term 'Australia' is replaced in nearly all instances within the GST, Luxury Car Tax, and Wine Equalisation Tax legislation with the term 'indirect tax zone' by the *Treasury Legislation Amendment (Repeal Day) Act 2015*. The scope of the new term, however, remains the same as the now repealed definition of 'Australia' used in those Acts. This change was made for consistency of terminology across the tax legislation, with no change in policy or legal effect. For readability and other reasons, where the term 'Australia' is used in this document, it is referring to the 'indirect tax zone' as defined in subsection 195-1 of the GST Act.

This Ruling contains references to provisions of the *A New Tax System (Goods and Services Tax) Regulations 1999,* which have been replaced by the *A New Tax System (Goods and Services Tax) Regulations 2019.* This Ruling continues to have effect in relation to the remade Regulations.

Paragraph 32 of TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed and rewritten.

A comparison table which provides the replacement provisions in the *A New Tax System (Goods and Services Tax) Regulations 2019* for regulations which are referenced in this Ruling is available.

This document has changed over time. This is a consolidated version of the ruling which was published on *20 March 2014*

GSTR 2001/8 History Draft Addendums

Date	Version	Change	
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Goods and Services Tax Ruling

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

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Preamble

This document was published prior to 1 July 2010 and was a public ruling for the purposes of former section 37 of the ***Taxation Administration Act 1953*** *and former section 105-60 of Schedule 1 to the* ***Taxation Administration Act 1953****.*

From 1 July 2010, this document is taken to be a public ruling under Division 358 of Schedule 1 to the ***Taxation Administration Act 1953****.*

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you - provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in

respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

[Note: This is a consolidated version of this document. Refer to the Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]

What this Ruling is about

1. This Ruling explains how you can identify whether a supply includes taxable and non-taxable parts under the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act).

2. This Ruling describes the characteristics of a supply that contains taxable and non-taxable parts. It refers to such a supply as a 'mixed supply'. This Ruling also describes the characteristics of a supply that appears to have more than one part but is essentially a supply of one thing. This type of supply is referred to as a 'composite supply'.

3. 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. This means that you can identify the consideration for the taxable part of the supply. The Ruling explains that you do not need to apportion the consideration for a composite supply.

4. The Ruling also discusses how you can work out the value of the taxable part of a mixed supply under sections 9-75 and 9-80 of the GST Act.

5. This Ruling also applies to the valuation of the separate parts of a mixed supply that includes food. Goods and Services Tax Determination GSTD 2000/6 explains the circumstances where a supply of food packaging is GST-free.[1] If both the rule stated in paragraph 7 of Goods and Services Tax Determination GSTD 2000/6 and the approach given in paragraph 21 of this Ruling apply to a supply that you make, then you may choose either approach.

5A. This Ruling does not deal with the question of whether, when more than one thing is supplied in a single transaction, the transaction should be characterised as a single supply or multiple supplies.

6. This Ruling does not deal with the apportionment of input tax credits. Goods and Services Tax Ruling GSTR 2006/4 is about

[1] Paragraph 7 of Goods and Services Tax Determination GSTD 2000/6 provides a rule to use so that where GST-free food is contained in packaging that might not otherwise be normal and necessary, the packaging may be treated as if it were normal and necessary and, therefore, GST-free. This rule only applies to packaging. It does not apply to promotional items accompanying the food and packaging or to items that are usually supplied separately.

determining the extent of creditable purpose for claiming input tax credits and for making adjustments in the extent of creditable purpose. It also explains several possible methods for determining the extent of creditable purpose.

7. Unless otherwise stated, all legislative references in this Ruling are to the GST Act.

Date of effect

8. This Ruling applies both before and after its date of issue. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

8A. [Omitted.]

8B. [Omitted.]

Context

9. You pay GST if you make a taxable supply.[2] However, a supply is not taxable to the extent that:

- it is GST-free;[3]
- it is input taxed;[4]
- a section of the GST Act states it is not a taxable supply;[5] or
- it does not meet the taxable supply requirements of paragraphs 9-5(a) to (d).

In this Ruling, we refer to a supply (or part of a supply) that is not taxable as being non-taxable.

10. It may be necessary to characterise what is supplied to determine whether it wholly or partly meets the requirements of section 9-5 or a provision that makes it non-taxable.[6]

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[2] Subsection 7-1(1) and section 9-40.
[3] Section 9-5 gives effect to subsection 9-30(1) and Division 38 to the extent that a supply is GST-free.
[4] Section 9-5 gives effect to subsection 9-30(2) and Division 40 to the extent that a supply is input taxed.
[5] See Appendix A for examples.
[6] Paragraph 9-10(2)(h) provides that a supply may include a combination of things.

11. Where you make a supply that is identifiable as having more than one part and each part is taxable, you do not need to apportion the consideration for the supply. This is because GST is payable on the whole supply. Similarly, if all of the parts of a supply are identifiable as being non-taxable, GST is not payable on any part of the supply.

12. However, where you make a supply that is a combination of separately identifiable taxable and non-taxable parts, you need to identify the taxable part of the supply. Then you can apportion the consideration for the supply and work out the GST payable on the taxable part of the supply.

13. A supply that may at first appear to be one thing may contain taxable and non-taxable parts on closer analysis. For example, a supply by way of a lease of goods, or a supply of rights or services used or consumed partly in Australia (taxable) and partly outside Australia (GST-free) may be regarded as having more than one part.[7]

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 if 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.

Ruling

15. This ruling uses the terms 'mixed supply' and 'composite supply' which are not found in the GST Act. However, these terms are used to identify whether a supply has taxable and non-taxable components which, in turn, informs the extent to which a supply may be a taxable supply.

Mixed supply

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 of this Ruling explain how to identify whether a supply has separately identifiable parts.

[7] See section 38-187 and subsection 38-190(1).

Composite supply

17. 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 You treat a composite supply as a supply of a single thing. Paragraphs 55 to 63 explain what are integral, ancillary or incidental parts.

18. A composite supply is either taxable or non-taxable. It may also be a part of a larger mixed supply.

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.

Differentiating between mixed and composite supplies

19. Where a transaction comprises a bundle of features and acts, it may be necessary to characterise what is supplied to determine whether a particular provision applies in whole or in part. The characterisation should be undertaken in a manner that is consistent with the object of the particular statutory provision in issue. For example, if a provision specifically requires different treatment of two components of a transaction, this will mean that the two components must necessarily be separately recognised. However, that does not mean that the two components need to be separately recognised for all purposes of the GST Act.

19A. An identification of the essential character of what is supplied may inform whether (and to which extent) a particular transaction falls within the terms of a specific statutory provision. You must consider all of the circumstances of the transaction to ascertain its essential character.[7A]

19B. Having regard to the essential character and with regard to the statutory provision in issue, you can then determine whether the transaction is a mixed supply because it has separately identifiable parts that the GST Act treats as taxable and non-taxable, or whether it is a composite supply 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.

[7A] It may be that the transaction is properly characterised as involving a number of separate supplies, rather than a single supply (whether mixed or composite). As mentioned at paragraph 5A, this Ruling does not directly consider that question.

20. The distinction between parts that are separately identifiable and things that are integral, ancillary or incidental, is a question of fact and degree. In deciding whether a supply consists of more than one part we take the view that you adopt a commonsense approach.

21. You may choose to treat something (or things taken together) as integral, ancillary or incidental if the consideration that would be apportioned to it (if it were a separately identifiable part of a mixed supply) does not exceed **the lesser of**:

- $3.00; or
- 20% of the consideration for the total supply.

22. If you choose not to apply this approach, then you need to make an objective assessment about whether the thing is integral, ancillary or incidental.

23. You cannot use this approach where a provision of the GST Act specifically requires you to treat a part of a supply in a particular way, regardless of its scale or connection with the supply. For example, the supply of food as part of an excursion or field trip may otherwise be considered to be integral, ancillary or incidental to the supply of the excursion or field trip, but paragraph 38-90(2)(b) specifies that such food will not be GST-free. This means that the consideration for the field trip requires apportionment.

24. A part of a supply may, on an objective assessment, be something that forms an integral, ancillary or incidental part of the supply even if the consideration for it would exceed the lesser of $3.00 or 20% of the consideration for the total supply.

Apportionment of the consideration for a mixed supply

25. GST is payable on a mixed supply that you make, but only to the extent that the supply is taxable. You need to apportion the consideration for a mixed supply between the taxable and non-taxable parts of the supply to find the consideration for the taxable part.

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.

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]

Calculating the GST payable on the taxable part of a mixed supply

28. The amount of GST payable on a taxable supply is 10% of the value of the taxable supply.[9] The application of sections 9-70, 9-75 and 9-80 to a mixed supply gives an amount of GST payable of 10% of the value of the taxable part of the mixed supply.

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 part is determined in accordance with section 9-80. To determine the value of the taxable part it is necessary to calculate the taxable proportion, that is, the proportion of the value of the actual supply that the taxable part 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; (2011) 79 ATR 768 *(Luxottica*) that proportion is calculated by the decision maker drawing a conclusion on the facts as to the value of the taxable part and the relationship that value has with the price of the actual supply.

30B. Paragraphs 114 to 118 of this Ruling explain how you calculate the GST payable on the taxable part of a mixed supply, and illustrate 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.

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[8] Paragraph 382-5(1)(a) in Schedule 1 to the *Taxation Administration Act 1953*.
[9] Section 9-70.
[10] Subsection 9-75(1) provides that the value of a taxable supply is 10/11 of the price of the supply.

Explanation

31. GST is structured around the concept of supply. An analysis of the character of a supply may be necessary to determine how a particular provision of the Act applies to the supply.

31A. In *Commissioner of Taxation v. Qantas Airways Limited* (*Qantas*) [2012] HCA 41, S 47 2012, the High Court considered whether there could only be a 'supply for consideration' within the meaning of sub-section 9-5(a) of the GST Act in circumstances where the 'essence or purpose' of the transaction was fulfilled (paragraphs [12] and [14]). The majority implicitly rejected such a proposition (paragraphs [21] and [22]).

31B. While the decision of the High Court in Qantas does not disturb the approach to mixed and composite supplies established by prior court decisions, it illustrates that it is not necessary to always characterise a supply on the basis of the 'mixed' or 'composite' analysis. Rather, the mixed/composite analysis is only relevant where it is necessary to determine whether (and to what extent) the supply meets the description in a particular statutory provision that may be in issue. Even then, the High Court decision illustrates the importance of undertaking the mixed/composite analysis in a manner that is consistent with the object and purpose of the provision.

32. The scheme of the GST Act depends on a clear distinction being made between taxable and non-taxable supplies. The GST Act provides that a taxable supply comes within its ambit, but not to the extent that it contains any non-taxable parts. Parts may be non-taxable if they are GST-free, input taxed, otherwise made non-taxable by a provision of the GST Act, or if they do not meet the requirements of paragraphs 9-5(a) to (d).

33. GST is payable on taxable supplies. Section 9-5 states that:

> 'You make a ***taxable supply*** if:
>
> (a) you make the supply for consideration; and
>
> (b) the supply is made in the course or furtherance of an enterprise that you carry on; and
>
> (c) the supply is connected with Australia; and
>
> (d) you are registered, or required to be registered.
>
> However, the supply is not a taxable supply to the extent that it is GST-free or input taxed.'

34. Also, the meaning of *taxable supply* is affected by other provisions of the GST Act.[11] Appendix A includes things that the GST Act specifies are not a taxable supply or are to be treated as if they were not a taxable supply. This means that a supply that might otherwise meet the criteria required of a taxable supply will not be taxable.

35. Subdivision 9-C states how you work out the GST payable on a taxable supply. The amount of GST is 10% of the value of the taxable supply.[12] You work out the value of a taxable supply from the price of the supply.[13] Where the consideration for the supply is expressed as an amount of money, the price is the amount payable on the supply. If the consideration (or part of it) is not expressed as an amount of money, the price is (or includes) the GST inclusive market value of the consideration.

36. Section 9-80 deals with supplies that are partly taxable, and partly GST-free or input taxed. It describes how you work out the value of the part of such a supply that is a taxable supply.

37. If all of the parts in a supply have the same GST treatment, then there is no requirement to separately identify each part. That is, if all of the parts are taxable, then apportionment of the consideration is not necessary as GST is payable on the total value of the supply.[14] Similarly, if all of the parts are non-taxable, then no GST is payable on the supply and apportionment is not necessary.

38. This Ruling does not apply to supplies that simply involve one thing, for example, the supply of a car by a dealership to a customer. A car has many parts which are fitted together to make a single vehicle. Although some of those parts, such as the tyres, may also be purchased separately, it is readily apparent that only the car is supplied when it is sold. In considering whether there is a supply of one thing a commonsense, practical approach to characterisation is to be taken.[14A]

39. However, other supplies are more complex and contain (or may appear to contain) more than one part. In these cases, you need to further analyse the supply to determine its character and GST treatment.[15]

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[11] Section 195-1 states that ***taxable supply*** has the meaning given by sections 9-5, 78-50, 84-5 and 105-5. 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.

[12] Section 9-70.

[13] Subsections 9-75(1) and 9-80(2).

[14] Section 9-70.

[14A] *Commissioner of Taxation v Luxottica Retail Australia Pty Ltd* (2011) 79 ATR 768; 2011 ATC 20-243 at [15].

[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

Differentiating between a mixed supply and a composite supply

40. Where a transaction comprises a bundle of features and acts, it may be necessary to characterise what is supplied to determine whether a particular provision applies in whole or in part. The characterisation should be undertaken in a manner that is consistent with the object of the particular statutory provision in issue. For example, if a provision specifically requires different treatment of two components of a transaction, this will mean that the two components must necessarily be separately recognised. However, that does not mean that the two components need to be separately recognised for all purposes of the GST Act.

40A. An identification of the essential character of what is supplied may inform whether a particular transaction falls within the terms of a specific statutory provision, and whether it does so wholly or only to some extent. You must consider all of the circumstances of the transaction to ascertain its essential character. However, that does not mean that an economic substance over legal form approach is endorsed for working out the essential character of what is supplied. For more guidance on how to characterise a supply, go to paragraphs 222 to 246 of Goods and Services Tax Ruling GSTR 2006/9.

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. It is a composite supply of one thing if 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.[18]

42. In this Ruling, we use the words integral, ancillary and incidental to assist in determining whether or not a part of a supply needs to be individually recognised or separately identified.[20]

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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.

[16] [Omitted.]

[17] [Omitted.]

[18] Again, it may be that such a transaction is properly characterised as involving a number of separate supplies, rather than a single supply (whether mixed or composite). However, this Ruling does not consider that question

[19] [Omitted.]

[20] The word 'incidental' has a specific meaning when used with 'financial supplies'. See *A New Tax System (Goods and Services Tax) Regulations 1999*, regulation 40-5.10. However, in this Ruling we use the term 'incidental' in its ordinary sense, in the same way as used in the overseas cases.

43. A mixed supply is a single supply made up of separately identifiable parts, where one or more of the parts is taxable and one or more of the parts is non-taxable, and these parts are not integral, ancillary or incidental in relation to a dominant part of the supply. On the other hand, a composite supply is a single supply made up of one dominant part and other parts that are not treated as having a separate identity as they are integral, ancillary or incidental to the dominant part of the supply.

44. In working out whether you are making a mixed or composite supply, the key question is whether the supply should be regarded as having more than one separately identifiable part, or whether it is essentially a supply of one dominant part with one or more integral, ancillary or incidental parts.

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. This is an example of a composite supply.

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.

Separately identifiable parts

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.

[20A] *Saga Holidays v Commissioner of Taxation* 2006 ATC 4841; (2006) 64 ATR 602.
[20B] *Westley Nominees Pty Ltd v Coles Supermarkets Pty Ltd* [2006] FCAFC 115; 2006 ATC 4363; (2006) 62 ATR 682.
[21] [Omitted.]

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 the Tribunal found that the supply of the promotional items packaged with the food items was a mixed supply.[21B] In such a case, 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.

45B. Various overseas cases have considered whether the elements of a transaction are separately identifiable or ancillary, integral or incidental to a dominant part of the transaction. 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.[21C] 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 to 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'.[21D] Advertising for the excursions placed significant emphasis on the food, wine and attentive service provided.

46. The question in *Sea Containers* was whether the supply was of transport or of transport and catering.[22] It was decided that the proper approach was to see whether the catering element was significant in its own right or whether it was merely ancillary to the provision of transport. Keene J said:

> 'The evidence shows that it [the catering] constituted a very important element in its own right in what was being provided by the appellant. Its significance in these transactions went well beyond the point where it could be seen merely as a way of better enjoying the transport element. ...it constituted for

[21A] *Re Food Supplier and Commissioner of Taxation* [2007] AATA 1550; 2007 ATC 157; (2007) 66 ATR 938.
[21B] *Food Supplier* at paragraph [5]
[21C] Note the comments of the High Court in *Avon Products Pty Limited* v *Commissioner of Taxation* 2006 ATC 4296; 62 ATR 399 at [28] about the considerable caution that must be exercised before relying on international authorities that deal with different statutory regimes.
[21D] *Sea Containers Ltd v. Customs and Excise Commissioners* [2000] BVC 60.
[22] Under British VAT legislation, transport is 'zero-rated' and catering is 'standard-rated'.

> customers an aim in itself. Not, of course, the sole aim but, given its prominence in the marketing literature, clearly a separate aim from the travel element. The emphasis upon this aspect of the facilities provided is very striking. The fine meals and wines were a vital part of what the customer was paying for, whether by way of a separate or an all-inclusive price.'[23]

47. *Sea Containers* can be contrasted with *British Airways plc v. Customs and Excise Commissioners* (*British Airways*), another United Kingdom case.[24] In this case, the question was whether British Airways was to be taken as making supplies of air transport and of catering services, or a single supply of air transport with the catering services being merely integral or ancillary (a composite supply).

48. In *British Airways*, the Court of Appeal found that the provision of in-flight catering was, in substance and reality, an integral part of the supply of air transportation. Stuart-Smith LJ said:

> 'While something that is necessary for the supply will almost certainly be an integral part of it, the converse does not follow … Catering facilities are part of and integral to the transportation in that degree of comfort which British Airways have decided is commercially appropriate and indeed necessary to attract passengers.'[25]

49. The Court was also influenced by the fact that no separate charge was made for the in-flight catering, and the price of the air ticket did not vary, regardless of the type of meal provided or whether or not meals were provided. It was not part of the contractual obligation of the airline to supply meals, even if meals were expected as part of the service. Customers could not obtain a refund if a meal was not served on their flight.

50. *Sea Containers* and *British Airways* show that different conclusions may be reached after taking into account the relevant facts of cases that are similar.

51. In *Customs and Excise Commissioners v. Wellington Private Hospital Ltd (Wellington)*, Millett LJ also considered the question of separate identity:

> 'The proper inquiry is whether one element of the transaction is so dominated by another element as to lose any separate identity as a supply for fiscal purposes, leaving the latter, the dominant element of the transaction, as the only supply. If the elements of the transaction are not in this relationship with

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[23] *Sea Containers Ltd v. Customs and Excise Commissioners* [2000] BVC 60 at 67.
[24] *British Airways plc v. Customs and Excise Commissioners* (1990) 5 BVC 97.
[25] *British Airways plc v. Customs and Excise Commissioners* (1990) 5 BVC 97 at 102-103.

> each other, each remains as a supply in its own right with its own separate fiscal consequences.'[26]

Millett LJ also found that courts need to ask whether one part is connected with the other, or whether the two parts are 'physically and economically dissociable'.[27]

52. The Commissioner's view 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. This view applies where the supply is comprised of a mix of separate things, such as various combinations of goods and services, including the provision of advice.

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 44C of this Ruling). 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]

54. Any of the separately identifiable parts that comprise a mixed supply may themselves be composite, being comprised of a dominant part and an integral, ancillary or incidental part.[29] Example 8 in paragraph 76 is a mixed supply with composite parts.

54A. Further, separately identifiable parts of a supply may not be individually recognised because of the effect of a specific provision of the GST Act. For example, a supply to an eligible disabled person of a car part and labour services in fitting that part may be considered to have separately identifiable parts due to their relative significance in the supply. However, in subsections 38-505(4) and 38-510(4), the expression a 'supply of car parts' includes the labour services in fitting the car parts to the car of an eligible disabled person. There is a single GST-free 'supply of car parts'.

54B. The inclusion of labour services gives effect to the legislative purpose, as identified by reference to Subdivision 38-P and

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[26] *Customs and Excise Commissioners v. Wellington Private Hospital Ltd* [1997] BVC 251 at 266.

[27] *Customs and Excise Commissioners v. Wellington Private Hospital Ltd* [1997] BVC 251 at 266.

[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.

[29] Paragraph 18 states that a composite supply can be a part of a mixed supply.

section 38-45, that a functioning car for suitable transportation is to be supplied to an eligible disabled person GST-free.

54C. A supply is GST-free under subsections 38-505(4) and 38-510(4) only if the supply is a 'supply of car parts'. Car parts supplied as an integral, ancillary or incidental component of a car service are not a supply of car parts under either of those subsections. For example, spark plugs supplied in the course of a routine service of a car are not a supply of car parts. Those car parts are only an incidental part of a supply that is properly regarded as a supply of services, not a supply of car parts.

Integral, ancillary or incidental parts

55. Some supplies include parts that do not need to be separately recognised for GST purposes. We refer to these parts of a supply as being integral, ancillary or incidental. In a composite supply, the dominant part of the supply has subordinate parts that complement the dominant part. If such a supply is analysed in a commonsense way, it can be seen that the supply is essentially the provision of one thing. It need not be broken down, unbundled or dissected any further. For this reason, a composite supply may appear, at first, to have more than one part, but is treated as if it is the supply of one thing.

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]

[29A] *Commissioner of Taxation v Luxottica Retail Australia Pty Ltd* (2011) 79 ATR 768; 2011 ATC 20-243 at [15].

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 porterage and concierge) were incidental and ancillary to the accommodation part of the supply.

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 a single supply.

56. In *Customs and Excise Commissioners v. Madgett and Anor (t/a Howden Court Hotel)*, the European Court of Justice described the term 'ancillary' in terms of scale and connection:

> '… a service is ancillary if, first, it contributes to the proper performance of the principal service and second, it takes up a marginal proportion of the package price compared to the principal service. It does not constitute an object for customers or a service sought for its own sake, but a means of better enjoying the principal service.'[30]

57. In *Customs and Excise Commissioners v. British Telecommunications plc*, Lord Slynn of Hadley considered whether delivery was ancillary or incidental to a supply of cars or whether it was separately identifiable. In concluding that, as a matter of commercial reality, there was one contract for a delivered car, Lord Slynn found it necessary to consider all of the circumstances of the supply and said:

> '… the fact that separate charges are identified in a contract or on an invoice does not on a consideration of all the circumstances necessarily prevent all the supplies from constituting one composite transaction nor does it prevent one supply from being ancillary to another supply which for VAT purposes is the dominant supply … the essential features of a transaction may show that one supply is ancillary to another and that it is the latter that for VAT purposes is to be treated as the supply.'[31]

58. You will need to consider all of the facts to determine whether the supply that you make has any parts that are integral, ancillary or incidental.

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[30] *Customs and Excise Commissioners v. Madgett & Anor (t/a Howden Court Hotel)* [1998] BVC 458 at 464.

[31] *Customs and Excise Commissioners v. British Telecommunications plc* [1999] BVC 306 at 312.

59. No single factor (by itself) will provide the sole test you use to determine whether a part of a supply is integral, ancillary or incidental to the dominant part of the supply.[32] 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:

- you would reasonably conclude that it is a means of better enjoying the dominant thing supplied, rather than constituting for customers an aim in itself; or
- it represents a marginal proportion of the total value of the package compared to the dominant part; or
- it is necessary or contributes to the supply as a whole, but cannot be identified as the dominant part of the supply; or
- it contributes to the proper performance of the contract to supply the dominant part.

59A. The factors listed in paragraph 59 of this Ruling are not necessarily the only ones that may be taken into account in properly characterising a supply. In any given case there may be other particular circumstances that are relevant. It may also be necessary to weigh up those factors which may point to part of a supply being integral, ancillary or incidental against the relative significance of the parts in the supply and therefore consider whether the parts should be recognised as separate parts. It is a question of fact and degree whether a supply is mixed or composite.

60. As a means of minimising compliance costs, you may treat something (or things taken together) as being integral, ancillary or incidental if the consideration that would be apportioned to it (if it were part of a mixed supply) does not exceed **the lesser of**:

- $3.00; or
- 20% of the consideration of the total supply.

61. You may use this approach to treat a supply as a composite supply, although it might otherwise be considered as a mixed supply. However, if the consideration for a part exceeds the lesser of $3.00 or 20% of the consideration for the total supply, it does not necessarily mean that the part is not integral, ancillary or incidental.

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[32] See Lord Hope of Craighead in *Customs and Excise Commissioners v. British Telecommunications plc* [1999] BVC 306 at 314.

Example 1 - cereal with stickers

62. *Smartwheat supplies a packet of cereal that contains a sheet of 4 stickers, for $4.20. Of this consideration, 20 cents is for the set of stickers and $4.00 is for the cereal.*[33] *Because the consideration for the stickers is less than $3.00 and is also less than 20% of the total consideration, Smartwheat may treat the stickers as being incidental. The supply is treated as being a supply of GST-free cereal.*[34]

63. However, in some cases, no matter how insignificant a part may be, that part is recognised as being a part in its own right where a provision of the GST Act specifically requires you to recognise it, regardless of its scale and connection with the supply. For example, certain education excursions or field trips are GST-free under section 38-90. However, paragraph 38-90(2)(b) specifically provides that the supply of food as part of the excursion or field trip is not GST-free under this provision.[35] Therefore, a supply of food cannot be regarded as an incidental part of the supply of the excursion or field trip.

Package deals

64. Many transactions consist of a variety of things packaged for a single consideration.[36] Particularly in a promotional package, the supply of one part often depends in some way on the supply of the other parts. The parts do not have to be physically packaged together to constitute a package deal.

65. 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.

66. Whether you characterise a package deal as being mixed or composite depends on the factors discussed at paragraphs 40 to 63 of this Ruling. The package deal may be a composite or a mixed supply, depending on all of the circumstances.

67. An example of a package deal that is a composite supply is where you supply a 250 millilitre bottle of sunscreen (GST-free) with a 10 gram bonus sachet of moisturiser (taxable). The consideration is not apportioned as the whole of the supply is GST-free.

68. Examples of package deals that are mixed supplies and require you to apportion the consideration include:

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[33] Paragraphs 92 to 111 explain the methods you may use to reasonably apportion the consideration for the parts of a mixed supply.
[34] The breakfast cereal in this example is GST-free under section 38-2. It does not fit any of the categories of food that is not GST-free under section 38-3.
[35] The food may, however, be GST-free under section 38-2.
[36] Whether you make a supply for a single consideration will depend on the facts.

- a 250 millilitre carton of flavoured milk (taxable) that is supplied 'free' when a 1 litre bottle of milk (GST-free) is purchased; and
- a coffee plunger (taxable) and a 200 gram jar of premium coffee (GST-free) that are sold together at a single discount price.

69. The terms of a promotion and their relevance to determining the value of the taxable part of the supply are discussed further at paragraphs 81U to 81ZG of this Ruling.

Examples of mixed supplies

Example 2 - commercial and residential premises

70. *Roberto owns a building comprising both residential and commercial premises. He leases the building to Lawrence who operates a small recruitment agency from the commercial premises and lives in the residential part. The supply of the residential part is input taxed.*[37] *The supply of the commercial part is taxable. Roberto is making a mixed supply that is partly taxable and partly input taxed.*

Example 3 - education courses

71. *A natural therapies college allows students to select four individual units from both GST-free and taxable courses. Students with good grades are permitted to undertake a fifth unit for no extra charge. Barbara takes advantage of this offer and selects both taxable and GST-free units. Barbara's packaged course is a mixed supply. The part of the consideration that is for the taxable parts needs to be worked out, with the fees charged to be apportioned between the five units.*

Example 4 - student board at a university college

72. *Rory is a student who lodges in a university's residential college. The college provides full board by way of a furnished room and meals. The college charges an all-inclusive fee for the board. The furnishing merely forms part of the amenity of the room and is integral to its supply. However, neither the room nor meals are integral, ancillary or incidental to each other. This is a mixed supply*

[37] Section 40-35. Paragraph 5.164 of the Explanatory Memorandum to the GST Act refers to a similar example. See Goods and Services Tax Ruling GSTR 2012/5 *Goods and services tax: residential premises* at paragraphs 40 to 45.

of input taxed residential premises and meals that are taxable.[38] *The college needs to work out its liability for the taxable part of the supply by apportioning the fee between the room and the meals.*

Example 5 - promotional pack

73. *Terrence supplies a promotional pack that consists of 'Toff's Tea' and a china cup and saucer. The tea is GST-free, and the cup and saucer are taxable. Each part of the supply has significant value. This is a mixed supply because the tea, and the cup and saucer are separately identifiable, and each would not be considered merely incidental or ancillary to the other.*

Example 6 - health cover and gym membership

74. *A private health fund offers six months gym membership with every purchase of its premium cover package. Both the health cover and the gym membership are, in this case, each of significant value when viewed as a part of the total package, such that it can not be said that the essential character of the supply is of one part and not the other part of the supply. This is a mixed supply.*

Example 7 - hamper

75. *Harry sells assorted hampers. The 'Deluxe Picnic Hamper' includes food and beverage items (bread rolls, cheese, fruit, chocolate and fruit juice), and a silver handled knife which are packaged with a wooden bread board.*[39] *The supply of the chocolate, knife and bread board is taxable. The other items are GST-free. Each of the parts of the supply are significant. The sale of the 'Deluxe Picnic Hamper' is a mixed supply and Harry needs to apportion the consideration for the hamper.*

Example 8 - granting a right for use in and outside Australia

76. *An Australian research company grants an Australian resident the right to manufacture and sell a new product that the Australian research company has designed. The agreement is made in Australia. The right is for use in Australia and Pacific rim countries. The right will enable the resident to generate significant sales in Australia and other countries. As part of the agreement, the Australian research*

[38] Under section 38-250, a supply of the accommodation and/or meals may be GST-free if provided by a charitable institution, a gift deductible entity or a government school.

[39] The hamper in this example is not a combination of foods under paragraph 38-3(1)(c).

company will also provide insignificant technical support for the manufacturing process. The technical support is integral, ancillary or incidental to the grant of the right and is not regarded as a separate part. The supply is a mixed supply because it is comprised of a taxable part (the right to the extent it is for use in Australia) and a GST-free part (the right to the extent it is for use outside Australia).[40]

Examples of composite supplies

Example 9 - delivery of GST-free goods

77. *A customer of 'Net-it-out' places an order for GST-free food through the internet. Net-it-out supplies the goods to the customer's doorstep for the price listed on its internet site. In this case, Net-it-out is making a supply of delivered GST-free goods, and has no liability to account for GST on the delivery of them. In this case, delivery is an integral, ancillary or incidental part of a supply as the supply is of delivered goods.*[41]

Example 10 - picnic box

78. *The Restless Traveller Hotel supplies guests with a picnic box that consists of bread rolls, tomatoes, a packet of cheese slices and bananas.*[42] *All of these items are GST-free and are packed in a disposable cardboard box. Also included in the picnic box are some paper serviettes and a plastic knife, that are ordinarily taxable, but in this case they are insignificant in terms of scale and connection with the food. The serviettes and knife merely contribute to the better enjoyment of the dominant parts of the supply (the food). They are integral, ancillary or incidental to the supply. The consideration for the picnic box does not need to be apportioned.*[43]

Example 11 - GST-free services and the use of goods

79. *The Heart Hospital provides GST-free hospital treatment. During hospital stays, patients are provided with the use of newspapers and television sets. No extra charges are made for the*

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[40] Item 4 of subsection 38-190(1) provides that in this case the supply of rights for use outside Australia is GST-free. Section 9-5 ensures that the supply is not taxable, to the extent that it is GST-free.

[41] See where the Court came to a similar conclusion in *Customs and Excise Commissioners v. British Telecommunications plc* [1999] BVC 306. In other cases the facts may indicate that a delivery charge is a separately identifiable part of a supply.

[42] The picnic box in this example is not a supply of food for consumption on the premises under paragraphs 38-3(1)(a).

[43] This is in contrast to Example 7 where the knife and bread board are regarded as significant even though they contribute to the better enjoyment of the food.

provision of these goods. They are merely incidental and ancillary to the composite supply of hospital treatment.

Example 12 - GST-free goods with ancillary item

80. *A hearing aid is supplied with a small brush that is used as an accessory to clean the hearing aid so that it performs properly. Compared to the value of the hearing aid, the brush represents a small proportion of the value of the total package. In this case, from a commonsense and objective approach, a customer who purchases the package is acquiring a hearing aid. The supply of the brush is not regarded as a part, but is merely ancillary to the supply of the hearing aid. This is a composite supply.*

Example 13 - fitted car parts

81. *Justine sells tyres for a price that includes fitting and balancing. The GST Act makes no relevant distinction between the provision of the goods, being tyres, and the service, being the fitting and balancing. Accordingly, it is unnecessary to characterise the supply to determine whether it is a mixed or composite supply.*[44]

Apportionment under section 9-80

81A. For supplies that are partly taxable and partly GST-free or input taxed the value of the taxable part 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 part 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 part is defined as the proportion of the value of the actual supply that the taxable supply represents.

81C. Subsection 9-80(2) sets out a formula for working out the value of the actual supply (vas). That formula is as follows:

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

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)

[44] In contrast, the balancing of previously fitted tyres is a supply in its own right.

81D. 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]

81E. In *Luxottica* the Full Federal Court found that the proportion in section 9-80 could not be determined in accordance with the formula in subsection 9-80(2) because the method for calculation prescribed in that section involved 2 unknowns, the value of the actual supply and the proportion.

81F. 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]

81G. 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.

81H. 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.

[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.

[44B] *IAC (Finance) Pty Limited v Courtenay* (1963) 110 CLR 550.

[44C] *Commissioner of Taxation v Luxottica Retail Australia Pty Ltd* (2011) 79 ATR 768; 2011 ATC 20-243 at [37].

81I. 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.

81J. 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).

81K. 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'.

81L. 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.

81M. 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 part?

81N. 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 practical, commonsense means of fixing value such as cost plus a margin.

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

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

Determining the value of the taxable part

81Q 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 part for the purposes of calculating the taxable proportion. This is discussed at paragraphs 97 to 111 of this Ruling.

81R At paragraphs 92 to 113 of this Ruling 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.

81S. 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 of this Ruling).

81T. 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

81U. 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'.

81V. 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.[44E] 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)).

81W. In *Luxottica* the Full Federal Court said that:

> Promotions that offer lower prices or greater value subject to conditions are common practice in many, if not every, arena of retail

[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] *Re Food Supplier and Commissioner of Taxation* [2007] AATA 1550; 2007 ATC 157; (2007) 66 ATR 938.

> 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.[44F]

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 always 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 an undissected price[44G] in connection with all parts of the package. In the circumstances of the case, the Tribunal found that 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.[44H]

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

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[44F] *Commissioner of Taxation v Luxottica Retail Australia Pty Ltd* (2011) 79 ATR 768; 2011 ATC 20-243 at [39].

[44G] See also the decision of the Tribunal in *Luxottica Retail Australia Pty Ltd v FC of T* [2010] AATA 22; (2010) 75 ATR 169; 2010 ATC 10-119, at [51], reproduced at paragraph 81ZA of this Ruling.

[44H] *Re Food Supplier and Commissioner of Taxation* [2007] AATA 1550; 2007 ATC 157; (2007) 66 ATR 938 at [12].

consideration for both items in the second example but not in the first.[44I]

[44I] *Re Food Supplier and Commissioner of Taxation* [2007] AATA 1550; 2007 ATC 157; (2007) 66 ATR 938 at [15].

81ZA. The Tribunal hearing *Luxottica* in the first instance[44J] referred to the decision in *Food Supplier* in some detail and said at [51]:

> In *Food Supplier* there were two items sold for one composite price. The distinction between Food Supplier and this case is that in this case there were two items or components and in respect of each of those components there was an agreed price which was in no way artificial or contrived. By contrast, in *Food Supplier* there was one undissected price in respect of the supply of two items. It follows that *Food Supplier* is distinguishable.

81ZB. The Commissioner takes the view that *Food Supplier* and *Luxottica* are distinguishable. The Commissioner also takes the view that *Food Supplier* and *Luxottica* were each determined based on their own specific facts and circumstances, and neither case is determinative of every possible situation. While the Full Federal Court said in *Luxottica* that 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.

81ZC. 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.

81ZD. 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.

81ZE. The need to consider each case on its own facts and circumstances also means that there may be cases where 'free' goods are included as part of a package and the facts and circumstances support a different approach to that taken in *Food Supplier*.. The Tribunal in hearing *Luxottica* at first instance seemed to allude to this possibility when it said at [42]:

> During the course of the hearing mention was made of "loss leading". Assume by way of example that a store has an excess of clocks of a certain make. It advertises that it will sell those clocks at a substantial discount (compared to its previously advertised price) to anyone who will purchase other goods costing not less than $100.

[44J] *Luxottica Retail Australia Pty Ltd v. FC of T* [2010] AATA 22; (2010) 75 ATR 169; 2010 ATC 10-119

> We can see no reason why, absent tax avoidance or sham, the price for the other goods and also the price for the clock is not for GST purposes the discounted price for the clock and the list prices for the other items purchased.

81ZF. This reasoning could in particular circumstances extend to cases where something was given away for free as part of a promotional package, perhaps as a genuine loss leader or goodwill promotional gesture.

Example 13A – 'free' goods - a reasonable apportionment

81ZG. *A shop owner has a surplus of a particular type of confectionery which normally sells for $7 per block but which is nearing its 'use-by' date. Rather than have the goods lose their value, he advertises as a 'one-off' promotion that he will give away blocks of this confectionery to the first 100 customers that buy at least $30 worth of other food items. For the sales in question, the business owner apportions all the consideration to the other food items, and nil consideration to the confectionery. In the particular circumstances, this may be considered a reasonable apportionment of the consideration. There are sound commercial reasons for this one-off promotion and no evidence to suggest that it is contrived to reduce the GST otherwise payable.*

81ZH. The Tribunal also accepted that contrivances to reduce the GST otherwise payable, which did not reflect a reasonable commercial position, would not be accepted as a practical, commonsense basis of apportionment. They said at [43]:

> During the hearing there was considerable discussion of an example posed by the Tribunal. Assume that a car supplier supplies a car which in the ordinary way will cost $40,000 but advertises that it will sell the car for $5 if the customer buys a bottle of water for $39,995. In the opinion of the Tribunal such a transaction will quite clearly be contrived and will not be given credence by a court.

Example 13B - unreasonable apportionment

81ZI. *Felicity is a registered medical practitioner who provides cosmetic medical procedures using certain drugs. She provides a cosmetic procedure using a drug that is GST-free but the supply of the medical service is taxable. The procedure usually takes between 15 and 30 minutes to carry out. Felicity invoices the patient but only applies consideration to the supply of the drug. The medical service is not considered to be incidental to the supply of the drug because it is an important part of the cosmetic procedure and it has considerable value because of the level of professional skill and time involved. The supply by Felicity is a mixed supply and the consideration is in respect*

of both parts. It is unreasonable in these circumstances that no consideration relates to the medical service. There is no commercial reason for Felicity to not apply any of the consideration to the taxable medical supply.

Apportionment under section 9-75

81ZJ. 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[44K] the calculation of the value of the taxable part must be made under section 9-75.

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

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

81ZL. Subsection 9-75(1) provides that the price is the sum of the monetary consideration[44L] and the non-monetary consideration.[44M] Price is therefore the total consideration for the supply. The value of the taxable supply is the consideration less GST.

82. The GST Act includes a number of specific provisions which state that certain supplies are not a taxable supply. For example, subsection 66-45(1) provides that, in some circumstances, a supply of goods that were part of an acquisition of second-hand goods divided for re-supply, is not a taxable supply. This means that these supplies are not taxable supplies, regardless of whether they meet the requirements of paragraphs 9-5(a) to (d). Similarly, any other supply that does not meet the requirements of paragraphs 9-5(a) to (d) is not a taxable supply. In other cases, it may be argued that the statutory

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[44K] For example, a supply may have a taxable part and a non-taxable part that is not GST-free or input taxed. This may be because a specific provision of the GST Act applies to make the non-taxable part not a taxable supply (see Appendix A for a list of relevant provisions), or the non-taxable part may not meet any of the requirements of paragraphs 9-5(a) to 9-5(d).

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

[44M] 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.

[45] [Omitted.]

context allows a particular provision to be read as requiring apportionment.[46]

83. Where non-taxable supplies are made separately, no further issue arises. However, where there are non-taxable 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.

The argument for a general rule of apportionment

84. The establishment of a sufficient nexus between a supply and the monetary (and non-monetary) payment received for that supply is central and essential to the proper operation of the GST Act. Establishment of this nexus indicates that there is consideration for the supply.

85. Apportionment also enables the proper operation of the GST Act, that is, to tax only that which is taxable. This would be prevented if the consideration for a supply that includes a non-taxable part could not be apportioned in the same manner as if the supplies had been made separately.

86. This point is demonstrated by a simple example. A registered sole trader supplies two cars for a single price. One car (a 'business' car) has been used exclusively in the sole trader's enterprise and the other (a 'private' car) exclusively for private purposes. If each car is supplied separately, then GST is correctly payable only on the supply of the business car. The supply of the private car attracts no GST. It would be anomalous if either GST was payable on the whole amount (including the supply of the private car), or not payable at all, simply because the two cars are sold together for the one price.

87. Furthermore, it would not be logical or equitable to deny an input tax credit to a registered recipient of a mixed supply that includes a non-taxable part, merely for the reason that no part of the payment for the supply can be apportioned to the taxable part.[47]

[46] For a discussion of examples of such provisions, see Goods and Services Tax Ruling GSTR 2000/31, which is about supplies connected with Australia.
[47] Given that the conditions of Division 11 are met.

88. The requirement to apportion generally should not be seen as unusual. The Australian income tax cases that have dealt with apportionment issues accept the principle that a single payment may be apportioned where the facts permit.[48] Once a sufficient nexus is found, apportionment can be established. In particular, the High Court in *McLaurin v. Federal Commissioner of Taxation* (*McLaurin*), stated that:

> 'It is true that in a proper case a single payment or receipt of a mixed nature may be apportioned amongst the several heads to which it relates and an income or non-income nature attributed to portions of it accordingly … it may be appropriate to follow such a course where the payment or receipt is in settlement of distinct claims of which some at least are liquidated … or are otherwise ascertainable by calculation …'[49]

89. Also, paragraph 9-5(a) sets out a threshold requirement that you make a supply for consideration. If there is no consideration for the supply, then it will not be taxable. Consideration is widely defined and includes any payment, act or forbearance made in connection with, or in response to, or for the inducement of a supply of anything.[50] Where you identify a payment for a mixed supply, then it is reasonable to say that part of that payment is made in connection with the taxable part. 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]

The alternative view

90. It has been argued that there is no inherent requirement to apportion for reasons which, together with our responses, appear below:

(a) the GST Act has no provision to deal with the general apportionment of consideration, as found in other jurisdictions (but see paragraph 91);[51]

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[48] *Allsop v. Federal Commissioner of Taxation* (1965) 113 CLR 341; *McLaurin v. Federal Commissioner of Taxation* (1961) 104 CLR 381; *National Mutual Life Association of Australasia v. Federal Commissioner of Taxation* (1959) 102 CLR 29; and *Commissioner of Taxation v. CSR Ltd* [2000] FCA 1513.

[49] *McLaurin v. Federal Commissioner of Taxation* (1961) 104 CLR 381 at 391.

[50] Subsection 9-15(1).

[50A] *Re Food Supplier and Commissioner of Taxation* [2007] AATA 1550; 2007 ATC 157; (2007) 66 ATR 938 at [8].

[51] For example, New Zealand, the United Kingdom and Canada.

(b) the decisions in both *McLaurin* and *Allsop v. Federal Commissioner of Taxation* are authority for the view that a single payment cannot be dissected into individual payments relating to particular things (but as stated at paragraph 88, the judgments in these cases support the view that a single payment may be apportioned where the facts permit);

(c) the GST Act contains numerous sections giving specific powers of apportionment which would not be necessary if there was a general inherent power available under the GST Act (but these do not necessarily form a code); and

(d) the exclusion from a taxable supply to the extent that the supply is GST-free or input taxed in section 9-5, does not contain words which similarly exclude other non-taxable supplies (but things that the GST Act specifically states are not a taxable supply and things that do not meet one or more of paragraphs 9-5(a) to (d) do not need such legislative treatment).

Taxation Office view

91. We are of the view that the GST Act inherently requires that the parts of a mixed supply be identified and that the consideration be apportioned where a sufficient nexus between the supply and its consideration is established. This approach gives practical effect to the intention of the GST Act and is consistent with a commonsense and equitable outcome.

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]

[51A] *Commissioner of Taxation v Luxottica Retail Australia Pty Ltd* (2011) 79 ATR 768; 2011 ATC 20-243 at [40].

93. What is a reasonable method of apportioning the consideration for a mixed supply depends on the circumstances of each case.[52] In some cases, there will be only one reasonable method you may use.

94. Depending on your circumstances, you may use a direct or indirect method when apportioning the consideration for a mixed supply.

95. The method you choose should be based on a consideration of all the circumstances and not because it gives you a particular result. You may need to use different methods, or a combination of methods, for different supplies to ensure the appropriate amount of GST is payable. You need to keep records that explain all transactions and other acts you engage in that are relevant to supplies you make, including supplies that are GST-free and input taxed.[53]

96. Where consideration is apportioned in a manner that cannot be justified in terms of reasonableness, the general anti-avoidance provisions of the GST Act may have application.[54]

Direct methods

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 (and therefore, the calculation of the value of) the taxable part of the supply you make. Such methods may include:

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

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[52] The principles of reasonableness used in Goods and Services Tax Ruling GSTR 2000/15, which is about determining the extent of creditable purpose for claiming input tax credits and for making adjustments for changes in the extent of creditable purpose, also apply in this Ruling.

[53] Paragraph 382-5(1)(a) in Schedule 1 to the *Taxation Administration Act 1953* provides rules for keeping records of indirect tax transactions.

[54] See Division 165.

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 13C – 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 is $165 and of the spectacles is $254. The GST payable is $15.

Example 13D - 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.

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.

[54A] The supply of the voucher is not a taxable supply under section 105-5.

Example 13E – 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 are 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 GST payable is $10.*

Price of each part relative to the whole

98. Where it is possible to determine 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), then an apportionment on this basis may be reasonable. If you use this basis, the GST you pay is the same as if you supplied the taxable parts separately in the same market.

Examples of apportionment using relative prices

Example 14 – goods sold together for single price

98A *A teapot is sold together with 100g of tea for $25. The teapot 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 teapot.*

98B. *The value of the teapot (the taxable component) is commensurate with its normal selling price of $15. The GST payable is $1.36.*

99. Where you cannot establish an appropriate market price for which particular goods are sold, then it may be reasonable for you to

use a relevant market price for a similar supply (or an industry standard), to determine the appropriate price of the particular goods.

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. Michael apportions the discount on a proportionate basis resulting in a price of $188 ($230 divided by $550 multiplied by $450) for the frames and $262 ($320 divided by $550 multiplied by $450) for the lenses. The GST payable is one-eleventh of $188 or $17.10.

Example 15 - education courses

102. *Pierre signs up for a college course at a discounted package price. There are four units in Pierre's course - two that are GST-free and two that are taxable. The college usually charges $500 for each of the GST-free units and $825 for each of the taxable units. Pierre would normally pay $2,650 for the course, but after a discount of 20%, he pays $2,120.*

103. *To reasonably apportion the consideration for the course, the college discounts each of the units by 20%. The consideration for each of the GST-free units is $400 (that is, $500 less 20%), and for each of the taxable units, the consideration is $660 (that is, $825 less 20%).*

103A. The value of the taxable part is commensurate with the discounted price of each course that is, $600 (excluding GST). The GST payable is $120.

[55] [Omitted.]

Example 15B – goods sold together for single discounted price

103B. If in example 14, the teapot 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 teapot.

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.

103D. 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 (the same proportion the rent for the commercial premises bears to the total rent of $1500) to the commercial part and one third to the residential part to ascertain the value of the taxable part.*

Relative time to perform the supply

104. Where you supply services and charge them out on a time basis (for example, at an hourly rate), it may be reasonable to apportion the consideration for a mixed supply based on the time taken to perform the relevant taxable and non-taxable parts of the supply. This method may be suitable where you make mixed supplies of professional or trade services.

[55A] The sale of commercial premises is taxable. The sale of residential premises is input taxed under section 40-65.

Example 16 - GST-free and taxable services

105. *Under direction from a doctor, Gilda provides home care to a privately funded client in the client's own home.*[55B] *She charges a flat hourly rate for her services that include helping to feed and dress her client. These services are GST-free under section 38-30. Gilda also tidies her client's house and garden. These latter services are taxable. Gilda apportions the consideration for her services on the number of hours it takes for her to perform the services. This is a reasonable method of apportionment to ascertain the value of the taxable part of the supply.*

Relative floor area in a supply of property

106. In some cases, it is reasonable for you to allocate the consideration for a mixed supply by reference to the relative floor area of the property being supplied. To make an allocation on this basis, you also need to consider the relative price of different types of floor space (for example, floor space in residential, retail and industrial property are often priced differently). That is, you may simply work out the proportionate floor area if the value per square metre does not vary. However, if the value per square metre is variable, then you can reasonably apportion on a basis of each area and its relative value. You may also need to take into account external features, such as the value of recreational areas.

Example 17 - commercial and residential premises

107. *Warren rents out a property to Josef for $2,000 per month. The property is comprised of residential and commercial premises. The floor area of the residential part is 160 square metres and the commercial part is 80 square metres. In the locality, the rental of commercial space is worth twice as much as residential space.*

108. *It would be reasonable for Warren to base the taxable proportion of the supply on the floor area of the commercial part as a proportion of the combined floor area of the commercial and residential parts. However, he also needs to take into account the difference in the relative value of the commercial and residential floor space. Warren may reasonably apportion the consideration equally between the commercial and the residential parts.*

108A. *The taxable proportion is therefore 50%. Applying the formula in section 9-80, the taxable value of the actual supply is calculated as*

[55B] Gilda's client is not a participant in the National Disability Insurance Scheme. Therefore the supplies made by Gilda to the client are not GST-free under section 38-38.

($2000 x 10)/(10 + 0.5). The value of the taxable part is $952.38 and the GST payable is $95.23.

Indirect methods

109. You may decide that it is appropriate that you use an indirect method to apportion the consideration for a mixed supply you make. For example, you may use a reasonable method that includes the addition of an appropriate mark-up to reflect your profit margin relative to the market you supply.

110. Another example is where an arm's length wholesaler or manufacturer makes a mixed supply to you of things that have been packaged in the form in which you will market them. In this case, you may adopt the apportionment ratio worked out by your supplier. On the other hand, if your supplier characterises a supply to you as a composite supply, you will not necessarily be able to adopt the same characterisation. This is because your supplier may have used the approach provided at paragraph 21 which may not be applicable to your particular circumstances because of your profit mark-up.

Example 18 - indirect method

111. *Byron manufactures cosmetics including perfume, shampoo and SPF 30+ sunscreen. Perfume and shampoo are taxable, and the sunscreen is GST-free. Byron supplies one bottle of each item in a clear plastic package to wholesalers. He chooses to use an indirect method based on the cost and usual profit margin of each item to apportion the consideration for the supply. This method is reasonable in the circumstances.*

Methods of apportionment that are not reasonable

112. Some methods may not result in a reasonable basis of apportionment of the consideration for a mixed supply. For example, in some cases, it may not be reasonable to apportion the consideration solely on the basis of the cost of the supply to you. This would be the case if your mark-up varies from part to part. Variations in mark-ups prevent this method from being a reasonable apportionment of the consideration for the supply.

113. Also, in some circumstances it may not be reasonable to apportion consideration using 'historical cost' and 'residual value' methods. These amounts often are used for accounting purposes and

may not reflect an appropriate apportionment of the consideration for a supply.[56]

Calculating the GST payable on the taxable part of a mixed supply

114. GST is calculated as 10% of the value of the taxable supply.[57] 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. This also means that the GST payable on a taxable supply is equivalent to 1/11 of the price (or consideration) of the supply.

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.

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

117. Section 9-80 provides the method for working out the value of the taxable part of a mixed supply that consists only of taxable and GST-free or input taxed parts. The section refers to such a supply as the actual supply.

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[56] In Goods and Services Tax Ruling GSTR 2001/6, Goods and services tax: non-monetary consideration, we also state that 'historical cost' or 'residual value' may not be acceptable methods for determining the market value of consideration.
[57] Section 9-70.
[57A] Section 195-1.
[58] [Omitted]

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 81F to 81O of this Ruling). 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.

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

119. Section 9-75 applies to work out the value of the taxable part of a supply consisting of taxable and non-taxable parts that are either dealt with in specific provisions of the GST Act or do not meet the requirements of paragraphs 9-5(a) to (d). The consideration that is allocated to the taxable part is the price of the taxable part referred to in section 9-75. The value of that part is simply calculated as 10/11 of its price (or consideration).

Preparing a tax invoice that includes a mixed supply

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. 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.

122. If you use a simplified accounting method to account for GST on your Business Activity Statement, you may still have to issue a tax invoice within 28 days of a request by the recipient of the supply.[60]

Detailed contents list

123. Below is the detailed contents list for this Ruling:

[59] [Omitted]

[60] The Commissioner has published a booklet titled 'Simplified GST Accounting Methods for Food Retailers'. This information is available from the ATO website at www.ato.gov.au.

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Commissioner of Taxation
19 December 2001

Previous Draft:
Previously released in draft form as GSTR 2001/D4

Related Rulings/Determinations:
TR 2006/10; GSTR 2000/31; GSTR 2001/6; GSTR 2006/4; GSTR 2012/5; GSTD 2000/6

Subject References:
- ancillary
- apportionment
- composite supply
- GST
- GST-free supply
- incidental
- integral
- input taxed supply
- mixed supply
- non-taxable supply
- package deal
- partly taxable supply
- tax invoice
- taxable supply
- value

Legislative References:
- ANTS(GST)A99 7-1(1)
- ANTS(GST)A99 9-5
- ANTS(GST)A99 9-5(a)
- ANTS(GST)A99 9-5(b)
- ANTS(GST)A99 9-5(c)
- ANTS(GST)A99 9-5(d)
- ANTS(GST)A99 9-10(2)(h)
- ANTS(GST)A99 9-15(1)
- ANTS(GST)A99 9-30(1)
- ANTS(GST)A99 9-30(2)
- ANTS(GST)A99 9-40
- ANTS(GST)A99 Subdiv 9-C
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Appendix A

In addition to section 9-5, which provides that a supply is not a taxable supply to the extent that it is GST-free or input taxed, the GST Act specifies that the following things are not a taxable supply, or are not treated as a taxable supply:

Supplies to members of the same GST group

[Subsection 48-40(2)] However:

(a) a supply that an entity makes to another *member of the same *GST group is treated as if it were not a *taxable supply, unless:

  (i) it is a taxable supply because of Division 84 (which is about offshore supplies other than goods or real property); or

  (ii) the entity is a participant in a *GST joint venture and acquired the thing supplied from the joint venture operator for the joint venture; and

(b) this section only applies to GST payable on a *taxable importation made, by a member of the GST group other than the *representative member, if the GST on the importation is payable at a time when GST on *taxable supplies is normally payable by the representative member.

Supplies between members of the same religious group

[Subsection 49-30(1)] A supply that a *member of a *GST religious group makes to another member of the same GST religious group is treated as if it were not a *taxable supply.

Supplies from a joint venture operator to another joint venture operator

[Subsection 51-30(2)] However, a supply that the *joint venture operator of a *GST joint venture makes is treated as if it were not a *taxable supply if:

(a) it is made to another entity that is a *participant in the joint venture; and

(b) the participant acquired the thing supplied for consumption, use or supply in the course of activities for which the joint venture was entered into.

Supply of goods that were part of an acquisition of second-hand goods that are divided for re-supply

[Subsection 66-45(1)] A supply you make is not a *taxable supply if:

(a) it is a supply of goods that were part of an acquisition you made that was an acquisition of *second-hand goods to which this Subdivision applied; and

(b) your *total Subdivision 66-B credit amount is more than your *total Subdivision 66-B GST amount; and

(c) what would be the amount of GST payable on the supply, if the supply were a taxable supply, is less than or equal to the difference between:

(i) your *total Subdivision 66-B credit amount; and

(ii) your *total Subdivision 66-B GST amount.

Note: This section will not apply unless the record keeping requirements of section 66-55 are met.

Supplies by an insurer in settlement of claims

[Subsection 78-25(1)] A supply that an insurer makes in settlement of a claim under an *insurance policy is not a *taxable supply.

Supplies of goods to insurers in the course of settling claims

[Subsection 78-60(1)] A supply of goods is not a *taxable supply if it is *solely* a supply made under an *insurance policy to an insurer in the course of settling a claim under the policy.

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:

(a) it is not a *taxable supply; and

(b) it is not treated as *consideration for an acquisition made by the operator; and

(c) 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.

Supply by an amalgamating company to an amalgamated company in the course of amalgamation

[Subsection 90-5(1)] A supply made by an *amalgamating company to an *amalgamated company in the course of *amalgamation is not a *taxable supply if, immediately after the amalgamation, the amalgamated company is *registered or *required to be registered.

Supplies of vouchers stating monetary value

[Subsection 100-5(1)] A supply of a *voucher is not a *taxable supply if:

(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.

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.

Supplies by creditors in satisfaction of debts where the debtor supplies a written notice that the supply would not be taxable

[You make a taxable supply if you supply the property of another entity (the ***debtor***) to a third entity in or towards the satisfaction of a debt that the debtor owes to you, and the supply would have been a taxable supply if the debtor had made the supply.]

[Subsection 105-5(3)] However, the supply is not a *taxable supply if:

(a) the debtor has given you a written notice stating that the supply would not be a taxable supply if the debtor were to make it, and stating fully the reasons why the supply would not be a taxable supply; or

(b) if you cannot obtain such a notice - you believe on the basis of reasonable information that the supply would not be a taxable supply if the debtor were to make it.

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).

Supply of work or services, under an arrangement, and a voluntary agreement to withhold is in place

[Subsection 113-5(1)] A supply that you make is not a *taxable supply to the extent that you make it under an arrangement (within the meaning of the *Income Tax Assessment Act 1997*) if:

(a) the arrangement the performance of which, in whole or in part, involves the performance of work or services (whether or not by you); and

(b) an agreement is in force that:

  (i) complies with section 12-55 in Schedule 1 to the *Taxation Administration Act* 1953 (about voluntary agreements to withhold); and

  (ii) states that the section covers payments under the arrangement, or payments under a series of arrangements that includes the arrangement; and

(c) you, and the entity acquiring what you supply under the arrangement, are parties to that agreement; and

(d) you have an *ABN that is in force and is quoted in the agreement; and

(e) the acquisition, by that entity, of what you supply under the arrangement would be a *creditable acquisition (and not *partly creditable) if the supply were a *taxable supply.