


# ***GSTR 2001/8A5 - Addendum - Goods and services tax: Apportioning the consideration for a supply that includes taxable and non-taxable parts***

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## Addendum

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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

This Addendum amends Goods and Services Tax Ruling GSTR 2001/8 to take account of the High Court decision in *Commissioner of Taxation v. Qantas Airways Ltd* [2012] HCA 41 which considered the GST treatment of fares received for flights booked but not undertaken by prospective passengers.

The Addendum also reflects amendments to the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), in particular for amendments made to Subdivision 29-C which are in relation to tax invoices and apply to tax periods starting on or after 1 July 2010.

This Addendum also makes further minor amendments to GSTR 2001/8 and to update the references section of GSTR 2001/8.

#### **GSTR 2001/8 is amended as follows:**

**1. Paragraph 8**

In the first sentence, omit the words '[to tax periods commencing]'.

**2. Paragraph 10**

Omit the paragraph; substitute:

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.

**3. Paragraph 15**

Delete the word '[Omitted]'; substitute:

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.

**4. Paragraph 19**

Omit the words 'you must consider all the circumstances of the transaction to ascertain its essential character. You also need to consider the effect the GST Act has on the supply or any of its individual parts. 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.'; substitute: '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.'

**5. Paragraph 19**

After the paragraph; insert:

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.<sup>7A</sup>

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.

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<sup>7A</sup> 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.

**6. Paragraph 31**

Omit the words 'It is the character of the supply that determines its GST treatment. Therefore, to determine how GST applies to a transaction, it is necessary to analyse the character of the supply.'; substitute: 'An analysis of the character of a supply may be necessary to determine how a particular provision of the Act applies to the supply.'

After the paragraph, insert:

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.

**7. Paragraph 40**

Omit the words 'you must consider all the circumstances of the transaction to ascertain its essential character'; substitute: '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.

After the paragraph, insert:

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.

**8. Footnote 37**

Omit reference at footnote 37 to 'GSTR 2000/20'; substitute: 'GSTR 2012/6.'

**9. Paragraph 81**

Omit the words '*The fitting and balancing of then tyres are necessary procedures in providing the tyres, and are not supplies in their own right. The fitting and balancing represents a small proportion of the value of the transaction for the supply of tyres and is integral, ancillary or incidental to the supply of tyres. The essential character of the transaction between Justine and Madge is the taxable supply of tyres. In similar circumstances, the fitting of a windscreen, battery or muffler would also be integral, ancillary or incidental to the supply of those parts. In this example, all the parts of the supply are taxable and it would therefore be of no consequence if the fitting and balancing of the tyres was a separately identifiable part.*'; substitute: '*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.*'

# GSTR 2001/8

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FOI status: **may be released**

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**10. 10. Related Rulings/Determinations:**

Omit: GSTR 2000/20; GSTR 2011/D1

**11. Legislative references**

Omit:

- ANTS(GST)A99 29-70

Insert:

- ANTS(GST)A99 29-70(1)

This Addendum applies both before and after its date of issue.

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**Commissioner of Taxation**

15 May 2013

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ATO references

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