

Cover sheet for: GSTR 2002/2A3 - Addendum

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Addendum

Goods and Services Tax Ruling

Goods and services tax: prizes

This Addendum amends Goods and Services Tax Ruling GSTR 2002/3 to include reference to monetary prizes relating to wagers that are consideration for supplies that are not taxable, such as bets placed by persons overseas that are consideration for GST-free supplies.

This follows an amendment to the GST law made by the *Tax Laws Amendment (2009 GST Administration Measures) Act 2010* to provide a general clarification of the GST treatment of prize money that gambling operators are liable to pay out on GST-free supplies.

This Addendum also makes some minor non-technical corrections.

GSTR 2002/3 is amended as follows:

1. Paragraph 8A

Omit the paragraph; substitute:

8A. Changes made to this Ruling by Addenda that issued on 11 July 2007, 18 June 2008 and 18 August 2010 have been incorporated into this version of the Ruling.^{1A} You can rely on the changes made to the Ruling by the addenda that issued on 11 July 2007 and 18 June 2008 for the purposes of section 105-60 of Schedule 1 to the TAA from the date of issue of the relevant Addendum. If the Addendum conflicts with a previous private ruling that you have obtained or a previous public ruling, the Addendum prevails.

2. Footnote 33

Omit '(ITAA)'

3. Paragraph 184

At the end of the paragraph, insert footnote 65D:

^{65D} However, money paid as a prize in relation to a GST-free wager is not included in total monetary prizes in the calculation of the global GST amount – see paragraphs 188A to 188I of this Ruling.

^{1A} Refer to each Addendum to see how that Addendum amends this Ruling.

4. Paragraph 188

After the paragraph, insert:

Whether 'total monetary prizes' includes monetary prizes paid in relation to a supply that was not a taxable supply

188A. Under the basic rules of the GST, a supply that meets the positive requirements for a taxable supply (under section 9-5) is not a taxable supply to the extent it is GST-free. As a result, a supply that might otherwise be a gambling supply (a taxable supply) may instead be a GST-free supply. For example:

- money wagered by a person outside Australia as a bet on a horse race may be consideration for a supply that is GST-free under section 38-190; or
- money a person pays to participate in a game of bingo conducted by a charitable organisation may be consideration for a supply that is GST-free under section 38-270.

188B. The ATO treatment of monetary prizes payable to non-residents overseas in relation to their GST-free bets, is to exclude them from total monetary prizes in the calculation of the global GST amount.^{65E}

188C. The reason for this is that the definition of total monetary prizes at paragraph (a) in section 126-10 makes reference to 'the gambling supplies'.^{65F} A gambling supply is by definition a taxable supply.^{65G} It is therefore considered that monetary prizes that do not relate to a taxable supply are outside the scope of 'total monetary prizes'.

188D. This is consistent with section 126-1 which explains that the global accounting method 'provides for an alternative way of working out your net amounts by incorporating your net profits from taxable supplies involving gambling'. By excluding GST-free wagers and monetary prizes payable in relation to these wagers, the global GST amount reflects the net profits on taxable gambling supplies.

^{65E} At the date of publication of this Addendum, fact sheet GST & gambling (NAT 3018) is current.

^{65F} See paragraph 181 of this Ruling.

^{65G} See subsection 126-35(1).

188E. Subsection 126-10(3) as amended^{65H} by *Tax Laws Amendment (2009 GST Administration Measures) Act 2010* provides:

- (3) In working out your total monetary prizes for a tax period, disregard any *monetary prizes you are liable to pay, during the tax period, that relate to supplies that are *GST-free.

188F. This provision expressly confirms that monetary prizes relating to GST-free supplies cannot be included in 'total monetary prizes'. As stated at paragraph 1.17 in the Explanatory Memorandum to the Tax Laws Amendment (2009 GST Administration Measures) Bill 2009:

The Board of Taxation in its *Review of the Legal Framework for the Administration of the Goods and Services Tax* recommended that the current GST treatment of gambling transactions by 'non-residents' **be confirmed**. The Government accepted this recommendation in its response to the report (then Assistant Treasurer's Media Release No. 042 of 12 May 2009). The amendments provide a general **clarification** of the GST treatment of prize money that gambling operators are liable to pay out on GST-free supplies. [emphasis added]

What monetary prizes 'relate' to GST-free supplies?

188G. A monetary prize 'relates' to a GST-free supply if the entitlement to the payment of the prize can be traced to the supply that was GST-free. This is done on a case by case basis.

188H. For example, an Australian gambling supply provider (GSP) accepts bets on horseracing and makes supplies to its customers (punters) in Australia that are taxable under section 9-5. The GSP also accepts wagers on horseracing from persons who are outside Australia. The supplies of gambling opportunities the GSP makes to its customers outside Australia will be GST-free in accordance with section 38-190.^{65I}

^{65H} Prior to this amendment, subsection 126-10(3) made express provision only in relation to supplies that are GST-free under section 38-270.

^{65I} See Goods and Services Tax Ruling GSTR 2007/2 Goods and services tax: in the application of paragraph (b) of item 3 in the table in subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999* to a supply, when does 'effective use or enjoyment' of the supply 'take place outside Australia'?, and Goods and Services Tax Ruling GSTR 2005/6 Goods and services tax: the scope of subsection 38-190(3) and its application to supplies of things (other than goods or real property) made to non-residents that are GST-free under item 2 in the table in subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*.

188I. In calculating its global GST amount for a tax period, the GSP includes in 'total amounts wagered' the consideration for those gambling supplies it makes to its customers in Australia that are attributable to the tax period. Similarly the GSP includes in 'total monetary prizes' the monetary prizes that became payable to the customers who laid those taxable bets. As for the GST-free bets the GSP accepts from its customers outside Australia, the consideration for those bets does *not* form part of 'total amounts wagered'. Similarly, any monetary prizes that become payable to the customers who placed those bets, do *not* form part of 'total monetary prizes' in the GSP's global GST amount.

5. Paragraph 227

Insert:

Whether 'total monetary prizes' includes monetary prizes paid in relation to a supply that was not a taxable supply	188A
What monetary prizes 'relate' to GST-free supplies?	188G

6. Related Rulings/Determinations

Insert:

GSTR 2005/6
GSTR 2007/2

7. Legislative references

Omit:

- ANTS(GST)A99 9-5(a)

Insert:

- ANTS(GST)A99
- ANTS(GST)A99 38-190
- ANTS(GST)A99 38-270
- ANTS(GST)A99 126-1
- ANTS(GST)A99 126-10(1)
- ANTS(GST)A99 126-10(3)
- ANTS(GST)A99 126-35(1)
- Tax Laws Amendment (2009 GST Administration Measures) Act 2010

8. Other references:

Insert:

Other references:

- Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998
- Explanatory Memorandum to the Tax Laws Amendment (2009 GST Administration Measures) Bill 2009
- Australian Taxation Office media release 'No GST on loyalty media release' (NAT 2000/14)
- Fact sheet 'GST & gambling' (NAT 3018)
- Butterworths Legal Dictionary 1997

This Addendum applies both before and after its date of issue, except for that part which deals with subsection 126-10(3) which applies from 24 March 2010.

Commissioner of Taxation25 August 2010

ATO references

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