Land product supplied to non-residents (as principal) -

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This ruling is being reviewed as a result of a recent court/tribunal decision. Refer to Decision Impact Statements: Commissioner of Taxation v Luxottica Retail Australia Pty Ltd (2007/3489, 3490 and 2009/4027 (AAT) NSD 134 of 2010 (Federal Court)) and Travelex Ltd v Commissioner of Taxation (S79 of 2010).

This publication is extracted from the Tourism and Hospitality Industry Partnership - issues register. See travel agents issue 5 of that register. This publication should be read in conjunction with the related content of that register where further context is required.

Tourism and Hospitality Industry Partnership

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This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

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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.

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1. Inbound tour operators (ITOs) typically provide packaged holidays or tailored itineraries for destinations in Australia. The holiday packages comprise things on which GST is normally payable in Australia. For example, a package can include airport transfers, hotel accommodation, car hire, other land transport, tickets for entry to cultural and entertainment venues, meals and other services.

2. The ITO's negotiate with land product providers such as hotel operators, restaurateurs etc, for the supply of the required holiday package components. The ITO's usually supply the holiday packages to foreign travel wholesalers as a principal. The foreign travel wholesalers on sell the holiday packages to either other foreign suppliers or directly to travellers.

Issue

3. What is the GST treatment of the supply of a holiday package by the ITO as a principal?

4. Please note this issue does not deal with supplies of a holiday package by foreign tour operators (FTOs) or other entities carrying on an enterprise outside Australia. Please refer to the *GST and Australian travel packages* fact sheet.

Decision

5. The ITO makes a supply to the non-resident tour wholesaler of the Australian land product. All of the requirements for a taxable supply are satisfied. No part of the supply is GST-free.

6. The ATO previously allowed ITO's to treat the arranging of the supplies as a separate supply from the provision of the land product. The arranging service was a GST-free supply pursuant to subsection 38-190(1) item 2, while the provision of the land product was a taxable supply. Advice to this effect was published prior to the ATO issuing Goods and Services Tax Ruling *GSTR 2001/8 Goods and services tax: apportioning the consideration for a supply that includes taxable and non-taxable parts*. In light of GSTR 2001/8, we now consider the earlier advice to be unsustainable.

7. GSTR 2001/8 provides guidance for determining whether a supply is essentially a supply of one thing (a composite supply) or a supply of separate things (a mixed supply). If a supply is a composite supply, it is not necessary to apportion the consideration.

8. GSTR 2001/8 provides that 'you should take an overall view of the circumstances of a transaction that comprises a bundle of features and acts'. Even where there are several distinct parts, it is only necessary to 'unbundle' the supply if the separate parts have different tax treatment. The application of GST to the major components of a typical land content holiday package is discussed briefly in the following paragraphs. To summarise, each element of the holiday package supplied to a non-resident is taxable. As the components have the same tax treatment, no dissection of the package (even if it is in fact several supplies rather than one supply with several parts) is required.

Supplies of real property - accommodation

9. The supply of rights to accommodation is a supply of real property. It is therefore excluded from consideration as a GST-free supply under section 38-190 because that section applies only to supplies of things other than goods or real property. As there is no other GST-free provision that is applicable, the supply of accommodation to a foreign travel wholesaler is taxable. Further discussion of the ATO view that a supply of accommodation rights is a supply of real property can be found in Goods and Services Tax Determination GSTD 2004/3 and Goods and Services Tax Rulings GSTR 2003/7 and GSTR 2003/8***.***

Supplies of goods - meals, car hire and so forth

10. A supply of goods is excluded from consideration under section 38-190. GST ruling GSTR 2000/31 *Goods and services tax: supplies connected with Australia* provides that a supply of goods by way of lease or hire is a supply of goods. As there is no other GST-free provision that is relevant, supplies of car hire, as well as restaurant meals and other goods to a foreign travel wholesaler are taxable.

11. An alternate view can be put, depending upon the supply contracts and other factual information, that what is being supplied is not a supply of goods, but a supply of an option to acquire those goods. Unless the facts and circumstances of the supply strongly support this view, the ATO considers that the preferred view is that the supply is a supply of goods. However, if the supply is an option to acquire goods, subsection 38-190(2) operates to prevent GST-free treatment applying where the underlying thing is for consumption in Australia.

Supplies of services - land transport, show tickets and so forth

12. To establish the correct nature of what is being supplied requires an examination of the supply contracts etc. The supply may be one of prepaid services or alternatively a right or option to acquire services that are to be consumed in Australia. Whichever analysis of the supply is appropriate, subsection 38-190(2) or 38-190(3) will operate to deny GST-free treatment applying where the underlying thing is for consumption in Australia.

The service of arranging the land content supplies

13. The arranging service does not need to be separately recognised for GST purposes. This element of the holiday package cost does not have a commercial purpose on its own. The arranging service cannot be separated from the land content components in a practical sense. The fact that a separate amount may be itemised for this service on an invoice for the supply does not alter its 'economically indissociable' nature or make the arranging a separate supply.

14. Since the arranging service cannot be separated, there is no requirement to distinguish this component of the supply. Since each element of the holiday package is taxable, the arranging service is also taxable.