

STD 95/4 - Classification of combination diver's gauges

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This Document is a Ruling for the purposes of section 77 of the *Sales Tax Assessment Act 1992*. As a result you may act on it as if it had the force of law.

Sales Tax Determination

Title: Classification of combination diver's gauges

Background

Subitem 32(1) in Schedule 1 to the Sales Tax (Exemptions & Classifications) Act 1992 (the E&C Act) exempts cylinders of a kind ordinarily used in marketing gases for industrial, medical or domestic use, providing the cylinders are portable cylinders in which the gases are delivered to consumers. The subitem also exempts parts and accessories for these cylinders.

Sometime ago the Australian Taxation Office (ATO) ruled that scuba diving cylinders were *of a kind ordinarily used* in marketing gases and were therefore exempt under *subitem 32(1)*. More recently, the ATO has received a number of classification requests for combination diver's gauges used in conjunction with scuba diving cylinders.

A combination diver's gauge is a single integrated unit consisting of a number of gauges including a tank pressure gauge, a compass, a depth gauge, a clock, a timer, a temperature gauge and a dive computer.

Issue

Are combination diver's gauges exempt from sales tax under *subitem 32(1)* as an accessory to a cylinder used in marketing and delivering gases?

Decision

Combination diver's gauges are not exempt from sales tax as accessories to cylinders (scuba diving cylinders) used in marketing or delivering gases.

They are covered by *Item 1 in Schedule 4* to the *E&C Act* and are currently taxable at the rate of 21%. This rate will increase to 22% on 1 July 1995.

Date of effect

This determination confirms previous ATO advice and is effective immediately.

Reasons

*We have based our decision on the following legislative provisions:
section 8, E&C Act*

*Item 32, Schedule 1,
E & C Act*

and case law:

Zendel Australia Ltd v FC of T (Cth) (1992) 24 ATR 101; 92 ATC 4,515

Zendel Australia Ltd v FC of T (Cth) (1993) 46 FCR 14; 27 ATR 352; 94 ATC 4,022

Subsection 8(2) of the E&C Act provides that, in order for goods to be accessories, they must satisfy one of two conditions. They must either be:

- marketed exclusively as accessories for the main goods; or
- used exclusively as accessories for the main goods.

The term *accessory* has been examined by the courts. In *Zendel Australia Ltd v FC of T*, Hill J. stated that an accessory *must contribute to the working of some principal item or its general effect*. This interpretation was confirmed on review by the Full Federal Court.

Combination diver's gauges are marketed as multi-purpose products and are used for a number of purposes, most of which are relevant to the sport of skin diving. While the tank pressure gauge component of the combination diver's gauge performs the function of an accessory in relation to the gas cylinder, the other components of the unit do not contribute to the working of the cylinder and are not in the nature of accessories.

The combination diver's gauges are not marketed exclusively or used exclusively as accessories for gas cylinders. The requirements of *subsection 8(2)* are not satisfied and the combination diver's gauges do not qualify for exemption under *subitem 32(1)* as accessories for gas cylinders.

Communication of the Decision

This determination is a public ruling for the purposes of *Section 77 of the Sales Tax Assessment Act 1992* and may be relied upon by any person to whom it applies. Taxpayers involved in the diving industry have been advised of this decision. The document has been made available for publication by the sales tax publishing houses.

Commissioner of Taxation**4 May 1995**

FOI INDEX DETAIL: Reference No. I 1016221

Related Determinations:

Related Rulings: ST 2428

Subject Ref: diver's gauges, accessories for gas cylinders

Legislative Ref: Sales Tax (Exemptions and Classifications) Act 1992, section 8, Item 32

Case Ref: Zendel Australia Ltd v FC of T (Cth) (1992) 24 ATR 101; 92 ATC 4,515
Zendel Australia Ltd v FC of T (Cth) (1993) 46 FCR 14; 27 ATR 352; 94 ATC 4,022

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