

STD 96/9 - Title: Taxable value of music compact disks



This cover sheet is provided for information only. It does not form part of *STD 96/9 - Title: Taxable value of music compact disks*

This document has been Withdrawn.

There is a Withdrawal notice for this document.

This Document is a 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.

Sales Tax Determination

Title: Taxable value of music compact disks

Background

In the case of *EMI Australia Pty Ltd v. FC of T* 94 ATC 5008; (1994) 29 ATR 626, the Federal Court held that certain types of printed matter sold with music compact disks were separate goods and were exempt from sales tax under Item 51 of the *Sales Tax (Exemptions and Classifications) Act 1935*. These goods would also be exempt under the *Sales Tax (Exemptions and Classifications) Act 1992*.

When taxable compact disks and exempt printed matter are sold by wholesale together for one inclusive price, the taxable value of the music compact disks is the price for which they could reasonably have been expected to have been sold if they had been sold separately.

The taxable value could be determined by each taxpayer in relation to each disk title. In order to simplify calculations and reduce compliance costs for relevant taxpayers, the Australian Record Industry Association (ARIA) and the Australian Taxation Office (ATO) have agreed a basis for the determination of taxable values of music CDs by members of ARIA. This determination sets out the basis of the agreement reached between ARIA and the Commissioner and offers arrangements on identical terms to other taxpayers.

Issue

What taxable value can be agreed under section 43 of the *Sales Tax Assessment Act 1992* for music compact disks that are sold with exempt printed matter which is included as part of the product?

Decision

The Commissioner has entered into an agreement (under section 43 of the *Sales Tax Assessment Act 1992*) with ARIA that provides for the taxable value of music compact disks to be as follows:

- Full Price disks - WSP less 16.70%
- Mid Price disks - WSP less 12.89%
- Budget Price disks - WSP less 4.85%

where WSP is the Wholesale Selling Price and the definition of the Full Price, Mid Price and Budget Price categories follows the prevailing ARIA guidelines.

The agreement will operate for a term of five years, subject to annual review of the component calculations, based on submissions from ARIA.

Where tax has been paid on a higher value it will have been overpaid within the meaning of the credit provisions in the Sales Tax Legislation. Entitlement to a credit would be subject to a claimant satisfying the normal requirements of the relevant credit provisions.

Members of ARIA who adopted lower taxable values prior to the agreement could adjust their sales tax returns, without penalty, to reflect the agreed values provided this adjustment occurred no later than the return due 1 month after the date of the agreement and any underpayment of sales tax was remitted to the Commissioner by the end of the following month. Taxpayers who are not parties to the ARIA agreement and who subsequently enter into an identical agreement with the ATO will be provided with an alternative date to adjust underpayments.

Date of effect

The taxable value agreement applies to ARIA members from the date specified in the agreement.

Taxpayers who are not parties to the ARIA agreement may request an agreement on the basis set out in this determination by writing to the Manager (WHTAX Large Clients), at the Parramatta Branch of the ATO.

Reasons

We have based our decision on the following legislative provisions:

Subitem 100(1), Schedule 1, to the Sales Tax (Exemptions and Classifications) Act 1992; section 95 of the Sales Tax Assessment Act 1992

*and case law:
EMI Australia Pty Ltd v. FC of T 94 ATC 5008, (1994) 29 ATR 626*

In the *EMI case*, Hill J considered whether certain printed matter (i.e., booklets, posters or sheets of paper that are inserted into a container, along with the CD pressing, hereafter referred to as CD inserts) were separate goods that could be classified as exempt printed matter. In finding that some of the CD inserts were exempt printed matter, his Honour concluded that this question should be determined by considering the function the insert plays. Factors such as the size and content of the insert and its relationship to the plastic cover are relevant in determining the function. In each case, the question of exemption turns upon the relationship of the insert to the container and will be one of fact and degree.

The CD inserts held to be exempt under *sub-item 51(1) of the First Schedule to the Sales Tax (Exemptions and Classifications) Act 1935* were at least 8 pages long, stapled and contained photographs of the artist, the words of the songs or information about the artist or the songs.

Under *section 5 of the Sales Tax Assessment Act 1992* that commenced in January 1993, the definition of 'container' includes ancillary items that are packed or secured in the container with the contents. These ancillary items are covered by the definition of 'container' if they are intended, and are reasonably necessary, to allow or facilitate the use of the contents.

For example, an operating and maintenance booklet that is packed with a video camera would be reasonably necessary to facilitate the use of the camera and therefore would be regarded as an ancillary item.

In the *EMI case*, Hill J found that the insert had two functions, viz., to provide information and to serve as the cover for the container. Providing information about the artist and the words of the songs is not reasonably necessary to facilitate the use of the CD and the insert will not form part of the container unless its only function is to be the cover for the container.

The taxable value of a music CD that is sold with exempt printed matter is the price for which the CD, without insert, could reasonably have been expected to have been sold, if sold separately. In order to reduce the costs that would be associated with determining a taxable value for each title and distinguishing between titles containing exempt CD inserts and those containing taxable ones, the ATO and ARIA agreed upon a basis for calculating the taxable value of music CDs in each of several price categories utilised by ARIA.

For the purposes of the agreement, the ATO and ARIA agreed that exemption under *sub-item 100(1)* would apply to music CD inserts that are 8 pages or longer, are fastened together so as to form a material whole and contain the words of the songs, or other information about the artists or songs.

To determine this value, a calculation has been performed for each of the three price ranges or categories of CD. For each category, consolidated industry costs supplied by ARIA have been used to arrive at a value reflecting:

- the average into store costs of the CD pressing; plus
- an agreed proportion of royalty and copyright fees attributable to the pressing (80%); plus
- the proportion of wholesale expenses and wholesale margin attributable to the CD.

The resultant figure is then reduced by the proportion of CDs in each category that are sold with exempt printed matter to arrive at the taxable values set out in the decision. The proportion of CDs sold with exempt printed matter was determined by ARIA and is based on a survey of the major taxpayers in the industry.

The taxable values will be reviewed annually, based on the updated consolidated industry costs supplied by ARIA. They will be applied irrespective of the cost of the CD insert or whether a particular title has an insert of exempt printed matter .

Communication of the Decision

This determination has been made available for publication by the sales tax publishing houses.

Commissioner of Taxation

28 August 1996

FOI Index Detail: I 1218252

Not previously released in draft form

Related Determinations:

Related Rulings:

Subject Ref: Taxable Value of Music Compact Disks which include inserts of printed matter containing words or music

Legislative Ref: Sales Tax (Exemptions and Classifications) Act 1935 Item 51; Sales Tax (Exemptions and Classifications) Act 1992 Sub-item 100(1), Schedule 1; STAA 5; STAA 43; STAA 95

Case Ref: EMI Australia Pty Ltd v. FC of T 94 ATC 5008; (1994) 29 ATR 626

ATO Ref: NAT 96/8355-1
