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Dr. Amir Pichhadze is currently a Lecturer at Deakin Law School, where he teaches and researches about different areas of tax law. He obtained his legal education at the University of Michigan Law School (S.J.D. and LL.M.-Int. Tax) and at the London School of Economics (LL.M.-Taxation and LL.B.), and was a judicial clerk at the Tax Court of Canada. His research was presented at conferences around the world, and has been published in numerous peer-reviewed, refereed, and peer-edited journals, as well as in book chapter(s). He was appointed as Visiting Scholar at the Max Plunk Institute for Tax Law and Public Finance, and a Senior Visiting Research Fellow at the Institute for Austrian and International Tax Law at the Vienna University of Economics and Business (WU). He has also been a guest teacher, speaker, and lecturer at: the University of Michigan Law School, the London School of Economics, Boston University School of Law, Osgoode Hall Law School, and the Australian Taxation Office.

Delineating ‘mixed supplies’ in transfer pricing law: the need to cross-reference and transplant principles from consumption tax law

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Abstract:

Domestic transfer pricing laws require comparing non-arm’s length conditions, in cross-border controlled transactions, to arm’s length conditions in comparable uncontrolled transactions. Where necessary, these laws authorize tax authorities to adjust the non-arm’s length conditions in order to bring them inline with the arm’s length conditions, so that the controlled transaction can then be taxed based on arm’s length conditions. In order to search for a comparable uncontrolled transaction, it is first necessary to delineate the commercial or financial relations in the controlled transaction. For this purpose, any relevant circumstance could/should be taken into account. This will typically include the property and/or service(s) exchanged between the contracting parties.

This article explores the issue of how to delineate the property and/or service(s) where the transaction (or a series of transactions) involved the exchange of ‘mixed supplies’ (i.e. a bundle of different types of property and/or services). Part 1 of the article: (a) exemplifies this issue through the transfer pricing dispute in *Canada v. GlaxoSmithKline Inc.*; (b) explains the relevance and importance of this issue; (c) suggests that guiding principles are required in order to better address this issue, and that such principles can and should be transplanted from consumption tax laws, where this issue has been addressed more extensively. Part 2 of the article proceeds to: (a) identify and address some of the obstacles to judicial cross-referencing and transplantation of relevant consumption tax principles; and (b) identify the necessary role of administrative intervention in order to overcome the hurdle of relying on judicial transplantation.