GSTR 2002/2EC-2 - Addendum Compendium

Australian Government
Australian Taxation Office

Public advice and guidance compendium – GSTR 2002/2

- **Relying on this Compendium**

This Compendium of comments provides responses to comments received on the draft Update to GSTR 2002/2 *Goods and services tax: GST treatment of financial supplies and related supplies and acquisitions*. It is not a publication that has been approved to allow you to rely on it for any purpose and is not intended to provide you with advice or guidance, nor does it set out the ATO's general administrative practice. Therefore, this Compendium does not provide protection from primary tax, penalties or interest for any taxpayer that purports to rely on any views expressed in it.

Summary of issues raised and responses

Issue number	Issue raised	ATO response
All legislative references in this Compendium are to the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), unless otherwise indicated.		
References to 'connected with Australia'		
1	The ATO should take the opportunity to update 'connected with Australia' references throughout the final Ruling. These references include footnotes to legislation and regulations which no longer refer to that phrase and are potentially confusing.	We acknowledge in paragraph 4A of the final Ruling that, from 1 July 2015, the term 'Australia' was replaced in nearly all instances within the goods and services tax (GST), Luxury Car Tax, and Wine Equalisation Tax legislation with the term 'indirect tax zone'. We explain that in the Ruling, the indirect tax zone is referred to as 'Australia'. This is consistent with our approach in other GST Rulings that have been updated since 2015 (for example, Goods and Services Tax Ruling GSTR 2006/3 *Goods and services tax: determining the extent of creditable purpose for providers of financial supplies*).
Buy-now, pay-later arrangements		
2	In Example 2A of the draft Update, the buy-now, pay-later arrangement is drafted on the basis that there is a supply of the interest in a credit arrangement by the buy-now, pay-later provider. We concur with this reasoning. It is our understanding that some buy-now, pay-later arrangements can (at least historically) also involve the assignment of a debt by the merchant to the buy-now, pay-later provider, being a debt created when the merchant accepts the customer's buy-now, pay-later card to effect	As with any arrangement, the GST consequences will depend on the particular facts and circumstances, including the contractual arrangements. In this update to the Ruling, we have not addressed circumstances where there is an assignment of debt from the merchant as, under typical buy-now, pay-later arrangements, the customer's debt to the merchant is discharged by the buy-now, pay-later provider. Example 2A has been updated in the final Ruling to make it clear that the factual scenario is not one involving an assignment of debt from the

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	payment for the underlying goods and services. These arrangements could potentially be subject to a different GST treatment as outlined in Goods and Services Tax Ruling GSTR 2004/4 *Goods and services tax: assignment of payment streams including under a typical securitisation arrangement* and could potentially impact the merchant's extent of creditable purpose. We recommend: • updating the final Ruling to clarify that the arrangement in Example 2A does not address a scenario involving a contractual arrangement whereby there is an assignment of a debt by a merchant to the buy-now, pay-later provider and, accordingly, that buy-now, pay-later providers (and merchants who engage those providers) should consider the facts and circumstances of their particular contractual arrangement to determine the correct GST treatment, and/or • including an additional example where the merchant supplies the goods on credit direct to the customer and assigns that debt to the buy-now pay-later operator.	merchant. A footnote has also been added to direct the reader to relevant guidance in GSTR 2004/4 on arrangements involving assignments of debt.
Rights for use outside Australia		
3	We suggest that the final statement in paragraph 158A of the draft Update be amended to read 'The actual use of the rights is not relevant, other than it may be evidence of the intended use.' In the absence of the term 'may', the paragraph can be interpreted as implying that the actual use is evidence of intended use and that is the end of the investigation.	We have taken this feedback on board in finalising the Ruling. We have clarified the statement in paragraph 158A of the final Ruling to be clear that the actual use of the rights is not relevant, other than as potential evidence of the intended use, consistent with Goods and Services Tax Ruling GSTR 2003/8 *Goods and services tax: supply of rights for use outside Australia – subsection 38-190(1), item 4, paragraph (a) and subsection 38-190(2).*
Example 24 of the Ruling – change in facts		
4	The previous Example 24 in GSTR 2002/2, dealing with the supply of an overdraft facility, has been removed and	Example 24 in the final Ruling is intended to provide a clear example of the application of table item 4 of subsection 38-190(1) to a financial supply.

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	replaced with a new Example 24, dealing with a supply of shares. We question why the original example dealing in other financial products (loans in this instance) has been deleted and recommend that the original be reinstated and the new example be renumbered to be Example 24A in the final Ruling. There is no problem in having more examples in this Ruling given the complexities involved.	We have also provided our view on the application of table item 4 of subsection 38-190(1) to various types of financial supplies, including: • foreign currency exchange transactions: Goods and Services Tax Determination GSTD 2012/5 *Goods and services tax: are acquisitions related to an entity's retail foreign currency exchange transactions with customers in Australia made solely for a creditable purpose under section 11-15 of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act)?* • the sale or purchase of financial products on overseas securities or futures exchanges: Goods and Services Tax Determination GSTD 2015/1 *Goods and services tax: is the supply of brokerage services that facilitates the sale or purchase of financial products on overseas securities or futures exchanges, a GST-free supply under paragraph (a) of item 4 in the table in subsection 38-190(1) of the A New Tax System (Goods and Services Tax) Act 1999?* • credit cards: Goods and Services Tax Determination GSTD 2017/1 *Goods and services tax: when is the supply of a credit card facility GST-free under paragraph (a) of Item 4 in subsection 38-190(1) of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act)?* • transaction accounts: Goods and Services Tax Determination GSTD 2020/1 *Goods and services tax: when is the supply of a transaction account GST-free under table item 3 or table item 4(a) of subsection 38-190(1) of the A New Tax System (Goods and Services Tax) Act 1999?* The previous factual scenario in Example 24 (a supply of an overdraft facility) was removed and will not be reinstated, as it did not provide a clear illustration of the application of the provision. In particular, it was not clear from the facts whether the rights were for use outside Australia because of the location of account, the fact that the recipient was a non-resident or the intended use of the funds. The extent to which each of these factors is relevant in determining whether the rights are for use outside Australia needs to be considered. This cannot be adequately addressed in a short example with limited facts and is beyond the scope of this Ruling.

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Paragraph 170A of the draft Update		
5	The inclusion of the statement 'other than an input taxed supply' almost implies that such supplies will not qualify as GST-free; however, the point being made is that subsection 38-190(3) does not apply to financial supplies given they involve rights. This is worthy of an inclusion of a footnote clarifying why this is included and that subsection 38-190(3) is limited to table item 2 and therefore does not apply to input taxed financial supplies, which more often than not fall under table item 4.	Paragraph 170A was included in the draft Update to address the enactment of paragraph 38-190(3)(c) and reflected the language of the legislation. However, we have updated paragraph 170A in the final Ruling for clarity. Subsection 38-190(3) does apply to input taxed financial supplies that are covered by table item 2, so that those supplies are not GST-free if paragraphs (a) and (b) of subsection 38-190(3) are satisfied. However, that supply may still be GST-free if the requirements of another table item (including table item 4) are satisfied and subsections 38-190(2) and (2A) do not apply. Paragraph 170B has been inserted into the final Ruling to make this clear and reflects paragraph 34 of 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.*
Schedule 1 – Glossary becoming non-binding		
6	We consider that making some parts of the Ruling binding and not others creates uncertainty for industry and complicates the status of the Ruling, as a number of defined terms are used in the body of the Ruling. The effect of this change is that some parts of the Ruling (that is, those included in the body of the Ruling) are binding, while others are not. The reference in paragraph 283 in the current Ruling (that Schedule 1 provides indicative and non-interpretive explanations) does not go as far as to say that those definitions are non-binding and so the proposed amendment represents a substantial change in scope. As many of the definitions are foundational to the operation of the Ruling (such as the definition of an account), we consider that Schedule 1 should be included as part of the Ruling. If the ATO's issue with the current wording of the	At the time GSTR 2002/2 was originally written, indirect tax public rulings did not contain binding and non-binding sections. However, since original publication of the Ruling, paragraph 283 has always provided that: > … [t]he explanations given in Schedule 1 for terms used in the Ruling are not exhaustive definitions nor are they interpretative. They are indicative only and may, due to industry usage, legal developments or other considerations change over time. As it is now common for public rulings to contain binding and non-binding sections, we consider that making Schedule 1 non-binding is consistent with the original intended purpose of the Schedule to provide general guidance about the meaning of various terms. Refer also to our response to Issue 8 of this Compendium, which explains the effect of the Addendum changes for tax periods prior to the issue date of the Addendum. The Glossary in Schedule 1 contains a mixture of different types of definitions, including definitions from the GST Act, definitions from the *A New*

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	Ruling is that there are terms defined which are not used in the body of the Ruling itself (or associated Schedules), those terms should be removed.	*Tax System (Goods and Services Tax) Regulations 2019* (the GST Regulations) and definitions of common industry terms. Some of these definitions are used in the body of the Ruling and others are not. We have not updated terms even if their meaning may have changed over time. The exceptions are terms that are defined by reference to legislation. For example, we have removed the definition for 'Futures Exchange' in Schedule 1 as the legislative reference used is no longer valid and as this is not a term used in the GST Regulations. In relation to the example of the definition of 'account', we consider that the binding section of the final Ruling provides sufficient coverage of this definition at paragraphs 202 to 206.
Managed investment scheme – entry and exit fees		
7	Generally speaking, all contributions to a managed investment scheme are consideration for the provision or disposal of an interest in the managed investment scheme. However, it is important to be mindful of the specific contractual arrangements in determining the GST treatment of entry and exit fees (line number D37 of Schedule 2). Depending on the arrangements, entry fees are included in the contribution for the interest in the managed investment scheme and therefore are not separately treated as consideration for the provision or disposal of an interest in the managed investment scheme. If a Product Disclosure Statement includes a reference to entry fees and/or exit fees and these are payable to the responsible entity, trustee or similar entity, then on the basis that those entities do not contract directly with the investors (but only have contractual arrangements with the managed investment scheme itself), the gross contribution made by the investor is to the managed investment scheme and is for the value of the investment. However, where an investment manager, responsible entity or similar entity has a contractual arrangement directly with	We have taken on board the feedback provided and have updated Schedule 2 of the final Ruling to provide clearer explanations of the GST treatment of entry and exit fees levied for the acquisition and disposal of an interest in a managed investment scheme. In the final Ruling, the previous line number 37 covering both entry and exit fees has been separated into 2 separate lines: • D37 – An investor's contribution to a managed investment scheme (including entry fees debited from the investor's contribution to the scheme) for the investor's acquisition of an interest in a managed investment scheme, and • D37A – Exit fees debited from a member's investment in the scheme when the investor makes a disposal of their interest in a managed investment scheme. The approach taken is to set out the GST treatment of a common factual scenario, while making it clear that the GST treatment of these arrangements needs to be considered on a case-by-case basis.

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	the investor and receives the entry fee directly, this can be a fee for a taxable supply made by that entity directly to the investor. We recommend that the line number D37 for both entry and exit fees remain in the final Ruling, but with additional explanation that the fee is a variable in calculating the final return to the investor on redemption of their units.	
Date of effect		
8	The ATO has advised that the updates to the Ruling will apply retrospectively, subject to the start dates of relevant law changes. We consider that the ATO should also include a statement in the Date of Effect section (paragraph 6) of the final Ruling to the effect of 'to the extent that there is no change from the previous ruling.' Given the number of changes, it is sensible to note that there may be material changes to the effect of the Ruling. This is also acknowledged by the remainder of the existing paragraph 6, which notes that 'this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling.' Given the conflict will likely arise from differences in the way the Ruling has been interpreted, there is the possibility that a change in the Ruling could be material. We therefore recommend the Ruling note that the changes should be applied retrospectively but only to the extent that there is no change to previous versions of the Ruling.	We have not adopted the suggested changes to the Date of Effect section of the final Ruling. In addition, we do not consider that the Addendum constitutes a material change to any views expressed in the Ruling, other than to reflect law changes. However, we have clarified the effect of the Addendum changes for tax periods prior to the issue date of the Addendum. *Law changes* If the Commissioner has made a public ruling about a relevant provision and that provision is re-enacted or remade, the public ruling is taken to be about the re-enacted or remade provision, insofar as the new law expresses the same ideas as the old law.[1] However, if the law is substantively changed, the part of the public ruling dealing with the changed law ceases to apply. Therefore, entities can continue to rely on existing legally binding rulings which deal with the old law if the old law expresses the same ideas as the new law. If the old law has been replaced by a new law which does not express the same ideas, then the part of the public ruling on that old law does not apply in relation to the new law.[2]

[1] Section 357-85 of Schedule 1 to the *Taxation Administration Act 1953*.
[2] Paragraphs 49 to 51 of Taxation Ruling TR 2006/10 *Public Rulings* provide guidance on determining whether a new law expresses the same ideas as the old law.

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		Retrospective start date of addendum changes A retrospective start date for an addendum does not extinguish an entity's ability to rely on the pre-addendum wording of the Ruling for tax periods prior to the issue date of the addendum. For tax periods prior to the issue date of the addendum, both the pre-addendum wording in GSTR 2002/2 and the revised wording in the Addendum apply. In these circumstances, entities can choose to rely on either version of the wording to apply GSTR 2002/2 to the past periods. For example, for tax periods prior to 22 March 2023, entities can continue to rely on the version of this Ruling prior to that date. The Date of Effect section of the final Ruling has been updated to reflect this.
Corporate collective investment vehicles		
9	Specific comments were made on reduced input tax credits and corporate collective investment vehicles.	Entitlements to reduced input tax credits fall outside the scope of this Ruling. However, we have updated Schedule 2 in the final Ruling to include new line item [D4] for supplies of shares in a corporate collective investment vehicle.