

# ***GSTR 2004/1A5 - Addendum - Goods and services tax: reduced credit acquisitions***

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## Addendum

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### Goods and Services Tax Ruling

#### Goods and services tax: reduced credit acquisitions

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Goods and Services Tax Ruling GSTR 2004/1 to reflect amendments made to the *A New Tax System (Goods and Services Tax) Regulations 1999* by the *A New Tax System (Goods and Services Tax) Amendment Regulation 2012 (No. 1)*.

This Addendum also makes other minor amendments.

This Addendum does not deal with:

- apportionment where an acquisition is partly subject to item 32 and partly subject to another RITC item – this issue is considered in Draft Goods and Services Tax Determination GSTD 2013/D1 *Goods and services tax: whether item 32 of the table in subregulation 70-5.02(2) of the A New Tax System (Goods and Services Tax) Regulations 1999 applies to some extent in respect of an acquisition for a single fee by a managed investment fund that is a recognised trust scheme from a Responsible Entity*; and
- the issue of when a trustee makes an acquisition in its capacity as trustee, or in its own capacity – this issue is currently dealt with in paragraphs 669 to 686 of GSTR 2004/1 and is currently under review.

#### **GSTR 2004/1 is amended as follows:**

##### **1. Paragraph 11**

Omit 'and 31 October 2012'; substitute ', 31 October 2012 and 24 July 2013'.

# GSTR 2004/1

## 2. Paragraph 17

Omit the paragraph; substitute:

17. For the purposes of subsection 70-5(2), the GST regulations specify that the percentage of the input tax credit for a reduced credit acquisition is either 55% for a reduced credit acquisition covered by item 32<sup>6</sup> or 75% for all other kinds of reduced credit acquisitions.<sup>6A</sup> If a reduced credit acquisition is covered by both item 32 and one or more other items of the table in subregulation 70-5.02(2), the percentage of the input tax credit will be 55% to the extent the reduced credit acquisition is covered by item 32 and 75% to the extent the reduced credit acquisition is not covered by item 32.<sup>6B</sup>

## 3. Paragraph 28

After the paragraph, insert:

28A. The concept of a mixed acquisition is also relevant to an acquisition that consists of a number of parts that are reduced credit acquisitions subject to different percentage credit reductions.

## 4. Paragraph 37

After the paragraph, insert:

37A. In considering the term 'interest' as set out in regulation 40-5.02, the majority of the Full Federal Court in *Commissioner of Taxation v. American Express International Inc*; *Commissioner of Taxation v. American Express Wholesale Currency Services Pty Limited* stated at [146]:

Considering the text of the GST Act (especially subsection 9-10 and 11-10) and the Regulations, it is apparent that the term 'interest' is referable to a very broad conception of property. The words 'anything' and 'in any form' in regulation 40-5.02 highlight this extensive scope. Further, as the Commissioner submitted, the examples of financial supplies in the table in regulation 40-5.09(3) include a range of items that would not fit the narrower definition of property urged by the respondents. The same can be said of the 'examples of interest' attached to regulation 40-5.02.<sup>14A</sup>

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<sup>6</sup> Subsection 70-5(2); subregulation 70-5.03(a).

<sup>6A</sup> Subsection 70-5(2); subregulation 70-5.03(c).

<sup>6B</sup> Subsection 70-5(2); subregulation 70-5.03(b).

<sup>14A</sup> (2010) 187 FCR 398; [2010] FCAFC 122; 2010 ATC 20-212; (2010) 77 ATR 12.

**5. Paragraph 38**

In the first sentence, omit 'This view is supported by'; substitute 'This view is also supported by other'.

At the end of the first sentence, insert footnote 14B:

<sup>14B</sup> See, for example: *White v. Director of Public Prosecutions for the State of Western Australia* [2011] HCA 20; (2011) 243 CLR 478 at [10] to [12].

**6. Paragraph 365**

(a) At the end of the paragraph, insert footnote 53A:

<sup>53A</sup> Although item 12A was introduced with effect from 1 July 2012 to cover lenders mortgage reinsurance, the Explanatory Statement to *A New Tax System (Goods and Services Tax) Amendment Regulation 2012 (No. 1)* referred to the intent that these acquisitions fall within the scope of item 12 and that the insertion of item 12A was not intended to change the scope of existing item 12.

(b) After the paragraph, insert:

**Item 12A**

Lenders mortgage reinsurance

365A. The acquisition of lenders mortgage reinsurance is also a reduced credit acquisition specifically under item 12A.<sup>53B</sup> As explained in paragraph 365, the Commissioner has interpreted item 12 as extending to the acquisition of lenders mortgage reinsurance. Item 12A was inserted to confirm this treatment and to avoid any doubt that the acquisition of lenders mortgage reinsurance is a reduced input tax credit acquisition.<sup>53C</sup>

**7. Paragraph 375**

Omit the paragraph and associated footnote.

**8. Paragraph 444**

In the second sentence, after 'hire purchase agreement'; insert 'entered into before 1 July 2012'.

**9. Paragraph 447**

After '*Happy Harry's Dealership*'; insert '*that relates to a hire purchase agreement entered into before 1 July 2012*'.

<sup>53B</sup> With effect from 1 July 2012.

<sup>53C</sup> See the Explanatory Statement to *A New Tax System (Goods and Services Tax) Amendment Regulation 2012 (No. 1)*.

# GSTR 2004/1

## 10. Paragraph 508

At the end of the paragraph, omit 'item 22.'; substitute 'item 23.<sup>70A</sup>'.

## 11. Paragraph 514

In the first sentence, after 'Consequently', insert 'subject to item 32,'.

At the end of the first sentence, insert footnote 71A:

<sup>71A</sup> It may, however, be necessary to separately identify components of the fee where the acquisition qualifies as a reduced credit acquisition under item 32 rather than item 23(c), as the percentage of the input tax credit for reduced credit acquisitions under items 23(a) and (b) differs to reduced credit acquisitions under item 32. See paragraphs 719 to 765 of this Ruling.

## 12. Paragraph 519

Omit the first sentence; substitute:

*'The acquisition of the services acquired before 1 July 2012 that are remunerated by the 1.5% fee and the amount on-charged for the external consultant fees, is a reduced credit acquisition by Periwinkle under item 23.<sup>71B</sup>'*

## 13. Paragraph 520

At the end of the paragraph; insert footnote 71C:

<sup>71C</sup> For acquisitions made on or after 1 July 2012, it is necessary to determine if the acquisition is also covered by item 32.

## 14. Paragraph 528

(a) In the first sentence, after 'Consequently,'; insert 'subject to item 32,'.

(b) At the end of the first sentence, insert footnote 73A:

<sup>73A</sup> It may, however, be necessary to separately identify components of the fee where the acquisition qualifies as a reduced credit acquisition under item 32 rather than item 23(d), as the percentage of the input tax credit for reduced credit acquisitions under items 23(a) and (b) differs to reduced credit acquisitions under item 32. See paragraphs 719 to 765 of this Ruling.

## 15. Paragraph 539

In Item 24 Omit:

*'(h) compliance with industry regulatory requirements, excluding taxation and auditing services'*

Insert:

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<sup>70A</sup> For acquisitions made on or after 1 July 2012, it is necessary to determine if the acquisition is also covered by item 32.

<sup>71B</sup> Similar acquisitions made on or after 1 July 2012 may be covered by item 32.

*'(h) compliance with industry regulatory requirements, excluding taxation and auditing services;*

*(i) processing and assessing claims under life insurance policies carried out on or after 1 July 2012.'*

**16. Paragraph 540**

Omit from the second sentence, '24(h)'; substitute '24(i)'.

At the end of the paragraph insert footnote 73B:

<sup>73B</sup> For acquisitions made on or after 1 July 2012, it is necessary to determine if the acquisition is also covered by item 32.

**17. Paragraph 541**

In the first sentence, omit '24(h)'; substitute '24(i)'.

**18. Paragraph 542**

Omit '24(h)'; substitute '24(i)'.

**19. Paragraphs 544 and 545**

In the first sentence, omit '24(a) to (h)'; substitute '24(a) to 24(i)'.

In the second sentence, omit '24(a) to (h)'; substitute: '24(a) to 24(i)'.

**20. Paragraph 611**

After the paragraph insert:

***Item 24(i) – processing and assessing claims under life insurance policies carried out on or after 1 July 2012***

611A. Where a superannuation scheme (or where applicable an investment fund) provides its members with life insurance coverage as part of the interest supplied to members, the entity may be required to process and assess claims made by members (or their beneficiaries) under the life insurance policies.

611B. Item 24(i) covers the acquisition of the service of processing and assessing claims under life insurance policies made by a superannuation scheme (or investment fund) carried out on or after 1 July 2012.<sup>87A</sup> Under this item, a superannuation fund (or investment fund) is entitled to comparable reduced input tax credits which life insurers are entitled to under item 26(c). The views expressed in paragraphs 625 to 626 concerning processing and assessing claims apply equally to item 24(i).

<sup>87A</sup> The views expressed in paragraph 742 may be applied in determining whether a service is acquired on or after 1 July 2012 in the context of applying item 24(i).

## 21. Paragraph 664

At the end of the first sentence; insert footnote 92A:

<sup>92A</sup> For acquisitions made on or after 1 July 2012, it is necessary to determine if the acquisition is also covered by item 32.

## 22. Paragraph 714

At the end of the first sentence; insert footnote 95A:

<sup>95A</sup> For acquisitions made on or after 1 July 2012, it is necessary to determine if the acquisition is also covered by item 32.

## 23. Paragraph 718

After the paragraph; insert:

### Item 32

**Supplies** acquired by a **recognised trust scheme**, to the extent that:

- (a) the supplies are acquired on or after 1 July 2012; and
- (b) the supplies acquired are not:
  - (i) a supply by way of sale of goods or supply of real property made by:
    - (A) selling a freehold interest in land; or
    - (B) selling a stratum unit; or
    - (C) granting or selling a long-term lease; or
  - (ii) a brokerage service covered by item 9 or 21; or
  - (iii) a service covered by paragraph (a), (b) or (e) of item 23; or
  - (iv) a service covered by paragraph (a), (b), (c), (d), (e), (f), (g), or (i) of item 24; or
  - (v) a custodial service covered by item 29; or
  - (vi) a service covered by item 30; or
  - (vii) a service covered by item 33

**24. Paragraphs 719-739 (and associated headings)**

Omit the paragraphs, substitute:

**Supplies to a recognised trust scheme**

719. Item 32 covers all acquisitions of supplies made by a recognised trust scheme on or after 1 July 2012 except to the extent that they are specifically excluded. Some items specifically excluded are themselves reduced credit acquisitions under other items. An acquisition covered by item 32 will be subject to a reduced input tax credit at the rate of 55% as opposed to 75% for other reduced credit acquisitions.<sup>96</sup>

**Meaning of a Recognised Trust Scheme**

720. Item 32 only applies to supplies acquired by a recognised trust scheme. Accordingly, an acquisition made by an entity that is not a recognised trust scheme is not covered by item 32 and will only be a reduced credit acquisition if it is covered by another item in the table in subregulation 70-5.02(2).

721. For the purposes of item 32, a 'recognised trust scheme' is defined in subregulation 70-5.02(4) to mean a trust that has the following features:

- (a) the entity that acts in the capacity as trustee or responsible entity of the trust, is carrying on, in its own capacity, an enterprise that includes making taxable supplies to the trust; and
- (b) the trust is:
  - (i) a managed investment scheme, or part of a managed investment scheme, other than a securitisation entity or a mortgage scheme; or
  - (ii) an approved deposit fund within the meaning of the *Superannuation Industry (Supervision) Act 1993*; or
  - (iii) a pooled superannuation trust within the meaning of the *Superannuation Industry (Supervision) Act 1993*; or
  - (iv) a public sector superannuation scheme within the meaning of the *Superannuation Industry (Supervision) Act 1993*; or

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<sup>96</sup> Paragraph 70-5.03(3)(a) prescribes the percentage of input tax credit reduction to be 55% for reduced credit acquisitions covered by item 32.

- (v) a regulated superannuation fund (other than a self managed superannuation fund) within the meaning of the *Superannuation Industry (Supervision) Act 1993*.

***Trustee or responsible entity must be carrying on an enterprise in its own capacity (which includes making taxable supplies to the trust)***

722. Paragraph (a) of the definition of a recognised trust scheme establishes the pre-requisite that a recognised trust scheme only applies to those trust arrangements where the trustee or responsible entity of the trust is carrying on an enterprise in its own capacity which includes the trustee or responsible entity making taxable supplies to the trust.<sup>97</sup>

723. Where the trustee or responsible entity does not carry on an enterprise in its own capacity that includes making taxable supplies to the trust, the trust will not qualify as a recognised trust scheme.

***Example 85 – trustee feature of ‘recognised trust scheme’ definition not satisfied***

724. *Atticus Trustee Services Pty Ltd (Atticus) acts as trustee of the Scout Trust. Atticus is registered for GST in its capacity as trustee of the Scout Trust (Scout Trust) but not in its own capacity.*

725. *As Atticus is not registered for GST in its own capacity and therefore is not making taxable supplies to the Scout Trust in that capacity, the Scout Trust is not a recognised trust scheme as the paragraph (a) requirement of the definition of recognised trust scheme in subregulation 70-5.02(4) has not been met. On this basis, supplies acquired by the Scout Trust are not subject to the application of item 32.*

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<sup>97</sup> Paragraph 523 of this Ruling sets out the view that the concept of a single responsible entity includes the operator of an IDPS. The expressions ‘single responsible entity’ and ‘responsible entity’ are interchangeable – see paragraph 522 of this Ruling.

**Trust Feature**

726. The second feature necessary to establish a recognised trust scheme is that the trust must be an entity listed in paragraph (b) of the definition. In particular, the trust must be either:

- a managed investment scheme, or a part of managed investment scheme, other than a securitisation entity or a mortgage scheme; or
- an approved deposit fund, a pooled superannuation trust, a public section superannuation scheme or a regulated superannuation fund (other than a self managed superannuation fund) within the meaning of the *Superannuation Industry (Supervision) Act 1993*.

727. Subregulation 70-5.02(4) defines a managed investment scheme to have the same meaning as in the *Corporations Act 2001*. A trust that is, or forms part of, a managed investment scheme satisfies paragraph (b) of the definition of a recognised trust scheme regardless of whether the managed investment scheme:

- is required to be registered under the *Corporations Act 2001*,<sup>98</sup> or
- involves more than one entity such that the trust is not considered in itself to be a managed investment scheme.

*Example 86 – a controlled sub-trust of a head trust that is part of a managed investment scheme*

728. *Cabott Trustee Services Pty Ltd (CTS) acts as the responsible entity of the Troth Forestry Scheme. CTS is registered for GST both in its capacity as responsible entity (trustee) of Troth Forestry Scheme and in its own capacity. Troth Forestry Scheme is a managed investment scheme and makes input taxed financial supplies through the provision of interests in the scheme. CTS makes taxable supplies of single responsibility entity services to the Troth Forestry Scheme.*

729. *Guildenstern Trust is a controlled sub-trust of Troth Forestry Scheme. Guildenstern Trust holds the legal interest in several of the forestry plantations which is scheme property of the managed investment scheme.*

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<sup>98</sup> See section 601ED of the *Corporations Act 2001*.

730. While the *Guildenstern Trust* is not a managed investment scheme in itself, it forms part of the *Troth Forestry Scheme* by virtue of it holding scheme property of the managed investment scheme.<sup>99</sup> Accordingly, the *Guildenstern Trust* forms part of a managed investment scheme and therefore satisfies paragraph (b) of the definition of recognised trust scheme in subregulation 70-5.02(4).

731. A securitisation entity is excluded from being a recognised trust scheme. Subregulation 70-5.02(4) defines a securitisation entity to mean a trust that has the following features:

- (a) the trust was established for the purpose of managing some or all of the economic risk associated with assets, liabilities or investments (whether the trust assumes the risk from another person or creates the risk itself);
- (b) the total value of the debt interests in the trust is at least 50% of the total value of the trust's assets;
- (c) the trust is an insolvency-remote special purpose entity according to criteria of an internationally recognised rating agency that are applicable to the circumstances of the trust (regardless of whether the agency has determined that the trust satisfies the criteria).

732. These are the same conditions as in subsection 820-39(3) of the *Income Tax Assessment Act 1997* (ITAA 1997), which provides a carve-out from the thin capitalisation rules in Division 820 of the ITAA 1997 for certain special purpose entities.

733. A mortgage scheme is excluded from being a recognised trust scheme. Subregulation 70-5.02(4) defines a mortgage scheme to mean a managed investment scheme that has at least 50 per cent of its non-cash assets invested in mortgage loans or in one or more other mortgage schemes. A mortgage loan is defined in subregulation 70-5.02(4) to mean a loan secured by a mortgage over real property.

734. Paragraph (b) of the definition of a recognised trust scheme also includes the following entities:

- an approved deposit fund which has the meaning given by section 10 of the *Superannuation Industry (Supervision) Act 1993*;

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<sup>99</sup> See also ASIC Regulatory Guide 136: Managed Investments: Discretionary powers and closely related schemes at reg 136.57 'Controlled Sub-Trusts', page 22.

- a pooled superannuation trust which has the meaning given by section 10 of the *Superannuation Industry (Supervision) Act 1993*;
- a public sector superannuation scheme which has the meaning given by section 10 of the *Superannuation Industry (Supervision) Act 1993*;
- a regulated superannuation fund (other than a self managed superannuation fund) which has the meaning given by section 10 and section 19 of the *Superannuation Industry (Supervision) Act 1993*.

***Effect of grouping provisions on a recognised trust scheme***

735. A trust entity can be a recognised trust scheme where the trustee and trust are part of the same GST group. Subsection 48-45(2) provides that, in deciding whether an acquisition of a group member is made solely or partly for a creditable purpose, the group representative member is required to make this determination on the basis of treating the GST group as a single entity (and not on the basis of the number of entities corresponding to the GST group).

736. Subsection 48-45(2) does not impact the application of section 70-5 in determining whether an acquisition is a reduced credit acquisition. It is necessary to identify whether an acquisition is a reduced credit acquisition before the special rules concerning whether the acquisition is made for a creditable purpose can be applied.

737. Accordingly, an acquisition made by a GST group member is only covered by item 32 where the entity that made the acquisition is a recognised trust scheme. The fact that a member of a GST group is a recognised trust scheme does not mean that an acquisition made by a different member of the GST group that is not a recognised trust scheme is covered by item 32.

738. One of the requirements of item 32 is that the trustee in its own capacity makes taxable supplies to the trust. In circumstances where the trustee and the trust entity are both members of the same GST group, the trustee may still make a taxable supply to the trust entity. While subsection 48-40(2) provides that a supply that an entity makes to another member of the same GST group is treated as if it were not a taxable supply subject to certain exclusions, this subsection does not alter the supply being a taxable supply under section 9-5. Rather, the supply is not treated as being a taxable supply for the purposes of determining the supplier's liability to pay GST.<sup>100</sup> Consequently, the trust entity may satisfy the definition of a recognised trust scheme where both the trustee and the trust entity are members of the same GST group.

***Item 32 is not restricted to supplies from the trustee***

739. The application of item 32 does not depend on the identity of the supplier. Item 32 does not require the acquisition made by the recognised trust entity to have been supplied by the trustee or responsible entity of the trust.

***Supply is acquired on or after 1 July 2012***

740. Subject to certain exceptions, an acquisition of a supply made by a recognised trust scheme qualifies as a reduced credit acquisition under item 32 to the extent that it is acquired on or after 1 July 2012. This requires the recognised trust scheme to identify when the thing is acquired.

741. In some situations, such as a single supply of services made by a trustee to the recognised trust scheme, the supply may be made for a period that commences before 1 July 2012 and ends after 1 July 2012. Item 32 addresses this situation by recognising that the item applies to the extent the supply is acquired on or after 1 July 2012. The recognised trust scheme will need to determine (or apportion where necessary) the consideration it provides for the acquisition for the part of the acquisition that is covered by item 32.

742. The GST Act does not contain statutory rules as to when a supply or acquisition is made by an entity. However, in the context of applying item 32, a recognised trust scheme acquires supplies on or after 1 July 2012 where it acquires:

- services to the extent the services are performed on or after 1 July 2012;
- goods acquired by way of lease and hire where the goods are delivered or first made available on or after 1 July 2012;

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<sup>100</sup> *Confidential v. Commissioner of Taxation* [2012] AATA 408 at [22] to [24].

- a right that is created, granted, transferred assigned or surrendered on or after 1 July 2012;
- the entry into, or release from, an obligation to do anything, or refrain from an act, or to tolerate an act or situation where the obligation is entered into or the release is effected on or after 1 July 2012;
- real property acquired by way of lease (other than a long term lease) or licence where the lease or licence is granted on or after 1 July 2012.

743. Item 32 does not apply to an acquisition of a supply made before 1 July 2012 even though the recognised trust scheme may provide consideration for that acquisition on or after 1 July 2012.

***Supplies acquired by a recognised trust scheme that are excluded from the application of item 32***

744. Item 32 covers all supplies acquired by a recognised trust scheme on or after 1 July 2012 unless the acquisitions are specifically excluded under paragraph (b). An acquisition that is excluded from item 32 but covered by another item in the table in subregulation 70-5.02(2) may be subject to a reduced input tax credit at the rate of 75%.

*Item 32(b)(i) – excludes a supply by way of sale of goods or supply of real property made by:*

- (A) *selling a freehold interest in land; or*
- (B) *selling a stratum unit; or*
- (C) *granting or selling a long term lease.*

745. For the purposes of applying item 32(b)(i), the expressions 'real property', 'stratum unit' and 'long term lease' are defined by reference to section 195-1 of the GST Act.<sup>101</sup>

746. To the extent that a recognised trust scheme acquires a supply that falls within the scope of paragraph (b)(i) of item 32, the acquisition will not be covered by item 32. As the acquisition of the supplies set out in paragraph (b)(i) is not covered by any other items in the table in subregulation 70-5.02(2), a reduced input tax credit is not available for these acquisitions.

<sup>101</sup> The terms 'long term lease', 'real property' and 'stratum unit' are defined in subregulation 70-5.02(4) to have the meaning given by the Dictionary in Part 6-3 of the GST Act.

*Item 32(b)(ii) – excludes a brokerage service covered by item 9 or 21*

747. Collectively, items 9 and 21 deal with services by entities facilitating a range of securities, derivative and foreign currency transactions. However it is only the supply of a brokerage service covered by item 9 or 21 that is excluded by paragraph (b)(ii) of item 32.

748. A brokerage service that is excluded from item 32 is the service provided by a broker who buys or sells an interest in a security, a derivative, the currency of a foreign country, or a forward contract as an agent on behalf of a principal. The exclusion set out in item 32(b) does not extend to the acquisition of other arrangement services that are specifically included under item 9.<sup>102</sup>

749. To the extent that an acquisition falls within this exclusion, the acquisition is a reduced credit acquisition under either item 9 or 21 and not under item 32.

*Item 32(b)(iii) – excludes a service covered by paragraph (a), (b) or (e) of item 23*

750. Item 23 covers specific investment portfolio management functions. Relevantly for the purposes of paragraph (b)(iii) to item 32, item 23 includes:

- management of a client's asset portfolio (item 23(a) – which is discussed at paragraphs 483 to 498 of this Ruling;
- management of an investment portfolio for a trust or superannuation fund (item 23(b)) – which is discussed at paragraphs 499 to 507 of this Ruling; and
- asset allocation services (item 23(e)) – which is discussed at paragraphs 529 to 539 of this ruling.

751. To the extent that an acquisition falls within these exclusions, the acquisition is a reduced credit acquisition under item 23 and not item 32.

752. Notably, item 32(b)(iii) does not exclude a supply acquired by a recognised trust scheme:

- acting as a trustee of a trust or superannuation fund (item 23(c)) – which is discussed at paragraphs 508 to 519 of this Ruling; or

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<sup>102</sup> See paragraphs 284 to 303 of this Ruling concerning the application of item 9. See paragraphs 464 to 472 of this Ruling concerning the application of item 21.

- acting as a single responsible entity (item 23(d)) – which is discussed at paragraphs 520 to 528 of this Ruling.

753. To the extent that a service acquired by the recognised trust scheme on or after 1 July 2012 is a reduced credit acquisition covered by paragraph (c) or (d) of item 23, the acquisition is covered by item 32.

754. However, in the funds management context, it is typically the case (as specified by the trust deed or constitution) that the trustee or responsible entity of the recognised trust scheme will also manage the investment portfolio of the recognised trust scheme. It is therefore necessary for the recognised trust scheme to identify the part of the supply it acquires from the trustee or responsible entity that is covered by item 23 and the part that is covered by item 32.<sup>103</sup>

*Item 32(b)(iv) – excludes a service covered by paragraph (a), (b), (c), (d), (e), (f), (g), or (i) of item 24*

755. In the context of funds management services, item 24 provides a list of acquisitions of administrative functions in relation to investment funds (including superannuation funds). Relevantly for the purposes of paragraph (b)(iii) of item 32, item 24 includes:

- maintaining member and employer and trustee records and associated accounting (item 24(a)) – which is discussed at paragraphs 553 to 563 of this Ruling;
- processing of applications, contributions, benefits and distributions (item 24(b)) – which is discussed at paragraphs 564 to 567 of this Ruling;
- processing transfers between funds and trusts (item 24(c)) – which is discussed at paragraphs 568 to 571 of this Ruling;
- production and distribution of reports, statements and forms to members, employers and trustees (item 24(d)) – which is discussed at paragraphs 572 to 575 of this Ruling;
- handling of inquiries and complaints made by members (item 24(e)) – which is discussed at paragraphs 576 to 580 of this Ruling;

<sup>103</sup> See Draft Goods and Services Tax Determination GSTD 2013/D1 *Goods and services tax: whether item 32 of the table in subregulation 70-5.02(2) of the A New Tax System (Goods and Services Tax) Regulations 1999 applies to some extent in respect of an acquisition for a single fee by a managed investment fund that is a recognised trust scheme from a Responsible Entity.*

- archives storage, retrieval and destruction services (item 24(f)) – which is discussed at paragraph 581 of this Ruling;
- statement processing and bulk mailing (item 24(g)) – which is discussed at paragraphs 582 and 583 of this Ruling;
- processing and assessing claims under life policies carried out on or after 1 July 2012 (item 24(i)) – which is discussed at paragraph 611A of this Ruling.

756. To the extent that an acquisition falls within one or more of these exceptions, the acquisition is a reduced credit acquisition under item 24 and not item 32.

757. The item 32(b)(iv) reduced credit acquisition exclusion does not cover acquiring functions concerning compliance with industry regulatory requirements, excluding taxation and auditing (paragraph (h) of item 24) – the scope of which is discussed at paragraphs 584 to 611 of this Ruling.

758. On this basis, where the service acquired by the recognised trust scheme is covered by paragraph (h) of item 24, the acquisition falls within the scope of item 32.

*Item 32(b)(v) – excludes a custodial service covered by item 29*

759. Item 29 deals with services provided by trustees and custodians. However, item 32(b)(v) only excludes the supply of a custodial service covered by item 29. The expression 'custodial service' is discussed at paragraph 668 of this Ruling.

760. Relevantly, for the purposes of item 32(b)(v), item 29 covers custodial services (except safe custody of money, documents and other things), including:

- transfer of cash without purchase, sale or transfer of assets, excluding cash delivery and collection from branches of Australian ADIs (item 29(a)) – the scope of which is discussed at paragraphs 687 and 688 of this Ruling;
- undertaking and settling of securities transactions by a financial supply facilitator (item 29(b)) – the scope which is discussed at paragraph 689 of this Ruling;
- collecting income and other payments (item 29(c)) – the scope of which is discussed at paragraph 690 of this Ruling;
- registration of interests and rights (item 29(d)) – the scope of which is described at paragraph 691 of this Ruling;

- proxy voting (item 29(e)) – the scope of which is discussed at paragraph 692 of this Ruling;
- exercise of options and warrants (item 29(f)) – the scope of which is discussed at paragraph 693 of this Ruling;
- opening and maintaining accounts with Australian ADIs (item 29(g)) – the scope of which is discussed at paragraph 694 of this Ruling;
- nominee services in relation to financial supplies (item 29(h)) – the scope of which is described at paragraphs 695 to 698 of this Ruling.

761. To the extent that a recognised trust scheme makes an acquisition that falls within the scope of an item 29 custodial service, the acquisition is a reduced credit acquisition under item 29 and not item 32.

762. Item 32(b)(v) does not exclude trustee services covered by item 29. Consequently, where a recognised trust scheme acquires a trustee service that is not otherwise excluded from item 32, the acquisition is covered by item 32.

*Item 32(b)(vi) – excludes a service covered by item 30*

763. A service covered by item 30 refers to a list of master custody services which are discussed at paragraphs 699 to 710 of this Ruling. To the extent that a recognised trust scheme acquires a service covered by item 30, the acquisition will be a reduced credit acquisition under item 30 and not item 32.

*Item 32(b)(vii) – excludes a service covered by item 33*

764. A service covered by item 33 refers to monitoring and reporting services (excluding taxation and auditing services) acquired on or after 1 July 2012 that are required for compliance with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*. Services covered by item 33 are discussed at paragraphs 766 to 776 of this Ruling. To the extent that a recognised trust scheme acquires a service covered by item 33, the acquisition will be a reduced credit acquisition under item 33 and not item 32.

## Acquisitions that are partly covered by item 32

765. Where an acquisition is covered by item 32 and is also covered by another item of the table in subregulation 70-5.02(2), paragraph (b) of regulation 70-5.03 establishes the percentage to which the input tax credit is reduced as follows:

- to the extent that the acquisition is covered by item 32 – 55%; and
- to the extent that the acquisition is not covered by item 32 – 75%.

### Item 33

**Monitoring and reporting services** (other than taxation and auditing services) that:

(a) are acquired on or after 1 July 2012; and

(b) are required for compliance with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

766. An acquisition under item 33 is a reduced credit acquisition if it is the acquisition of monitoring and reporting services (other than taxation and auditing services).<sup>104</sup> The monitoring and reporting services must be acquired on or after 1 July 2012<sup>105</sup> and be required for the purpose of compliance with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).

767. The AML/CTF Act requires a reporting entity to comply with certain obligations under the Act including, but not limited to: verifying a customer's identity; carrying out on-going customer due diligence; reporting suspicious matters, threshold transactions and international fund transfer instructions to AUSTRAC; and giving AML/CTF compliance reports to AUSTRAC.<sup>106</sup>

768. A 'reporting entity' is defined in section 5 of the AML/CTF Act by reference to entities that provide designated services. 'Designated services' has the meaning given by section 6 and includes, but is not limited to, certain services provided by the following:

- an ADI;
- a bank;
- a building society;

<sup>104</sup> The views expressed in paragraphs 598 (concerning taxation services) and paragraph 608 (concerning auditing services) apply consistently to item 33.

<sup>105</sup> The views expressed in paragraph 742 of this Ruling concerning when an acquisition is made in the context of applying item 32 also apply consistently to determining when an acquisition is made in the context of applying item 33.

<sup>106</sup> See sections 27 and 40 of the AML/CTF Act.

- a credit union;
- an entity carrying on a loans business;
- an entity carrying on a factoring business;
- an entity carrying on a business of issuing or selling securities or derivatives to a person (subject to some exceptions);
- an insurer of a life policy;
- a provider of a pension or annuity;
- a trustee of a superannuation fund (other than a self managed superannuation fund) or an approved deposit fund.

769. The purpose of item 33 is to allow entities a reduced input tax credit for services acquired to fulfil the monitoring and reporting obligations imposed by the AML/CTF Act. An acquisition of services that is not required for compliance with the AML/CTF Act is not covered by item 33.

770. However, item 33 only covers the acquisition of monitoring and reporting services supplied to the entity for compliance with the AML/CTF Act and not acquisitions that provide the entity with the capability to undertake monitoring and reporting activities itself.<sup>107</sup> This is because acquisitions that provide the entity with the capability to undertake these activities are not themselves acquisitions of monitoring and reporting services.

*Example 87 – an acquisition that falls within item 33*

771. *LTL Bank is registered for GST. As part of its monitoring and reporting obligations under the AML/CTF Act, LTL Bank outsources its customer identification and verification obligations to a credit reporting company, Check 'em Out Pty Ltd.*

772. *Check 'em Out collects customer information on behalf of LTL Bank and verifies this information by conducting electronic searches across a number of databases, including the Australian Electoral Roll, telephone number search, historical name and address search and Australian Business Registry (ABR).*

773. *As the service supplied by Check 'em Out is an acquisition of monitoring and reporting services, and is acquired for the purposes of complying with the AML/CTF Act, LTL Bank will be entitled to a RITC under item 33.*

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<sup>107</sup> This is consistent with the Explanatory Statement to *A New Tax System (Goods and Services Tax) Amendment Regulation 2012 (No. 1)*.

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*Example 88 – an acquisition that does not fall within item 33*

774. Continuing on from example 87, LTL Bank also acquires services from an accounting firm, Stevens & Stephens, to assist with managing its monitoring and reporting obligations under the AML/CTF Act.

775. Stevens & Stephens undertakes the following work for LTL Bank:

- reviews the AML/CTF program implemented by LTL Bank;
- reviews LTL Bank’s policies and procedures in relation to anti-money laundering and counter-terrorism financing; and
- conducts independent testing of LTL Bank’s existing AML/CTF systems and processes.

776. Although the services supplied by Stevens & Stephens relate to complying with the AML/CTF Act, LTL Bank will not be entitled to a RITC under item 33. This is because the services are acquisitions that provide LTL Bank with the capability to undertake monitoring and reporting activities itself, rather than Stevens & Stephens undertaking the monitoring and reporting activities on LTL Bank’s behalf.

## Detailed contents list

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**25. Related Rulings/Determinations**

Insert 'GSTD 2013/D1'.

**26. Legislative References**

Insert:

- ANTS(GST)A99 9-5
- ANTS(GST)A99 40-5(2)
- ANTS(GST)A99 40-45(2)

- ANTS(GST)A99 48-40(2)
- ANTS(GST)A99 48-45(2)
- ANTS(GST)A99 70-10
- Anti-Money Laundering and Counter Terrorism Financing Act 2006 5
- Anti-Money Laundering and Counter Terrorism Financing Act 2006 6
- Corporations Act 2001 601ED
- ITAA 1997 Div 820
- ITAA 1997 820-39(3)
- ANTS(GST)R99 70-5.02(4)
- ANTS(GST)R99 70-5.03(a)
- ANTS(GST)R99 70-5.03(b)
- ANTS(GST)R99 70-5.03(c)

## **27. Case References**

Insert:

- Confidential v. Commissioner of Taxation [2012] AATA 408
- White v. Director of Public Prosecutions for the State of Western Australia [2011] HCA 20; (2011) 243 CLR 478

## **28. Other References**

Insert:

- ASIC Regulatory Guide 136: Managed Investments: Discretionary powers and closely related schemes
- Explanatory Statement to A New Tax System (Goods and Services Tax) Amendment Regulation 2012 (No. 1)

## **29. Schedule**

Insert at the end of the Ruling:

### **Schedule 1**

## **Glossary**

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The following terms are defined or explained for the purposes of this Ruling.

### **Bailiff**

An officer of a lower court, authorised to perform the same duties as a sheriff in a Supreme court: service of process, enforcement of civil judgments, and provision of juries.<sup>108</sup>

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<sup>108</sup> Taken from the *CCH Macquarie Dictionary of Business*, CCH Australia Ltd, North Ryde (NSW), 1993.

## Bonus issue

Company shares issued free to existing shareholders, sometimes known as a '**scrip** issue'. Companies may make a bonus issue instead of increasing a **dividend** payout. New shares are usually issued in proportion to existing holdings.<sup>109</sup>

## Currency

A unit of exchange that has purchasing power within a country.<sup>110</sup>

## Electronic funds transfer (EFT)

The transfer of funds from one account to another by electronic means (such as through the use of computers). **EFTPOS**, **B-pay** and telephone or **Internet banking** are examples of customer-level EFT. Banks use similar systems to transfer funds between themselves.

## Flotation (float)

The term flotation can be applied to any initial raising of finance by a business. However, the term is usually used for an initial public offer of shares or **debentures** for subscription.<sup>111</sup>

## Franchise

A licence bought by a retailer or supplier of services under a franchising arrangement. Franchising arrangements are contractual arrangements between a franchisor and franchisee under which:

- the franchisor allows the franchisee to use their trade marks, business names and branding;
- the franchisor may regulate and specify certain aspects of the franchisee's business;
- the franchisor provides assistance to the franchisee in certain aspects of the business; and
- the franchisee pays money to the franchisor.

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<sup>109</sup> Carew, Edna, *The Language of Money*, Allen & Unwin, Sydney, 1988.

<sup>110</sup> Taken from the *CCH Macquarie Dictionary of Business*, CCH Australia Ltd, North Ryde (NSW), 1993.

<sup>111</sup> Ford, H.A.J., Hinde, G.W., Hinde, M.S., *Australian Business Dictionary*, Butterworths, Sydney, 1985.

The particular form these conditions take varies with the kind of business franchised. A very wide variety of retail, service and manufacturing businesses are operated under these arrangements.<sup>112</sup>

### **General insurance**

A contract of general insurance indemnifies the insured (or assured) against loss resulting from certain events, as set out in the contract of insurance (known as a policy). Common examples of general insurance include fire, theft or burglary, hail, professional indemnity, and marine. Contracts of health or life insurance are not general insurance.<sup>113</sup>

### **Investor-directed portfolio service (IDPS)**

In general terms, an IDPS can be summarised as a *managed investment scheme* that:

- embodies services for acquiring and holding investments that involve arrangements for the custody of assets and consolidated reporting;
- generally includes a menu of investment opportunities from which an investor can make selections; and
- provides for the investor to make all the investment decisions (whether directly or through authorising the operator or another person to make the decisions according to some standing directions).<sup>114</sup>

### **Internet banking**

The name given to the way in which banks allow their customers to access account information and perform transactions electronically using the Internet. Customers must register and obtain security identifications before they can access information. This is one method of carrying out **EFT** transactions.

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<sup>112</sup> Ford, H.A.J., Hinde, G.W., Hinde, M.S., *Australian Business Dictionary*, Butterworths, Sydney, 1985.

<sup>113</sup> Based on *Oxford Dictionary of Business*, OUP, Oxon., 2002.

<sup>114</sup> The Australian Securities & Investments Commission Policy Statement 148.

## **Mercantile agent**

A person who, in the usual course of their business as an agent, has the authority to buy, sell, consign, or to raise money on the security of, goods.<sup>115</sup>

## **Merger**

A form of corporate restructuring in which two companies combine under the same control. Properly speaking, mergers are mutually negotiated, but the term is also used of **take-overs**.<sup>116</sup>

## **Privatisation**

The alteration of the legal, financial, and management structure of a Government trading body, such as a statutory authority, to permit private equity or ownership. The public issue of shares in government telecommunications bodies is an example of privatisation. Government bodies may also undergo corporatisation, under which ownership and control remain with the Government.

## **Registered scheme**

Under the Corporations Act, a registered scheme is a **managed investment scheme** registered under section 601EB of that Act.

## **Securities**

For the purposes of regulation 70 of the GST regulations, securities are defined in subsection 92(1) of the Corporations Act. The extended definition of securities given in item 10 of subregulation 40-5.09(3), does not apply to regulation 70.

Under subsection 92(1) of the Corporations Act 'securities' means:

- (a) debentures, stocks or bonds issued or proposed to be issued by a government; or
- (b) shares in, or debentures in, a body; or
- (c) interests in a managed investment scheme; or
- (d) units of such shares;

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<sup>115</sup> Rutherford, L., & Bone, S., *Osborn's Concise Law Dictionary, 8th edition*, Sweet & Maxwell, London, 1993.

<sup>116</sup> Ford, H.A.J., Hinde, G.W., Hinde, M.S., *Australian Business Dictionary*, Butterworths, Sydney, 1985.

but does not include:

- (f) a derivative (as defined in Chapter 7), other than an option to acquire by way of transfer a security covered by paragraph (a), (b), (c) or (d); or
- (g) an excluded security.

'Excluded security' is defined in section 9 of the Corporations Act, and means:

where:

- there is attached to a share a right to participate in a retirement village scheme; and
- each of the other rights, and each interest (if any) attached to the share or debenture is a right or interest that is merely incidental to the right referred to in subparagraph (i);
- the share or debenture or a unit in the share or debenture; or
- an interest in a managed investment scheme constituted by a right to participate in a retirement village scheme.

### **Security (loans)**

When used in relation to borrowing and lending, security is provision of an interest in property that enables the lender to recover the loan by sale to the extent of the value of the property.<sup>117</sup>

### **Take-over and acquisition**

The purchase, by a person, group of people or entity, of sufficient shares in a company to take over its control.<sup>118</sup>

### **Take-over bid**

An offer made to company shareholders by an individual or other entity, to buy their shares at a stated price and gain a controlling interest in the company. This is also known as a take-over offer. Take-overs of Australian companies are regulated by the Corporations Law.<sup>119</sup>

<sup>117</sup> Taken from the *CCH Macquarie Dictionary of Business*, CCH Australia Ltd, North Ryde (NSW), 1993.

<sup>118</sup> Ford, H.A.J., Hinde, G.W., Hinde, M.S., *Australian Business Dictionary*, Butterworths, Sydney, 1985.

<sup>119</sup> Based on the definition in *The Language of Money*. (Carew, Edna, *The Language of Money*, Allen & Unwin, Sydney, 1988.)

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## Telephone banking

The means by which banks offer their customers access to account information and simple transactions electronically, using an automated telephone system. To use this service, customer must register and use **PIN** number/s. This is a method of carrying out **EFT** transactions.

This Addendum applies on and from 1 July 2012.

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**Commissioner of Taxation**

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### ATO references

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