

GSTR 2004/4A7 - Addendum - Goods and services tax: assignment of payment streams including under a typical securitisation arrangement

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Addendum

Goods and Services Tax Ruling

Goods and services tax: assignment of payment streams including under a typical securitisation arrangement

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Goods and Services Tax Ruling GSTR 2004/4 to clarify when input tax credits are available to home loan lenders where securitisation arrangements exist.

GSTR 2004/4 is amended as follows:

1. Preamble

Omit the preamble; substitute:

① Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

2. Table of contents

Omit the table of contents; substitute:

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3. Paragraph 1

Omit the paragraph; substitute:

1. This Ruling explains the Commissioner's view on how the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) and the *A New Tax System (Goods and Services Tax) Regulations 2019* (GST Regulations) apply to the supply of rights to a payment stream by means of an assignment.

4. Paragraph 7

Omit 'and GST regulations'.

5. Paragraph 8

(a) After 'TR 2006/10', insert '*Public Rulings*'.

(b) After the paragraph, insert new paragraph 8A:

8A. The Addendum to this Ruling that issued on 25 September 2020 applies to tax periods commencing on or after 1 October 2020.

6. Paragraph 9A

Omit the paragraph (including footnote 1A).

7. Paragraph 10

Omit the paragraph; substitute:

10. Table item 2 of subsection 40-5.09(3) of the GST Regulations refers to a debt, credit arrangement or right to credit, including a letter of credit. The examples applicable to table item 2, as set out in clause 2 of Schedule 2 to the GST Regulations, include the right to an income stream under a securitisation arrangement.

8. Paragraph 11

Omit 'regulations, item'; substitute 'GST Regulations, table item'.

9. Paragraph 12

After 'paragraphs 13 and 14', insert 'of this Ruling'.

10. Paragraph 15

In footnote 3, omit 'GSTR 2002/2 GST'; substitute 'GSTR 2002/2 *Goods and services tax*'.

11. Paragraph 17

Omit the diagram; substitute:

**12. Paragraph 19**

(a) Omit the first sentence; substitute:

The provision, acquisition or disposal of an *interest* in or under a debt is a financial supply under table item 2 of subsection 40-5.09(3) of the GST Regulations.

(b) In the second sentence, omit 'subregulation 40-5.09(1)'; substitute 'subsection 40-5.09(1) of the GST Regulations'.

13. Paragraph 20

(a) Omit 'Regulation 40-5.02'; substitute 'Section 196-1.01 of the GST Regulations'.

(b) Omit footnote 5.

14. Paragraph 21

(a) Omit the first sentence; substitute:

One of the matters listed in table item 2 of subsection 40-5.09(3) of the GST Regulations is debt.

(b) In the second sentence, omit 'regulations'; substitute 'the GST Regulations'.

15. Paragraph 22

Omit 'Subregulation 40-5.09(3)'; substitute 'Subsection 40-5.09(3) of the GST Regulations'.

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16. Paragraph 23

Omit the wording of footnote 9; substitute 'Section 196-1.01 of the GST Regulations'.

17. Paragraph 29

Omit 'regulations'; substitute 'Regulations'.

18. Paragraph 30

Omit the last sentence; substitute:

This is a financial supply under table item 2 of subsection 40-5.09(3) of the GST Regulations provided the requirements of subsection 40-5.09(1) of the GST Regulations are also satisfied.

19. Paragraph 31

In footnote 21, omit 'regulation 40-5.02'; substitute 'the definition of 'interest' in section 196-1.01 of the GST Regulations'.

20. Paragraph 33

- (a) After 'paragraphs 23 to 30', insert 'of this Ruling'.
- (b) Omit 'regulation 40-5.09'; substitute 'section 40-5.09 of the GST Regulations'.
- (c) Omit '40-5.09(1)'; substitute 'subsection 40-5.09(1) of the GST Regulations'.

21. Paragraph 35

- (a) In footnote 22A, omit 'GSTD 2012/1 *Goods and services tax: what are the GST consequences*'; substitute 'GSTD 2012/1 *Goods and services tax: what are the goods and services tax consequences*'
- (b) In footnote 22A, omit GSTD 2012/2 *Goods and Services tax: what are the GST consequences*'; substitute GSTD 2012/2 *Goods and services tax: what are the goods and services tax consequences*'.

22. Paragraphs 36, 39 and 43

Omit 'regulation 40-5.09'; substitute 'section 40-5.09 of the GST Regulations'.

23. Paragraph 50

- (a) Omit 'is still obligated to perform'; substitute 'still performs'.
- (b) Omit 'obligations'; substitute 'functions'.

24. Paragraph 52

In footnote 29, after 'paragraphs 68 and 69', insert 'of this Ruling'.

25. Paragraph 55

Omit 'non cash'; substitute 'non-cash'.

26. Paragraph 58

In footnote 33, omit 'Div 156'; substitute 'Division 156'.

27. Paragraph 59

In footnote 35, omit '[1356]'; substitute '1356'.

28. Paragraph 60

- (a) Omit the wording in footnote 36; substitute 'See paragraph 29 of GSTR 2000/34'.
- (b) Omit the wording in footnote 37; substitute 'See paragraph 35 of GSTR 2000/34'.

29. Paragraph 61

After 'paragraph 60', insert 'of this Ruling'.

30. Paragraph 65

In footnote 41, after 'taxable supply and', insert 'section'.

31. Paragraph 68

In the heading, omit 'Income Tax'; substitute 'income tax'.

32. Paragraph 70

- (a) After 'paragraphs 23 to 33', insert 'of this Ruling'.
- (b) Omit 'item 2 of subregulation 40-5.09(3)'; substitute 'table item 2 of subsection 40-5.09(3) of the GST Regulations'.

33. Paragraph 71

- (a) Omit 'item 2'; substitute 'table item 2 of subsection 40-5.09(3) of the GST Regulations'.
- (b) Omit 'subregulation 40-5.09(1)'; substitute 'subsection 40-5.09(1) of the GST Regulations'.

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34. Paragraph 72

- (a) Omit 'regulation 40-5.02'; substitute 'the definition of 'interest' in section 196-1.01 of the GST Regulations'.
- (b) Omit the wording of footnote 43; substitute 'The definition of 'disposal' in section 196-1.01 of the GST Regulations includes an assignment'.
- (c) Omit 'subregulation 40-5.09(1)'; substitute 'subsection 40-5.09(1) of the GST Regulations'.

35. Paragraphs 76, 79, 82, 84 and 87

Omit 'subregulation 40-5.9(1)'; substitute 'subsection 40-5.09(1) of the GST Regulations'.

36. Paragraph 78

- (a) In the first sentence, omit 'regulation 40-5.02'; substitute 'the definition of 'interest' in section 196-1.01 of the GST Regulations'.
- (b) At the end of footnote 45, insert 'of this Ruling'.
- (c) In the last sentence, omit 'regulation 40-5.02'; substitute 'the definition in section 196-1.01'.

37. Paragraph 80

- (a) In footnote 46, omit 'item 20 in the table in regulation'; substitute 'table item 20 of section'.
- (b) Omit the wording of footnote 46A; substitute 'Table item 8 of subsection 40-5.09(3) of the GST Regulations'.

38. Paragraphs 81, 83 and 86

Omit 'regulation 40-5.02'; substitute 'the definition in section 196-1.01 of the GST Regulations'.

39. Paragraph 85

- (a) Omit 'item 2 of subregulation 40-5.09(3)'; substitute 'table item 2 of subsection 40-5.09(3) of the GST Regulations'.
- (b) Omit 'subregulation 40-5.09(1)'; substitute 'subsection 40-5.09(1) of the GST Regulations'.

40. Paragraph 90

- (a) Omit 'item 2 in the GST regulations'; substitute 'table item 2 of subsection 40-5.09(3) of the GST Regulations'.
- (b) Omit 'subregulation 40-5.09(1)'; substitute 'subsection 40-5.09(1) of the GST Regulations'.

41. Paragraph 91

Omit the wording of footnote 47; substitute 'Table item 14 of section 40-5.12 of the GST Regulations'.

42. Paragraph 92

After 'paragraph 15', insert 'of this Ruling'.

43. Paragraph 95

Omit 'Public'.

44. Paragraph 97

- (a) In the first sentence, after 'Schedule 1', insert 'of this Ruling'.
- (b) In the second sentence, omit 'schedule'; substitute 'Schedule'.

45. Paragraph 97A

- (a) Omit 'regulation 70-5.02'; substitute 'the definition in section 196-1.01'.
- (b) In footnote 48A, omit the first sentence; substitute 'See section 196-1.01 of the GST Regulations'.

46. Paragraph 97B

- (a) Omit 'item 32 in subregulation 70-5.02(2)'; substitute 'table item 32 of subsection 70-5.02(1)'.
- (b) Omit 'item of the table in subregulation 70-5.02(2)'; substitute 'table item in subsection 70-5.02(1)'.
- (c) In footnote 48B, omit 'Item 32 in the table in subregulation 70-5.02(2)'; substitute 'Table item 32 of subsection 70-5.02(1) of the GST Regulations'.

47. Paragraph 102

Omit the last sentence, insert 'The originator will take the receivables from its own portfolio'.

48. Paragraphs 105, 106, 107, 110, 112, 113, 115, 116, 118, 119 and 120

In the associated footnotes:

- (a) after 'See', insert 'table'
- (b) omit 'Schedule 1 attached'; substitute 'the Schedule to this Ruling'.

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49. Paragraph 108

- (a) Omit 'regulation 70-5.02'; substitute 'section 70-5.02 of the GST Regulations'.
- (b) Omit 'items 14,15 and/or 17 of subregulation 70-5.02(2)'; substitute 'table items 14, 15 and/or 17 of subsection 70-5.02(1)'.

50. Paragraph 109

- (a) After the paragraph, insert:

Determining the creditable purpose of acquisitions made by a home loan originator

109A. Paragraphs 109A to 109BW of this Ruling focus on determining whether acquisitions made by a home loan originator^{52B} (who makes financial supplies of home loans, and makes an assignment of the related loan receivables) are made solely or partly for a creditable purpose.^{52C}

109B. Goods and Services Tax Ruling GSTR 2008/1 *Goods and services tax: when do you acquire anything or import goods solely or partly for a creditable purpose?* sets out the principles for establishing a relevant connection to supplies for the purposes of paragraph 11-15(2)(a). The connection may be direct, or indirect, substantial or real. It must be relevant and usually a remote connection would not suffice.^{52D} The required connection has also been described as 'sufficient and material', which would include a 'direct and immediate' connection.^{52E} In this Ruling, we refer to the required connection as a 'real and substantial connection' or a 'relevant connection' interchangeably.

109C. An approach that looks through to the subjective intention or actual purpose for making the acquisition will be inconsistent with paragraph 11-15(2)(a).^{52F} The identification of the relevant connection does not turn upon a characterisation of the purpose, or the occasion of the purpose, of the supplier in the sense of a broader commercial objective of the enterprise.^{52G} Further contextual support for this position can be found in subsection 11-15(5), which provides a specific exception whereby an acquisition that relates to a financial supply consisting of a borrowing will generally be for a creditable purpose if the borrowing relates to making supplies that are not input taxed. This provision would be unnecessary if it were appropriate to consider the purposes for which the borrowing is used.

109D. The creditable purpose of acquisitions made by a home loan originator will be based on whether the acquisitions have a relevant connection to one or more of the:

- financial supply of the loan;
- taxable supply of servicer services to the SPV; or
- financial supply of the assignment of the loan receivables.^{52H}

109E. Paragraphs 109A to 109BW of this Ruling apply to a typical securitisation arrangement, as described in paragraphs 96 to 125 of this Ruling, for home loan receivables.

109F. These paragraphs do not apply to other arrangements, such as 'Tier 2' securitisation arrangements. Under Tier 2 securitisation arrangements, services in arranging the origination and servicing of loans are supplied by a manager entity, and another entity (such as a warehouse trust) makes the supply of the loan and the assignment of the receivables.

109G. In order to explain the Commissioner's view on how paragraph 11-15(2)(a) applies to common acquisitions made by home loan originators, acquisitions have been divided into categories for origination acquisitions, pre-securitisation servicing acquisitions and post-securitisation servicing acquisitions in paragraphs 109I to 109X of this Ruling. This reflects an analysis of common acquisitions in these phases of the loan.

109H. However, there may be factual variations in the acquisitions or supplies you make that need to be taken into account when applying paragraph 11-15(2)(a) in your individual circumstances, which may mean that a particular acquisition does not have the treatment described in a that category. The application of paragraph 11-15(2)(a) requires the precise identification of the relevant acquisition and a factual enquiry into the connection between the acquisition and the making of supplies that would be input taxed.^{52I}

Origination acquisitions

109I. Origination acquisitions are acquired and used by the originator to originate the supply of the loan to the borrower. They are typically acquired leading up to the borrower entering into the loan contract.

109J. Examples of origination acquisitions include mortgage-broking services, services provided by 'referrers' who refer potential borrowers to the originator, lender's mortgage insurance, and costs relating to the mortgage security, including property valuations, settlement attendance costs, and title search costs.

109K. These acquisitions are typically intended for use in making the financial supply of the loan. Where there is a close connection to the making of input taxed supplies, a broader commercial objective of the originator, which includes making taxable supplies of servicer services, will be insufficient to establish a creditable purpose for these acquisitions. In this case, there is not a real and substantial connection to the potential future taxable supply of servicer services.

109L. It is not necessary to determine whether the originator has the requisite intention^{52J} to securitise a particular loan at the time of making the origination acquisitions, because in either case the acquisition does not have a relevant connection to the taxable supply of servicer services.

109M. Where the originator does have the requisite intention to securitise the loan, this may give rise to a relevant connection to the financial supply of the assignment of the loan receivables, in addition to the relevant connection to the supply of the loan (depending on the particular factual circumstances).^{52K} However, it is generally unnecessary to determine this, as in either case the acquisition only relates to making financial supplies.

109N. The fact that the originator makes supplies of servicer services as a result of making the supply of the assignment of the loan receivables is insufficient to establish a relevant connection between these acquisitions and the taxable supply of servicer services.

Pre-securitisation servicing acquisitions

109O. In a typical securitisation arrangement, the originator does not immediately securitise the loan receivables to the SPV. In the pre-securitisation period, the

originator has recurring servicing functions to perform, and makes acquisitions relating to payment processing and statement preparation, maintaining security interests, providing customer service and collection of arrears.

109P. As these acquisitions are intended for use in maintaining or servicing the loan before securitisation, the acquisitions relate solely to making the financial supply of the loan. These acquisitions are not for use in maintaining the loan after securitisation, when the originator commences making taxable supplies of servicer services. Pre-securitisation servicing acquisitions typically relate solely to making financial supplies of loans.

109Q. In paragraphs 109A to 109BW of this Ruling, when the term 'acquisition' is used, it can also refer to the relevant part of an acquisition. For example, when we refer to a post-securitisation servicing acquisition, this would include the part of an acquisition that relates to securitised loans, and not the part that relates to non-securitised loans. For example, an acquisition of statement preparation services for all home loans would be partly intended for use in servicing loans that are not securitised, and partly for use in servicing loans that are securitised.

Post-securitisation servicing acquisitions

109R. Once the assignment of the loan receivables has been settled, the originator typically makes a taxable supply of servicer services to the SPV for those receivables. This is described in paragraph 107 of this Ruling.

109S. The creditable purpose of the post-securitisation servicing acquisitions^{52L} depends on the functions that the originator performs under the taxable supply of servicer services, and under the supply of the loan to the borrower. These functions need to be determined on a case-by-case basis, in the context of the relevant contractual relationships and other legal obligations.

109T. When the taxable supply of servicer services requires the originator to perform functions that would not have been necessary had the loans not been assigned, any acquisitions relating to those additional functions are solely for a creditable purpose. For example, additional functions such as collating payments for remittance to the SPV, and the provision of reports related to servicer services only arise from assignment of the receivables. They are not functions that the originator performs under the supply of the loan to the borrower.

109U. Other post-securitisation servicing acquisitions that relate to servicing the loan receivables have a relevant connection to both the financial supply of the loan and the taxable supply of servicer services. This is the case when the acquisitions are for use in performing functions that are within the scope of the taxable supply of servicer services the originator makes to the SPV. As stated in paragraph 107 of this Ruling, this may include things done after settlement of the receivables up to and including discharge, for example, providing payment processing and statement preparation, and maintaining security interests.

109V. The supply of the loan to the borrower continues after securitisation, with the loan contract remaining on foot between the originator and the borrower. The originator will continue to make acquisitions to perform functions to manage its debtor/creditor relationship with the borrower. The provision of the credit requires the originator to maintain this ongoing relationship with the borrower, as the terms of the supply require the borrower to repay the loan over a period of time. This deferral or 'time to pay' is an inherent part of the credit arrangement.^{52M}

109W. The acquisitions relating to the originator's usual functions and responsibilities as the supplier of the loan, including routine matters of repayment and collection, and providing customer service to borrowers, continue to have a relevant connection to that supply.

109X. In principle, the approach to post-securitisation acquisitions could be applicable for some pre-securitisation acquisitions that are used over time. Where a decision has been made to securitise a particular loan, and an acquisition relating to that loan is used over a period of time, some of which will be after the securitisation, then the acquisition may also relate to both the supply of the loan and the intended future taxable supply of servicer services.

Examples

109Y. **Note:** In each of Examples 2 to 6 of this Ruling, the assigned receivables discussed are home loan receivables relating to the originator's financial supplies of home loans secured by a mortgage. In each example, the entity that supplies the loan assigns the loan receivables to an SPV that is carrying on an enterprise in Australia.^{52N} The examples are not intended to address every potential variation in individual circumstances.

Example 2 – acquisition of mortgage broking services

109Z. *Elf Mutual Bank has an agreement with Barnacle Mortgage Brokers Limited (Barnacle), under which Barnacle introduces potential borrowers to Elf Mutual Bank's loans.*

109AA. *Under the agreement, Barnacle undertakes activities such as:*

- *providing information on Elf Mutual Bank's loan products to potential borrowers and assisting applicants to select a loan product;*
- *conducting loan interviews with applicants and guarantors;*
- *assisting applicants to complete a loan application (including collecting necessary documentation);*
- *assessing factors that are relevant to Elf Mutual Bank's lending criteria;*
- *submitting the applicant's application to Elf Mutual Bank; and*
- *informing the applicant of whether Elf Mutual Bank has approved the loan application.*

109AB. *Elf Mutual Bank is responsible for preparing the loan documents and for all aspects of managing the loans on an ongoing basis.*

109AC. *Once the borrower has drawn down the funds under the loan, Barnacle has completed its mortgage broking supply under the agreement. Barnacle does not provide ongoing services to Elf Mutual Bank in respect of the loan once it has been drawn down.*

109AD. *Elf Mutual Bank pays commissions to Barnacle, which are:*

- *an upfront commission, which is a proportion of the settled amount, paid following the settlement; and*

- *a trail commission, which is a proportion of the borrower's loan balance, paid on a monthly basis.*

109AE. *The acquisition of services from Barnacle helps Elf Mutual Bank to determine whether it should enter into a debtor/creditor relationship with potential borrowers, and facilitates Elf Mutual Bank making supplies of loans to new borrowers. The fact that one of the commissions is calculated based on an ongoing trail commission does not alter the nature of the acquisition or how it is for use.*

109AF. *These acquisitions are intended for use in originating supplies of loans, and therefore have a real and substantial connection with the supply of the loan.*

109AG. *In the future, Elf Mutual Bank may make a financial supply of the assignment of the loan receivables, which includes the receivables from loans originated with Barnacle's assistance, to an SPV as part of a typical securitisation arrangement. Following the assignment, Elf Mutual Bank may supply taxable services to the SPV as a servicer of the loan.*

109AH. *Barnacle's services are not utilised in functions that Elf Mutual Bank performs in making taxable supplies of servicer services. Any connection between the acquisition and the taxable supply of servicer services arise solely from the intervening financial supply of the assignment of loan receivables, and is too remote. There is not a real and substantial connection between the acquisition of broking services from Barnacle and the taxable supply of servicer services.*

109AI. *Elf Mutual Bank's acquisitions from Barnacle only have a relevant connection to the financial supply of the loan.*

Example 3 – acquisition of lender's mortgage insurance

109AJ. *Gentoo Bank acquires lender's mortgage insurance, to protect it from financial loss from defaulting borrowers, including any shortfall from the sale of properties arising from these defaults. Gentoo Bank acquires lender's mortgage insurance for loans originated with a loan-to-valuation ratio of 80% or greater, given the higher risk profile of these loans.*

109AK. *Gentoo Bank also acquires title insurance for all of its home loans, to protect it from risks involving the title to the mortgaged property.*

109AL. *Gentoo Bank pays an upfront premium to the lender's mortgage insurer and the title insurer, which it passes on to the borrowers.*

109AM. *In the future, Gentoo Bank may make a financial supply of the assignment of loan receivables, which includes the receivables for the home loan and the incidental financial supply⁵²⁰ of the right to any payout from the lender's mortgage insurance and title insurance policies, to an SPV as part of a typical securitisation arrangement.*

109AN. *Following the assignment, Gentoo Bank may supply taxable servicer services to the SPV, in managing the collection of the loan receivables for the SPV as beneficial owner.*

109AO. *The lender's mortgage insurance and title insurance are intended for use by the originator in protecting against financial loss from default and defects in the title to the mortgaged property, and relate to making the financial supply of the loan.*

109AP. *Regardless of whether Gentoo Bank intends to securitise the loan when it acquires the policies, there is not a real and substantial connection between the acquisition of lender's mortgage insurance or title insurance and the taxable supply of servicer services. The right to any payout under the insurance policies is not supplied to the SPV by the originator as part of the supply of servicer services, as the originator has already assigned this right to the SPV as part of the supply of assignment of the loan receivables. The connection between the acquisitions and the taxable supply of servicer services is too remote.*

109AQ. *If at the time that Gentoo Bank acquired the lender's mortgage insurance and title insurance policies, Gentoo Bank had already formed the requisite intention to make a financial supply of the assignment of those loan receivables (which includes the right to any payout from the lender's mortgage insurance and title insurance), these acquisitions would be intended for use in making the financial supply of the assignment of the receivables and the financial supply of the loan. This connection to the assignment of the receivables arises because the rights acquired under the policies are incorporated into what is assigned to the SPV.*

109AR. *In either case, Gentoo Bank's acquisitions of insurance only have a real and substantial connection to financial supplies it makes.*

Example 4 – other acquisitions to establish home loans

109AS. *Adelie Bank makes acquisitions intended for use in originating and establishing supplies of loans, including:*

- *services for outsourced processing of home loan applications;*
- *credit-checking services, to assess the risk associated with the potential borrower;*
- *services for property valuation, to assist in determining whether the amount of the loan and deposit are appropriate;*
- *services to perform a title search, to ensure that the seller has title to the property, and to obtain information on encumbrances or caveats on the property; and*
- *outsourced settlement attendance services for attendance by a representative at the settlement for the property.*

109AT. *Adelie Bank's acquisitions assist in completing the loan application process and providing security for the loan, which culminate in Adelie Bank making the supply of the loan. These acquisitions are for use in originating and establishing supplies of loans, and therefore have a real and substantial connection with the supply of the loan.*

109AU. *In the future, Adelie Bank may make a financial supply of the assignment of loan receivables, which includes the receivables from the loans that these acquisitions are made to originate, to an SPV as part of a typical securitisation arrangement. Following the assignment, Adelie Bank may supply taxable servicer services to the SPV.*

109AV. *There is not a real and substantial connection between these acquisitions and the taxable supply of servicer services.*

109AW. *Adelie Bank's acquisitions only have a relevant connection to the financial supply of the loan.*

Example 5 – pre-securitisation servicing acquisitions

109AX. *In March, Fiordland Bank identifies a pool of home loans it will securitise in July.*

109AY. *In March, Fiordland Bank makes acquisitions to maintain and service those home loans and manage its ongoing relationship with borrowers.*

109AZ. *These acquisitions include:*

- *acquisitions of services to prepare, print and post loan statements to borrowers;*
- *acquisitions of services for the storage of documents, including mortgage documents and loan contracts;*
- *acquisitions to collect home loan repayments and to manage delinquent accounts; and*
- *a proportion of Fiordland Bank's acquisitions to maintain a network of bank branches and to operate a call centre that are allocated to its home loans area, to reflect the activities of the relevant customer service representatives in servicing the loans.*

109BA. *Fiordland Bank's servicer servicing agreement with the SPV will commence in July, immediately after the loan receivables are assigned. The agreement requires Fiordland Bank to supply servicer services to the SPV.*

109BB. *Fiordland's acquisitions in March are intended for use in maintaining loans that are not securitised (prior to the supply of the assignment of the loan receivables being made to the SPV). Fiordland Bank's acquisitions do not have a relevant connection to the taxable supply of servicer services.*

Example 6 – post-securitisation servicing acquisitions

109BC. *Following on from Example 5 of this Ruling, in July Fiordland Bank makes a financial supply of the assignment of the loan receivables to an SPV, Emperor Securitisation Trust (Emperor), as part of a typical securitisation arrangement. Following the assignment, Fiordland Bank supplies taxable servicer services to Emperor.*

109BD. *Fiordland Bank continues to make acquisitions to maintain the securitised home loans, including:*

- *acquisitions of services to prepare, print and post loan statements to borrowers;*
- *acquisitions of services for the storage of documents, including mortgage documents and loan contracts;*
- *acquisitions to collect home loan repayments and to manage delinquent accounts;*
- *acquisitions to discharge loans; and*

- *a proportion of Fiordland Bank's acquisitions to maintain a network of bank branches and to operate a call centre that are allocated to its home loans area, to reflect the activities of the relevant customer service representatives in servicing the loans.*

109BE. *Following the assignment, Fiordland Bank continues to perform functions as the supplier of the loan. Fiordland Bank also has to meet continuing obligations under the loan contract with the borrower, and statutory obligations to the borrower as a credit provider.*

109BF. *The acquisitions Fiordland Bank makes are intended for use in maintaining its ongoing debtor/creditor relationship with the borrower under the supply of the loan. In addition, in some cases the acquisitions assist Fiordland Bank to meet its obligations under both the loan contract and its statutory obligations as a credit provider, such as to issue loan statements, and to provide loan documents to borrowers on request.*

109BG. *The acquisitions therefore have a real and substantial connection to the supply of the loan.*

109BH. *Fiordland Bank makes a supply of servicer services to Emperor and has obligations to Emperor to service the home loan in accordance with agreed guidelines to maintain the loan receivables that have been assigned to Emperor. These guidelines require Fiordland Bank to undertake the same functions with respect to the loan and the borrower as it does prior to securitisation. The acquisitions relate to functions that Fiordland performs within the scope of the supply of servicer services that Fiordland makes under these agreements.*

109BI. *The acquisitions therefore also have a real and substantial connection to the taxable supply of servicer services.*

109BJ. *Fiordland Bank's acquisitions, which are intended for use in maintaining loans that are securitised, have a relevant connection to both the financial supply of the loan and the taxable supply of servicer services.*

Situations where the home loan originator and SPV are members of the same GST group

109BK. In determining whether an acquisition made by an entity that is a member of a GST group is for a creditable purpose, the GST group is treated as a single entity and not as a number of separate entities.^{52P}

109BL. Therefore, where the home loan originator and SPV are in the same GST group, there is taken to be no supply of the assignment of the payment stream or supply of servicer services between them. Only supplies made to entities outside the GST group are relevant when determining the creditable purpose of the acquisitions.

Example 7 – Originator and SPV are members of a GST group

109BM. *Riwaka Bank and Orbit Securitisation Trust (the Trust) are members of the same GST group.*

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109BN. *Riwaka Bank assigns some of the loan receivables for home loans that it originates to the Trust. Riwaka Bank has obligations to the Trust to service the securitised loans on an ongoing basis, in exchange for servicer fees.*

109BO. *To fund its acquisition of the receivables, the Trust issues notes to investors which are backed by the assigned receivables. The notes are issued to non-resident investors, with the supplies of debt securities meeting the requirements to be GST-free under table item 2 of subsection 38-190(1).*

109BP. *Once the assignment is settled, Riwaka Bank continues to make acquisitions to maintain the securitised home loans, such as acquisitions to issue statements to borrowers.*

109BQ. *In determining the creditable purpose of acquisitions made by either entity, Riwaka Bank and the Trust are treated as a single entity. Only the supplies made to entities outside the GST group are relevant – these are the financial supply of the loan to the borrower and the GST-free supply of debt securities to the investors.*

109BR. *The acquisitions Riwaka Bank makes are intended for use in maintaining its ongoing debtor/creditor relationship with the borrower under the supply of the loan. In addition, in some cases the acquisitions assist Riwaka Bank to meet its obligations under both the loan contract and its statutory obligations as a credit provider.*

109BS. *The acquisitions therefore have a real and substantial connection to the supply of the loan.*

109BT. *The acquisitions do not have a real and substantial connection to the GST-free supply of debt securities to the investors.*

109BU. *While the supply of the loan and the supply of debt securities are commercially interrelated, the fact that the supply of debt securities may provide a source of funding for future supplies of loans, and enables the management of credit risk, is not sufficient to establish a relevant connection to the acquisitions that are for use in making the financial supply of the loan.*

109BV. *The acquisitions made to maintain the loan following the assignment only have a relevant connection to the financial supply of the loan.*

109BW. *Consistent with the above, acquisitions that relate to the GST-free supplies of the debt securities (for example, the acquisition of best endeavours underwriting services in relation to the issue of the securities) will not have a relevant relationship to the financial supplies of loans under paragraph 11-15(2)(a).^{52Q}*

- (b) After 'originator' in paragraph 109A, insert new footnote 52B:

^{52B} As stated in paragraph 5 of this Ruling, where the term 'originator' is used, this refers to the assignor of the payment stream, which in this case is also the entity who makes the financial supply of the loan in a typical securitisation arrangement. The term is not used to refer to an 'originator' in a 'Tier 2' securitisation arrangement (as explained in paragraph 109F of this Ruling), where the term 'originator' may be used to refer to the manager entity that facilitates the loan with the borrower, but which does not make the financial supply of the loan and is not an assignor of receivables relating to the loan.

- (c) At the end of paragraph 109A, insert new footnote 52C:

^{52C} The extent to which a supply of loan is GST-free is not addressed. The term 'relates to a financial supply' is used rather than 'relates to an input taxed supply' in paragraphs 109A to 109BW of this Ruling as in some circumstances the supply of a loan may be GST-free, for

example, if table item 2 of subsection 38-190(1) applies. If acquisitions partly relate to GST-free financial supplies of loans they will be partly for a creditable purpose.

- (d) At the end of the third sentence in paragraph 109B, insert new footnote 52D:
^{52D} *HP Mercantile Pty Limited v. Commissioner of Taxation* [2005] FCAFC 126 (*HP Mercantile*) at [35]; paragraphs 113 and 118 of GSTR 2008/1.
- (e) At the end of the fourth sentence in paragraph 109B, insert new footnote 52E:
^{52E} *Rio Tinto Services Ltd v. Commissioner of Taxation* [2015] FCA 94 (*Rio Tinto – first instance*) at [26] and [33].
- (f) At the end of the first sentence in paragraph 109C, insert new footnote 52F:
^{52F} *AXA Asia Pacific Holdings Limited v. Commissioner of Taxation* [2008] FCA 1834 at [122].
- (g) At the end of the second sentence in paragraph 109C, insert new footnote 52G:
^{52G} *Rio Tinto Services Limited v. Commissioner of Taxation* [2015] FCAFC 117 (*Rio Tinto – appeal*) at [7–8].
- (h) At the end of paragraph 109D, insert new footnote 52H:
^{52H} See GSTR 2008/1 and GSTR 2006/3 which provide the Commissioner’s views on determining the extent of creditable purpose for financial suppliers.
- (i) At the end of paragraph 109H, insert new footnote 52I:
^{52I} *Rio Tinto – appeal* at [7].
- (j) After ‘intention’ in paragraph 109L, insert new footnote 52J:
^{52J} See further discussion about ‘intention’ and ‘intended use’ in paragraphs 49 and 50, 102 to 104, and 121 and 122 of GSTR 2008/1. See also *HP Mercantile* at [76].
- (k) At the end of the first sentence in paragraph 109M, insert new footnote 52K:
^{52K} An example of this is provided in Example 3 of this Ruling.
- (l) After ‘acquisitions’ in paragraph 109S, insert new footnote 52L:
^{52L} These are the same types of acquisitions as the pre-securitisation acquisitions described in paragraph 109O of this Ruling.
- (m) At the end of paragraph 109V, insert new footnote 52M:
^{52M} See *Commissioner of Taxation v. American Express Wholesale Currency Services Pty Limited* [2010] FCAFC 122 (*Amex*) at [154], citing ‘*Fitz-Gibbon, In the Matter of Fitz-Gibbon v. Inspector General in Bankruptcy* [2000] FCA 1677.’
- (n) At the end of the second sentence in paragraph 109Y, insert new footnote 52N:
^{52N} ‘Australia’ refers to the ‘indirect tax zone’ as defined in subsection 195-1’.
- (o) After ‘incidental financial supply’ in paragraph 109AM, insert new footnote 52O:
^{52O} See paragraph 131 of this Ruling.
- (p) At the end of paragraph 109BK, insert new footnote 52P:
^{52P} See subsection 48-45(2).
- (q) At the end of paragraph 109BW, insert new footnote 52Q:
^{52Q} See paragraphs 125 and 137 of this Ruling.

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51. Paragraph 118

- (a) Omit 'item 3 of subregulation 40-5.09(3)'; substitute 'table item 3 of subsection 40-5.09(3) of the GST Regulations'.
- (b) Omit 'subregulation 40-5.09(1)'; substitute 'subsection 40-5.09(1) of the GST Regulations'.
- (c) In footnote 58, omit 'attached'; substitute 'to this Ruling'.

52. Paragraph 121

- (a) Omit 'items 10 or 11 in the table in subregulation 40-5.09(3)'; substitute 'table items 10 or 11 of subsection 40-5.09(3) of the GST Regulations'.
- (b) Omit 'subregulation 40-5.09(1)'; substitute 'subsection 40-5.09(1) of the GST Regulations'.
- (c) In footnote 62, omit 'attached'; substitute 'to this Ruling'.

53. Paragraph 130

In footnote 67 (in the heading to paragraph 130), after 'paragraphs 34 to 43', insert 'of this Ruling'.

54. Paragraph 136

Omit 'regulation 70-5.02'; substitute 'section 70-5.02 of the GST Regulations'.

55. Paragraph 151A

- (a) Omit 'regulation 70-5.02'; substitute 'section 70-5.02'.
- (b) Omit the wording in footnote 75A; substitute 'See the definition of 'securitisation entity' in section 196-1.01 of the GST Regulations'.

56. Paragraph 159

- (a) Omit the header; substitute 'Appendix – Detailed contents list
- (b) After the entry at paragraph 106, insert

<u>Determining the creditable purpose of acquisitions made by a home loan originator</u>	109A
<u>Origination acquisitions</u>	109I
<u>Pre-securitisation servicing acquisitions</u>	109O
<u>Post-securitisation servicing acquisitions</u>	109R
<u>Examples</u>	109Y
<u>Example 2 – acquisition of mortgage broking services</u>	109Z
<u>Example 3 – acquisition of lender's mortgage insurance</u>	109AJ
<u>Example 4 – other acquisitions to establish home loans</u>	109AS
<u>Example 5 – pre-securitisation servicing acquisitions</u>	109AX

<u>Example 6 – post-securitisation servicing acquisitions</u>	109BC
<u>Situations where the home loan originator and SPV are members of the same GST group</u>	109BK
<u>Example 7 – originator and SPV are members of a GST group</u>	109BM

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57. Schedule 1

(a) Omit Schedule 1 (excluding footnotes), insert:

Schedule

GST classification of supplies in a typical securitisation arrangement^{75B}

Step number	Type of supply	Description	Form of consideration	GST treatment of supply	RITC available for acquisition ⁷⁶
1	Services for the creation of the SPV	Creation of the SPV for a particular tranche of notes	Fees for advice and preparation of documents etc	Taxable Section 9-5	No
2	Disposal/ acquisition of interest in debt	Equitable assignment of the right to the payment stream to the SPV	Monetary consideration based on net present value of assets	Input taxed Table Item 2 of subsection 40-5.09(3) of the GST Regulations	Not applicable
3	Trustee services	General and specific powers and duties of the trustee as set out in the transaction documents.	Fees	Taxable Section 9-5 Table item 15 of section 40-5.12 of the GST Regulations	Yes Table item 29 of subsection 70-5.02(1) of the GST Regulations provided services are in accordance with the duties set out in the transaction documents.
4	(a) Servicer (performed by originator of receivables)	All services performed as part of the taxable supply by the originator to the SPV.	Fees	Taxable supply Section 9-5	Yes – under table items 14, 15 or 17 of subsection 70-5.02(1) of the GST Regulations.
	(b) Servicer (performed by third party)	All services performed as part of the taxable supply by the third party to the SPV.	Fees	Taxable supply Section 9-5	Yes – under table items 14, 15 or 17 of section 70-5.02 of the GST Regulations.

Step number	Type of supply	Description	Form of consideration	GST treatment of supply	RITC available for acquisition ⁷⁶
5	Management services	<p>A full description of the manager's duties and powers is set out in the transaction documents and includes:</p> <ul style="list-style-type: none"> • day-to-day administration and servicing of the assets (not serviced by the servicer), borrowings and other liabilities of the trust; • making recommendations on authorised investments and directing the trustee in relation to those investments; • coordinating the issue of debt securities by the SPV. 	Fees	<p>Taxable Section 9-5 Table item 12 of section 40-5.12 of the GST Regulations</p>	<p>Yes Table item 9 of subsection 70-5.02(1) of the GST Regulations, to the extent it relates to activities in preparing for the issue of securities; Table item 23(b) of subsection 70-5.02(1) of the GST Regulations – management of the trust's investment portfolio.</p>
6	Custodian services	<ul style="list-style-type: none"> • Separation and safe storage of relevant documents • Provision of reports on the movement of relevant documents • Retrieval of relevant documents. 	Fees	<p>Taxable Section 9-5 Table item 16 of section 40-5.12 of the GST Regulations</p>	<p>No Table item 29 of subsection 70-5.02(1) of the GST Regulations excludes provision of custodial services in relation to money and document security.</p>
7	Liquidity support facilities	Provision of liquidity facilities for advances to the trustee to cover certain income shortfalls in the trust	Commitment fees plus interest on draw downs	Input taxed Table item 2 of subsection 40-5.09(3) of the GST Regulations	Not applicable
8	Credit enhancement arrangements	Where used they may take a variety of forms such as: irrevocable letters of credit, third party insurance, spread accounts, cash collateral accounts, over-collateralisation, plus senior subordinated structures.	Various fees and charges where relevant	Mainly input taxed however third party insurance would be a taxable supply to the SPV.	Not applicable in the case of input taxed supplies. No RITC would be available to the SPV for acquisitions of third party insurance.

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Step number	Type of supply	Description	Form of consideration	GST treatment of supply	RITC available for acquisition ⁷⁶
9	Ratings agency services	Rating of debt securities	Fees	Taxable Section 9-5 Table item 3 of section 40-5.12 of the GST Regulations	No
10	Security trustee services	Holding security over assets for the benefit of chargees	Fees	Taxable Section 9-5	Yes Table item 29 of subsection 70-5.02(1) of the GST Regulations, on the basis that these custodial services do not fall under the exclusion for safe custody of money, documents or other things.
11	Swap facilities	Interest rate and currency swaps	Reciprocal obligations	Input taxed Table item 11 of subsection 40-5.09(3) of the GST Regulations	Not applicable
12	Underwriters	(a) Best endeavours underwriting, that is not relating to the acquisition of unplaced securities	Fees	Taxable Section 9-5	Yes Table item 9(i) of subsection 70-5.02(1) of the GST Regulations
		(b) Traditional underwriting including the agreement to acquire unplaced securities	Fees	Both taxable and input taxed Section 9-5 Section 40-5.09 of the GST Regulations	Partly Table item 9(i) of subsection 70-5.02(1) of the GST Regulations
13	Issue of debt securities to investors	Provision of interest in debt securities	Subscription moneys	Input taxed Table Item 10 of subsection 40-5.09(3) of the GST Regulations	Not applicable

(b) Omit the wording of footnote 75B; substitute:

This Schedule has been prepared on the basis that the SPV is a securitisation entity for the purposes of the definition in section 196-1.01 of the GST Regulations. See paragraphs 97A to 97B of this Ruling.

This Addendum applies on and from 25 September 2020.

Commissioner of Taxation

25 September 2020

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