GSTR 2003/D6 - Goods and services tax: Assignment of income streams including under a securitisation arrangement

There is an Erratum notice for this document.
This document has been finalised.

Australian Taxation Office

Draft Goods and Services Tax Ruling

Goods and services tax: Assignment of income streams including under a securitisation arrangement

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Preamble

*This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered views of the Australian Taxation Office. This draft may not be relied on by taxpayers and practitioners, as it is not a ruling or advice for the purposes of section 37 of the **Taxation Administration Act 1953**. The final Ruling will be a public ruling for the purposes of section 37 and may be relied upon by any entity to which it applies.*

What this Ruling is about

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 1999 (GST regulations) apply to the supply of rights to an income stream by means of an assignment.

2. In particular this Ruling deals with the supply of a right to an income stream arising from the following types of transactions:

- Loan portfolios;
- Finance and operating leases;
- Hire purchase agreements;
- Residential/commercial property leases;
- Royalty agreements; and
- Credit card receivables.

3. This Ruling also deals with issues related specifically to debt factoring and securitisation arrangements.

4. It does not cover circumstances where there is:

- a mere redirection of a payment from one entity to another; and
- a novation of an agreement that gives rise to an income stream.

5. For the purposes of this Ruling the term 'assignor' is used to refer to the entity that first assigns the right to an income stream. Where the term 'originator' is used this refers to an assignor under a securitisation arrangement.

6. Certain terms in this Ruling are defined or explained in the Definition Section of the Ruling. These terms, when first mentioned in the text in the body of the Ruling, will appear in **bold type**.

7. Unless otherwise stated all legislative references in this Ruling are to the GST Act and GST regulations.

Date of effect

8. This draft Ruling represents the preliminary, though considered view of the Australian Taxation Office. This draft may not be relied on by taxpayers or practitioners. When the final Ruling is officially released, it will explain our view of the law as it applies from 1 July 2000.

9. The final Ruling will be a public ruling for the purposes of section 37 of the *Taxation Administration Act 1953* and may be relied upon, after it is issued, by any entity to which it applies. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and our view of when you can rely on our interpretation of the law in GST public and private rulings.

10. If the final public ruling conflicts with a previous private ruling that you have obtained, the public ruling prevails. However, if you have relied on a private ruling, you are protected in respect of what you have done up to the date of issue of the final public ruling. This means that if you have underpaid an amount of GST, you are not liable for the shortfall prior to the date of effect of the later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

Background

11. Item 2 in subregulation 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 item 2 in Schedule 7 include the right to an income stream under a securitisation arrangement.

12. One of the common methods by which the right to an income stream is provided or acquired is through an assignment. Assignment is the immediate transfer of an existing proprietary right, vested or contingent, from the **assignor** to the **assignee**.[1]

13. An assignment can be effected by either a legal or an equitable method.[2]

14. Some arrangements, identified in paragraphs 15 to 17 below, do not involve a transfer of rights to an income stream as contemplated by this Ruling.

Redirection of payments (otherwise known as post derivation assignment)

15. Where an entity merely redirects the payment of an amount due to it to another entity there is no assignment of the right to the income. There is no provision, acquisition or disposal of an interest in a debt. It is an agreement for the payment of amounts receivable from one entity to another. The payment may be the consideration for a supply by the entity receiving the payment.

Novation

16. Typically a novation involves the creation or substitution of a new agreement between the original parties to an agreement and a third party. All parties must agree to a novation in order to give enforceable rights or obligations to the third party.

17. In contrast, the nature of an assignment was explained by Windeyer J in *Olson v. Dyson* (1969) 120 CLR 365:

> An assignment is a transaction between the creditor and the assignee to which the assent of the debtor is not needed. The debtor is given notice of it; for notice is necessary to complete an assignment pursuant to the statute or in the case of an **equitable assignment** to preserve priorities. But the debtor's assent is not required. He is not a party to the transaction. [3]

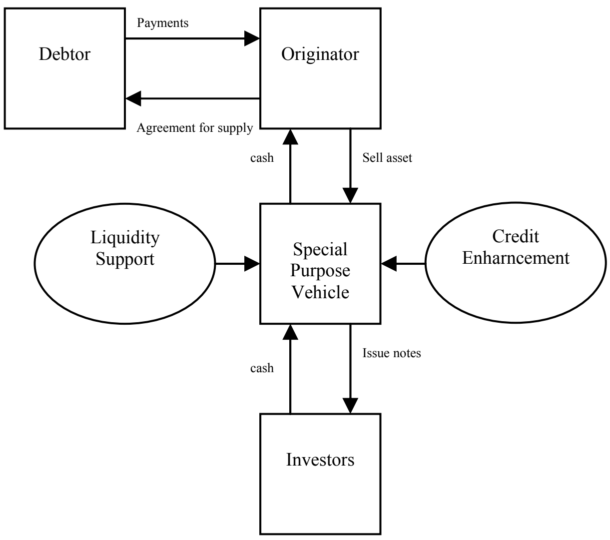
[1] *Norman v. FCT* (1963) 109 CLR 9 per Windeyer J at 26.
[2] A more detailed explanation of these methods starts at paragraph 47.
[3] *Olson v. Dyson* (1969) 120 CLR 365 at 388.

Securitisation arrangements

18. A securitisation arrangement is the process whereby an entity packages and converts legal or beneficial title to future receivables and kindred assets into marketable debt securities which are traded in the capital market.[4] Securitisation is widely used because of the advantages it offers in terms of management of risk and raising funds.

19. Many institutions in Australia now offer debt securities backed by a wide variety of assets that include residential mortgages, commercial property loans, lease, credit card and trade receivables. These assets commonly have predictable cash flows, are small compared to the overall pool of assets, are reasonably homogeneous in terms of maturity and risk profile, and have similar terms and conditions.

20. Securitisation structures vary according to the objectives of the originating institution, the assets involved, and the targeted investors but are all essentially variations on a theme.[5] A typical securitisation structure is as follows:



21. The main feature of a securitisation arrangement is the establishment of a special purpose vehicle (SPV) under either trust or corporations law. The purpose of the SPV is to acquire a pool of receivables and any associated collateral rights from an originating institution. The SPV pays for the assets by issuing debt securities (or notes) backed by the asset pool. A more detailed explanation and

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[4] Glossary to GSTR 2002/2 GST: treatment of financial supplies and related supplies and acquisitions.

[5] Australian Prudential Regulation Authority (2000), *The Australian Securitisation Market*, Working Paper 6, October 2000.

discussion of a securitisation arrangement is provided at paragraphs 99 to 128 of this ruling.

Ruling and explanation

22. The provision, acquisition or disposal of an *interest* in or under a debt is a financial supply under item 2 of subregulation 40-5.09(3). The supply of the right to an income stream by way of assignment is a financial supply provided it is the provision, acquisition or disposal of an interest in a debt and the requirements of subregulation 40-5.09(1) are satisfied.

Meaning of interest in or under a debt

23. Regulation 40-5.02 provides that an *interest* in relation to a financial supply is anything that is recognised at law or in equity as property in any form.[6] The term interest is therefore given its broadest meaning so that an interest is as wide as the legal and equitable concept of property, including rights under a contract.[7]

24. Relevant examples of an interest include a debt or right to credit and a right to future property.[8] The inclusion of present and future property as examples of an interest in a matter listed in the items in subregulation 40-5.09(3) broadens the application of the matters listed in that subregulation.

25. One of the matters listed in item 2 of subregulation 40-5.09(3) is debt. Debt is not defined in the GST Act or regulations and therefore takes its common law meaning unless a contrary intention appears.[9] When not expanded by particular words or phrases the ordinary legal usage of the term debt means an obligation actually incurred.[10]

26. Subregulation 40-5.09(3) deals with interests in or under debt. The term interest, in relation to debt, extends to contingent or future debt. Therefore the expression *interest in or under a debt* includes proprietary interests in present, contingent or future debts.

[6] Paragraph 78 of GSTR 2002/2.
[7] Paragraph 79 of GSTR 2002/2.
[8] Regulation 40-5.02.
[9] *Valance v The Queen* (1961) 108 CLR 56.
[10] *Pyramid Building Society (In Liq) v. Terry & Another* (1997) 189 CLR 176.

Presently existing debt

27. In the Glossary to GSTR 2002/2 *GST treatment of financial supplies and related supplies and acquisitions* the meaning of debt is given as 'an amount due from one entity to another or a presently existing obligation to pay an ascertainable amount at a future time.'

28. *Butterworth's Australian Legal Dictionary* defines debt as:

> **1.** An obligation to pay. **2.** A sum of money owed: *Director of Public Prosecutions v. Turner* [1973] 3 All ER 124 at 126. **A debt is a sum of money which is now payable or will become payable in the future by reason of a present obligation**: *debitum in prasenti, solvedum in futuro*. It is a right which a creditor has to enforce by taking action in a court of law against the person who owes the money (the debtor). (Emphasis added)

29. A presently existing debt is a present obligation under an existing agreement, such as a loan or lease, to make payments now and/or into the future that gives rise to a right to an income stream. In *Norman v. FCT* (1963) 109 CLR 9, Windeyer J indicated that the right does not depend on the debts for each payment due under the agreement being presently due and payable. In comparing an existing legal right and a mere expectancy or possibility of a future right he observed:

> It does not in my view depend on whether or not there is a debt presently recoverable by action because presently due and payable. A legal right to be paid money at a future date is, I consider, a present **chose in action**, at all events when it depends upon an existing contract on the repudiation of which an action could be brought for anticipatory breach.[11]

30. And per Toohey and Gaudron JJ in *Booth v. Federal Commissioner of Taxation* (1987) 164 CLR 159:

> …it is not right, at least so far as leases in existence at the time of the assignments are concerned, to speak of a mere expectancy. In the case of each such lease, there was present property in respect of which the assignor had, as against the lessee, a present right to rent payable at future dates in accordance with the terms of each lease.[12]

31. Present property in the form of a right to payments due over the term of an agreement is property that falls within the meaning of an 'interest'. This present property answers the description of an interest in or under a debt.

[11] *Norman v. FCT* (1963) 109 CLR 9 per Windeyer J at 26.
[12] *Booth v. Federal Commissioner of Taxation* (1987) 164 CLR 159 at 176.

Contingent debt

32. *Butterworth's Australian Legal Dictionary* defines contingent debt as:

> A debt, based on an existing obligation, that will or might arise at a future time or if a future event occurs.

33. A contingent debt can be viewed as a subset of present debt. A contingent debt is also based on there being a presently existing obligation to make a payment. However the actual payment is not made until the occurrence of some future event.

34. An example of a contingent debt is an amount that may become payable under a royalty agreement where the payment is subject to conditions such as production levels or a relevant index reaching a certain level.

Future debt

35. *Butterworth's Australian Legal Dictionary* defines future debt as:

> **1. A debt that might or might not be incurred in the future and not arising out of any existing contract or obligation.** 2. A debt incurred under an existing contract or obligation but not payable until some time in the future. For example, an instalment of purchase price under a contract for sale which is not due to be paid until a future time: *Re Wills; Will v. Abram* [1993] ACL Rep 50 FC 48. Future debts are provable in bankruptcy: (CTH) Bankruptcy Act 1966 s 82. (Emphasis added)

36. For the purposes of this Ruling we take the meaning given in the highlighted text above as the one to be applied to the term 'future debt'. Therefore a future debt is a debt that does not arise out of any existing contract or obligation. In other words the prospect of a debt arising is a mere expectancy, however, once the debt arises, it is property. This is the case where the *right* to receive rent is dependent on the exercise or grant of an option for some future lease.[13]

37. A future debt is a right to future property as specified in example 6 to regulation 40-5.02 and is an interest in or under a debt for the purposes of subregulation 40-5.09(1).

[13] *Booth v. Federal Commissioner of Taxation* (1987) 164 CLR 159 at 170.

Assignment of property

38. If what is assigned is the legal title to property (real property or choses in possession) then the assignment may be a taxable supply.[14]

39. If an equitable interest in property is assigned, but legal title remains with the assignor, then the assignment may be a taxable supply or an input taxed supply if done in the form of a security for example by way of a charge or mortgage. If the property assigned is subject to a lease or other arrangement, the transfer of a beneficial interest in the property to another entity will not alter the supplier/recipient relationship in that arrangement for GST purposes.

40. If there is an assignment of the income stream arising under an agreement then this is a financial supply. It does not matter that the assignment is expressed in terms of all right, title and interest in the receivables agreement.

41. The property involved in an assignment of the entire right, title and interest in a receivables agreement is those contractual and property rights capable of being assigned.[15] Usually these rights represent the benefits under an agreement with the main benefit being the right to receive the income stream.

42. In addition to the dominant right to receive the income stream other things covered by the assignment might include all right, title and interest in or to related documents, records and accounts, payments and enforcement action, any ancillary rights and all rights in the underlying asset which may be the subject of the particular receivables agreement. The assignment of the right to the income stream together with the related rights is a composite supply.

43. The supply is composite[16] because the supply of the related rights is considered integral, ancillary or incidental to the dominant part of the assignment of the right to the income stream. The supply of the related rights is not seen as an end in itself but rather it merely contributes to or complements the use or enjoyment of the dominant part of the supply. The composite supply is a financial supply of an interest in or under a debt on which no GST liability arises.

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[14] Subject to the requirements of section 9-5 being satisfied.
[15] *Halsbury's Laws of Australia*, Carter J.W., Contract, 110-3048.
[16] A more detailed explanation of a composite supply is contained in GSTR 2001/8.

Alternative view

44. There is an alternative view that many assignments involve the transfer of underlying property and not just the mere assignment of an income stream. On this view an equitable assignment of the property transfers beneficial ownership of the property which carries with it the rights to any income stream. For example the actual loan that the lender has made, together with the rights under the mortgage are equitably assigned which carries with it the right to payments due under the loan agreement.

45. On this interpretation the transferor of leased equipment would be treated as disposing of the equipment and the assignee would, following that equitable assignment, be treated as making the supply under the lease on an ongoing basis.

46. The Commissioner considers the better view to be that, for the reasons set out at paragraphs 38 to 43, an equitable assignment of property, with legal title remaining with the assignor, does no more than transfer those contractual and property rights capable of being assigned. In this instance the supply under the lease remains with the assignor.

Methods of assignment of rights to an income stream

47. There are two methods of assignment:

- a **legal assignment**; and
- an equitable assignment.

48. Neither method need take any particular form. However, in both instances, a clear expression of an intention to assign is required and the subject matter of the assignment must be identified with certainty.[17]

49. Certain formalities are required for an effective legal assignment. These are set out as follows:

(a) the assignment must be absolute and not purport to be by way of charge;

(b) it must be in writing under the hand of the assignor; and

(c) express notice must be given to the debtor in writing.[18]

If an assignment fails to comply with these requirements it may be effective as an equitable assignment.

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[17] *Tailby v. Official Receiver* (1888) 13 App Cas 523 at 528 and 543.
[18] D Skapinker, *The Principles of Equity*, 2nd ed, P. Parkinson, Chapter Thirteen: 'Equitable Assignments', Lawbook Co, Pyrmont, NSW, 2003, 477.

50. Judicial consideration of what constitutes 'a clear expression of intention' has seen the formulation of the words 'all right title and interest in and to …' gain acceptance for making the assignment. Barwick J in *Shepherd v. Federal Commissioner of Taxation* (1965) 113 CLR 385 considered that these words 'are appropriate to the assignment of a chose in action as distinct from its ultimate produce'.[19]

51. Provided there has been an effective legal or equitable assignment of a presently existing right to an income stream there will be the supply of an interest in or under a debt. This is a financial supply under item 2 of subregulation 40-5.09(3) provided the requirements of subregulation 40-5.09(1) are also satisfied.

Partial assignment of rights to an income stream

52. Where there has been an effective assignment of only part of the right to an income stream this is also the supply of an interest in or under a debt.

Assignment of a right to a future income stream

53. An assignment of a right to a future income stream, wholly or in part, is not strictly possible but provided there is valuable consideration present, a purported assignment will be an agreement to assign the right when it comes into existence. The agreement will take effect as an equitable assignment of the right immediately upon the assignor acquiring ownership of the right and provided it is capable of being identified with certainty as the one to which the agreement to assign applied.[20]

54. Until such time as the right has crystallised the assignee of future property for valuable consideration is regarded in equity as having a prospective interest in the property to be acquired which has some of the incidents of a proprietary right.[21] Therefore the interest that an assignee acquires under an agreement to assign a future right to an income stream, for valuable consideration, is a right to future property. The supply of an interest in this future property is the provision of an interest in or under a debt and a financial supply under item 2 of subregulation 40-5.09(3), provided the requirements of subregulation 40-5.09(1) are also satisfied.

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[19] *Shepherd v. Federal Commissioner of Taxation* (1965) 113 CLR 385 at 391.
[20] *Tailby v. Official Receiver* (1888) 13 App Cas 523 at 533 and 543.
[21] *Federal Commissioner of Taxation v. Everett* (1978) 78 ATC 4595; (1978) 9 ATR 211; (1978) 38 FLR 26 - Federal Court.

Alternative view

55. There is an alternative view that a purported assignment of a future debt, which is mere expectancy, cannot be characterised as the provision or creation of an interest in a debt. This is on the basis that there can be no interest 'recognised at law or in equity as property in any form',[22] in a debt which has not yet come into existence. This view assumes that it is not possible to have a proprietary interest, at law or in equity, in something that does not exist.

56. According to the alternative view, the better analysis is that there is an assignment of the actual debt when it comes into existence, rather than an assignment of a 'future debt'. This is said to be consistent with the effect of a purported assignment of future property, which has no legal effect, but equity treats as an agreement to assign with the assignment taking effect immediately upon the property coming into existence.

57. The Commissioner considers the better view to be that, for the reasons set out at paragraphs 53 to 54, an agreement to assign future debts involves the provision of an interest in a debt. In any case, whichever analysis is adopted, the assignment is a financial supply.

Liability for GST

58. Since an assignment of the rights under a receivables agreement does not change the underlying supply, the assignor retains any liability to remit GST in respect of that underlying supply. The assignor retains the obligation to make the underlying supply and any GST liability in respect of that supply.

Example 1 – obligation to remit GST

59. *RentCo leases a number of commercial properties to tenants. It assigns the income streams from the leases to OpportunistCo for valuable consideration. RentCo must continue to remit GST on the rental payments for the duration of the relevant leases as it is the supplier under the lease agreements.*

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[22] As prescribed by regulation 40-5.02.

Making provision for the GST liability

60. At law the obligation to remit GST on an underlying taxable supply where the associated income stream has been assigned may exist for a number of years depending on the term of the particular agreement that gives rise to the income stream.[23] The assignor may have to take this into account at the time that the right to the income stream is assigned.

61. In practice the assignor may ensure that there are sufficient funds available to it to meet this obligation either by a partial assignment of the right excluding an amount to meet the assignor's obligation to pay GST or by reflecting the GST component in the pricing methodology adopted for the assignment of the right.[24]

Attribution of GST on the original supply

62. The basic attribution rules are set out in Division 29. The rules differ according to whether the entity accounts for GST on the cash or the non-cash basis. Special rules also apply to the attribution of GST on supplies, made by non-cash basis suppliers, that are made progressively or for a period.[25]

63. The assignor of the debt is the entity that makes the supply to which the debt relates. Whether the payment by the debtor is made to the assignor (as **trustee** for the assignee) or to the assignee directly, the assignor continues to be liable for any GST on the supply.

64. The supply is made for consideration, and, depending on the nature of the supply, may be a taxable supply if all the other criteria in section 9-5 are met. The supplier is required to remit GST in accordance with section 29-5 which provides that GST on a supply is attributed to the tax period in which an invoice is issued or consideration is received, whichever occurs earlier. It does not specify that the supplier needs to issue the invoice, nor that the supplier must receive the consideration.

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[23] Subject to Division 156.
[24] See also paragraphs 75 and 76 regarding the income tax consequences of a partial assignment.
[25] Division 156.

Cash basis

65. Where an entity assigns an income stream arising from taxable supplies that the entity makes and the entity accounts on the cash basis, GST is attributed to the tax period in which consideration is received for the supply, but only to the extent that the consideration is received in the tax period.[26] The amount of GST payable is 1/11th of the amount paid to either the assignor or the assignee depending on the arrangements that exist following the assignment.

Non-cash basis

66. Subject to the operation of Division 156 which is about progressive or periodic supplies, for an entity operating on a non-cash basis, attribution occurs at the earlier of the tax period in which any of the consideration for the supply is received, or an invoice is issued.[27]

67. Division 156 modifies the basic attribution rules to attribute GST as if each progressive or periodic component of the supply were a separate supply.[28] In the case of a lease Division 156 has the effect of treating each periodic or progressive component as if it were a separate supply for attribution purposes which is then accounted for in accordance with section 29-5.[29] The GST is attributed to the tax period in which a separate invoice for a particular component is issued or when the periodic or progressive payment for that particular component is received.

Effect of notice of an assignment to the debtor

68. For an effective legal assignment there is a mandatory requirement to give express notification of the assignment to the debtor. Notification may also be given of an equitable assignment in order to preserve priorities, for example in an insolvency, and to prevent the debtor from obtaining a valid discharge of the debt from the assignor.[30] Where notification is given, the debtor is bound to make payments to the assignee from that point onwards.

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[26] Subsection 29-5(2).
[27] Subsection 29-5(1).
[28] For a full discussion on the effects of Div 156 see GSTR 2000/35.
[29] See paragraph 59 of GSTR 2000/35.
[30] D Skapinker, *The Principles of Equity*, 2nd ed, P. Parkinson, Chapter Thirteen: 'Equitable Assignments', Lawbook Co, Pyrmont, NSW, 2003, paragraph.[1356].

Issuing invoices notifying an obligation to pay

69. In a practical sense this raises an issue as to which entity is to provide an invoice, for example, where separate invoices are issued for each progressive or periodic component of a lease. An invoice is defined in section 195-1 to mean 'a document notifying an obligation to make a payment'. What this means is that the document must not only inform the recipient of a presently existing obligation to make a payment but also the amount of that payment.[31] It is also desirable that an invoice contains sufficient information to identify or ascertain the date of issue, the supplier and the recipient.[32]

70. In paragraph 32 of GSTR 2000/34 it is accepted that a third party can issue an invoice notifying an amount payable by one party to another. Therefore, where the assignor and assignee agree, it will be sufficient for the assignee to issue an invoice to the debtor to trigger attribution of the GST payable by the assignor provided, the requirements set out in paragraph 68 above are satisfied.

Issuing tax invoices

71. A similar issue arises for tax invoices in cases where the underlying supply that gives rise to the income stream is a taxable supply. The responsibility for issuing a tax invoice rests with the supplier except in circumstances where the Commissioner has determined that recipient created tax invoices may be issued.[33]

72. The fact that the supplier has assigned the right to the income stream does not relieve that entity of the obligation to provide a tax invoice to the recipient of the supply within 28 days if there is a request from the recipient to do so.[34]

73. Alternatively an existing document may already satisfy the requirements for a valid tax invoice for a supply or all components of a supply.[35] For example a lease agreement and supporting schedule setting out the price of each component of the supply can satisfy the requirements.[36]

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[31] See GSTR 2000/34 at paragraph 29.
[32] See GSTR 2000/34 at paragraph 35.
[33] Section 29-70.
[34] Subsection 29-70(2).
[35] See paragraphs 68 to 70 in GSTR 2000/17.
[36] See paragraphs 68 to 70 in GSTR 2000/17.

Bad debts and assignments

74. Where entities account for GST on a basis other than the cash basis a decreasing adjustment is available under Division 21 of the GST Act if debts are either written off as bad or they have been outstanding for 12 months or more. However, once a debt has been assigned, the provisions of Division 21 cannot operate.[37]

75. This is because there has been a legal or equitable assignment of the debt to which Division 21 applies and it is no longer payable to the assignor. Similarly no decreasing adjustment is available to the assignee because:

- the assignee is not the supplier in the underlying transaction that gave rise to the right to the debt or income stream; and
- in any event, the assignment of the debt is a financial supply that does not attract GST.

Interaction between GST and Income Tax in a partial assignment

76. In some instances an entity may assign only a portion of the right to an income stream to another entity. In these circumstances it could be the case that the assignor incurs an income tax liability on that portion of the income stream that the assignor retains.

77. Section 17-5 of the *Income Tax Assessment Act 1997* (ITAA 1997) provides that the GST amount payable on a taxable supply is not assessable or exempt income of an entity. This applies to a partial assignment of a right in which the assignor retains an amount to meet its obligation to pay GST so that that amount is not included in the assessable income of the assignor.

Assignment of various types of income streams

78. Each of the income streams arising from the contracts discussed below is either debt, contingent debt, or future debt. The right to the income stream is property of a kind that fits the description of an interest in a matter mentioned in item 2 of subregulation 40-5.09(3).

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[37] See paragraphs 45 to 47 in GSTR 2000/2.

Loan agreements

79. A loan is a financial supply under item 2, as the creation or provision of an interest in or under a credit arrangement or right to credit, provided the requirements of subregulation 40-5.09(1) are satisfied. The loan agreement also gives rise to a presently existing right to receive payments of principal and interest from the debtor. This presently existing right to the income stream is property and an interest for the purposes of regulation 40-5.02.

80. Assignment of this property is the disposal[38] of an interest in or under a debt for GST purposes. The disposal of the interest, by way of assignment, is a financial supply if the requirements of subregulation 40-5.09(1) are satisfied.

Finance and operating leases

81. Whilst there are differences between finance and operating leases these are not relevant in determining the GST consequences of an assignment of the right to the income stream. Under either type of lease the agreement typically provides for periodic payments, over the term of the lease, from the lessee plus the residual amount in the case of a finance lease. Both the periodic payments and the residual amount, in the case of a finance lease, are part of the income stream, the right to which exists under the particular lease agreement.

82. The residual amount under a finance lease is recovered by the lessor, in the first instance, by offering the asset for public sale. Under the lease agreement the lessee is required to meet any shortfall in the sale proceeds up to the residual amount and may receive anything in excess of this amount. The payment of a shortfall or receipt of an excess does not have any GST consequences for the assignment of the right to the income stream.[39]

83. Both types of lease agreement are for a taxable supply provided the requirements of section 9-5 are satisfied. Each lease agreement also gives rise to a presently existing right to the income stream that is property and therefore an interest for the purposes of regulation 40-5.02. Assignment of this property is the disposal of an interest in or under a debt for GST purposes. The disposal of this interest is a financial supply if the requirements of subregulation 40-5.09(1) are satisfied. Disposal of this interest does not affect the obligation of the assignor to remit GST on the taxable supply by way of the lease.

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[38] Regulation 40-5.04 includes under disposal an assignment.
[39] For a discussion of the GST consequences in connection with the original supply by way of a lease see GSTD 2001/2 and GSTR 2003/11.

Residential/commercial property leases

84. A real property lease gives rise to a presently existing right to receive rental payments for the term of the lease. Typically leases also include options for further leases upon conclusion of the current term. A commercial property lease is a taxable supply provided the requirements of section 9-5 are satisfied.

85. The presently existing right to the income stream under a current lease is property and therefore an interest for the purposes of regulation 40-5.02. The right to an income stream under leases yet to come into existence, because it is dependent on the exercise of an option, is future property. Future property is also an interest for the purposes of regulation 40-5.02.

86. Assignment or an agreement to assign these forms of property is the disposal of an interest in or under a debt for GST purposes. The disposal of the interest is a financial supply if the requirements of subregulation 40-5.09(1) are satisfied. Disposal of this interest does not affect the obligation of the assignor to remit GST on the taxable supply by way of a commercial property lease.

Hire purchase agreements

87. For GST purposes some hire purchase agreements are treated as wholly taxable supplies. Other agreements, where there is a separate charge for the credit component that is disclosed to the recipient of the goods, partly constitute financial supplies.[40] The difference is irrelevant for the purposes of determining the GST consequences of an assignment of the right to the income stream arising from either type of agreement.

88. A hire purchase agreement gives rise to a presently existing right to receive regular 'hire' payments from the debtor. In some circumstances receipt of the final payment may be contingent on the option to purchase the goods being exercised. Even though a payment may be subject to a contingency it is still part of the presently existing right to the income stream under the hire purchase agreement. The right to the income stream is property and therefore an interest for the purposes of regulation 40-5.02.

89. Assignment of this property is the disposal of an interest in or under a debt for GST purposes. The disposal of the interest is a financial supply if the requirements of subregulation 40-5.09(1) are satisfied. Disposal of this interest does not affect the obligation of the assignor to remit GST on the taxable component of a supply by way of a hire purchase agreement.

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[40] Item 8 Subregulation 40-5.09(3).

Royalties

90. A royalty agreement or licence is a taxable supply where the requirements of section 9-5 are satisfied. The agreement or licence may provide for payment of royalties that is subject to contingences such as certain production levels being reached or commodity prices achieving certain levels. Even though payments may be subject to contingencies, the right to the income stream, under an existing agreement or licence, is a presently existing right that is property and an interest for the purposes of regulation 40-5.02.

91. Assignment of this property is the disposal of an interest in or under a debt for GST purposes. The disposal of the interest, by way of assignment, is a financial supply if the requirements of subregulation 40-5.09(1) are satisfied. Disposal of this interest does not affect the obligation of the assignor to remit GST on the taxable supply by way of the royalty agreement or licence.

Credit card receivables

92. A credit card receivable arises from a financial supply under item 2 of subregulation 40-5.09(3), interest in or under a credit arrangement or right to credit, provided the requirements of subregulation 40-5.09(1) are satisfied. A feature of a credit card receivable is that it is usually paid off in a relatively short timeframe. Accordingly arrangements for the transfer of this type of debt may provide for continual assignments, under a master agreement, of the right to debts as they arise.

93. Each assignment of credit card receivables, under such an arrangement, will represent presently existing debts incurred by cardholders. The right to these debts is property and an interest for the purposes of regulation 40-5.02.

94. Assignment of this property is the disposal of an interest in or under a debt for GST purposes. The disposal of the interest, by way of assignment, is a financial supply if the requirements of subregulation 40-5.09(1) are satisfied.

Debt factoring

95. Debt factoring and invoice discounting arrangements commonly involve the assignment of debts by a business to a factor or discounter on a once off or regular basis for an immediate payment. Essentially the difference between the arrangements is that under debt factoring the factor provides additional services of managing the sales

ledger which are referred to as sales accounting services. Both arrangements may be regarded as debt factoring arrangements.

96. Debt factoring arrangements have gained popularity largely because they allow for improved cash flow management and can be a more flexible and cheaper alternative to traditional funding sources. Under the arrangements, book debts are sold to the debt factor for a price that is less than the face value of the debts. The difference between the face value and the purchase price is referred to as a 'discount fee'. Under a factoring arrangement an administration fee is also charged for provision of the sales accounting service. Sales accounting services entail administration of the sales ledger and collection functions by the factor.

97. Under both debt factoring and invoice discounting the assignment of the book debts is the provision of an interest in or under a debt under item 2 in the GST regulations. The assignment is for consideration being the discounted purchase price of the book debts and is therefore a financial supply so long as the other requirements in subregulation 40-5.09(1) are satisfied.

98. Sales accounting services, on the other hand, are not financial supplies.[41] As this service is usually provided for a separate fee it will constitute a taxable supply provided the other requirements in section 9-5 are satisfied. Consideration for the sales accounting service may be represented by a reduction in the price paid to acquire the debts. In these circumstances the sales accounting fee is taken to have been 'netted off' against the consideration for the debts and represents consideration for the taxable supply.

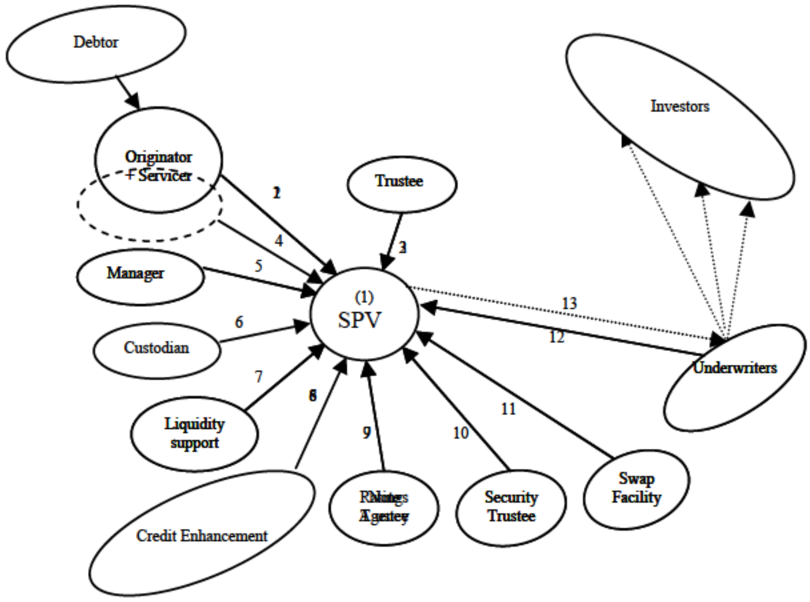
Securitisation

99. A securitisation arrangement is a complex set of transactions involving a number of entities in the establishment and ongoing maintenance of the arrangement. The major transactions in a typical securitisation arrangement have already been described simply at paragraph 21. They include the sale of a pool of rights to income streams to an SPV and the issue of debt securities (or notes) by that entity to fund the acquisition of the asset pool.

Typical transactions

100. The following diagram and related discussion sets out those elements and transactions common to the majority of securitisation arrangements.

[41] Item 14 Regulation 40-5.12.



101. The GST consequences associated with each of the following transactions are contained in Schedule 1.

Step 1: Creation of the special purpose vehicle (SPV)

102. The majority of securitisation arrangements are conducted through a trust program. The general framework of the program is established under a master trust deed. The master trust deed does not actually create any trusts but provides for the establishment of an unlimited number of trusts, referred to as special purpose vehicles (SPV), as the need arises. A separate SPV is created for each series of notes issued.

103. Individual SPVs are created by issue of a notice of creation of a trust. The notice of creation of a trust is accompanied by a series notice which sets out the detailed terms of the trust by incorporating or amending the master trust deed as required for that particular series. The trustee of the trust is usually a professional trustee company specialising in these activities. The trust is an entity pursuant to section 184-1.

Step 2: Assignment of receivables pool to the SPV

104. To initiate the securitisation process a pool of homogeneous assets such as mortgages, finance lease or hire purchase contracts (collectively referred to as receivables agreements) is created. The **originator** may take the assets from its own portfolio or purchase them from a third party.

105. Once the pool has been established it is offered for sale to the SPV, for that series, by issue of a sale notice according to the terms of an associated purchase agreement. The sale effects an equitable assignment of an interest in the rights to the pooled assets.

106. The SPV finances the purchase by issuing debt securities backed by the pool of assets which are the sole assets of the SPV. The consideration provided is usually based on the net present value of the income stream.

Step 3: Provision of trustee services

107. The trustee has a general power to exercise all rights, powers and discretions over the assets of the trust but is subject to direction by the manager in the exercise of such powers. Without limiting the general powers, a number of specific powers are usually set out in the transaction documents.[42]

Step 4: Provision of servicer services

108. The **servicer** is often the originator or an entity to which this function has been outsourced by the originator. Under the transaction documents the functions performed by the servicer typically include:

- managing and servicing the features and facilities available under the receivables agreements;
- the ongoing collection of payments deriving from the pooled assets;
- responding to customer enquiries;
- managing delinquent accounts; and
- the remittance of these funds to the trustee.

109. The first four of these functions are performed by the originator in the ordinary course of the day to day administration of the receivables agreements. The issue that arises is whether the originator can be performing these services for the SPV (for the servicer fee) if the SPV has not assumed the role of the supplier under the agreements.

110. Because the servicer (originator) is still obligated to perform some functions as the supplier, either itself or under an outsourcing arrangement, it will incur costs that it would normally have recovered from the income stream it has now assigned. Part of the servicer fee is therefore to reimburse the servicer for the income foregone as a

[42] See item 2 of Schedule 1 attached.

consequence of the assignment. It is not consideration for any supply that the servicer provides to the SPV. We consider that this part of the servicer fee is additional consideration for the assignment of the rights to the income streams.[43]

111. Where the supplier (originator) has outsourced the servicer functions and the SPV pays the third party directly the payments are still additional consideration for the assignment of the right to the income streams as the SPV is meeting the costs of the supplier (originator).[44]

112. As the SPV is the beneficial owner of the income stream any management of delinquent accounts will be a service provided to the SPV. The portion of the servicer fee that relates to the supply of management of delinquent accounts is consideration for a taxable supply. An entitlement to a reduced input tax credit may arise for the SPV if the acquisition of services in relation to the management of delinquent accounts is covered by item 17, debt collection services, in regulation 70-5.02.[45]

Step 5: Provision of manager services

113. The duties and obligations of the trust manager are usually set out in the Master Trust Deed. The manager has full and complete powers of management over the day to day operations of the trust and the administration and servicing of assets and liabilities not already dealt with by the servicer.[46]

Step 6: Provision of custodial services

114. Custodial services are provided to ensure the safekeeping of the associated documentation in relation to the assets acquired by the SPV. Custodial services may be provided by the originator, in its capacity as servicer, or another entity.

115. The custodian is required to hold the documents in accordance with procedures contained in the relevant transaction document. The procedures usually require the custodian to keep the pooled documents separate from other similar documents and to report on movements of the documents.[47]

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[43] See item 3 of Schedule 1 attached.
[44] See item 4 of Schedule 1 attached.
[45] See paragraphs 424 to 442 of GSTR 2003/D3 for a more detailed explanation of what acquisitions are covered by the item.
[46] See item 5 of Schedule 1 attached.
[47] See item 6 of Schedule 1 attached.

Step 7: Provision of liquidity support

116. Under a liquidity facility, the liquidity facility provider agrees to make advances to the trustee for the purpose of funding certain income shortfalls in the trust up to predetermined limits.[48]

Step 8: Provision of credit enhancement

117. Credit enhancement, where used, is to protect investors by absorbing credit losses, thereby improving the credit rating and marketability of the securities issued by the SPV.

118. As investors are not normally prepared to take on all the credit risks associated with a pool of loans, asset-backed securities are usually provided with credit enhancement by a third-party bank or insurance company and sometimes by the originator. The most common forms of credit enhancement are:

- **irrevocable letters of credit**;
- **third party insurance**;
- **spread accounts**;
- **cash collateral accounts**;
- **over-collateralisation**; and
- **senior subordinated structures**.

Different forms of enhancement may be combined in a single arrangement.

Step 9: Provision of ratings agency services

119. The **ratings agency** assesses the credit rating of the originator/servicer, the quality of the underlying assets, and the structure of the arrangement. This assessment will affect the extent of the credit enhancement provided or arranged, especially if the rating of the assets is lower than that desired by potential investors.[49]

Step 10: Provision of security trustee services

120. The SPV is normally required to give a mortgage or other securities over its assets to a **security trustee**, which holds the benefit of the securities on trust for all of the **chargees** as set out in the transaction documents from time to time. The usual form of security

[48] See item 7 of Schedule 1 attached.
[49] See item 8 of Schedule 1 attached.

provided to the security trustee is a floating charge over the trust assets.

121. The charge secures the trustee's obligations under the various transaction documents and in relation to the notes issued by the SPV. The grant of an interest in or under the charge over the SPV's assets is a financial supply under item 3 of subregulation 40-5.09(3) if the other requirements in subregulation 40-5.09(1) are satisfied.[50]

Step 11: Provision of swap facilities

122. Interest rate swap agreements are primarily entered into so that notes issued at a fixed or variable interest rate can be matched with income at an equivalent rate from the asset pool no matter what rate of interest is being paid on mortgages that make up the pool.[51] Currency swaps may also be entered into if the notes are offered offshore. The swaps are generally governed according to industry standards such as those contained in an International Swaps and Derivatives Association Inc (ISDA) Master Agreement as amended by any supporting schedules.[52]

Step 12: Provision of underwriting services

123. There are two forms of underwriting. One only requires the underwriter to use their best endeavours to place the securities with investors while the other requires the underwriter to take up any securities they have not been able to place up to an agreed number. The first is referred to as best endeavours underwriting and the underwriter is a financial supply facilitator in relation to the supply of the securities by the SPV. The underwriter's supply of services is a taxable supply to the SPV.[53]

124. In the other form of underwriting the placement service is complimented by an agreement to take up unsold securities. The agreement to take up the unsold securities is the supply of an interest in securities (or a derivative) as described at items 10 or 11 in the table in subregulation 40-5.09(3). This is a financial supply if the other requirements in subregulation 40-5.09(1) are satisfied. In this circumstance the underwriting fee is consideration for both a taxable supply of placement services and a financial supply.[54]

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[50] See item 9 of Schedule 1 attached.
[51] Mallesons Stephen Jacques, *Australian Finance Law*, 4th ed, LBC Information Services, Pyrmont, NSW, 1999.
[52] See item 10 of Schedule 1 attached.
[53] See item 11 of Schedule 1 attached.
[54] See item 11 of Schedule 1 attached.

Step 13: Supply of debt securities

125. Different classes of notes may be issued. The general arrangement is that there is one class of senior notes and one class of subordinated notes. In the case of mortgage backed loans special classes of notes may be issued to cover the repayment of a redraw granted by the originator. When an originator funds a redraw it is entitled to be reimbursed by the SPV. The SPV may finance the reimbursement in a number of ways one of which is the issue of different classes of notes.

126. The right to receive payments of interest under subordinate notes is subordinated to the rights of holders of the redraw funding securities, if any, and to the rights of senior note holders.

127. **Definitive notes** are not normally issued and it is common for one or more **global notes** of each class of offered notes to be recorded by book entry registration with a **depository**. Payments on the offered notes may be made through a paying agent on the nominated payment dates to those entities in whose name the notes are registered.

128. The notes may be offered for sale in Australia or on overseas capital markets. An offering in an offshore market may result in the notes being GST-free if the requirements of section 38-190 are satisfied.

Is the trustee of the SPV carrying on an enterprise?

129. The meaning of carrying on an enterprise for GST purposes is the same as the definition of that expression in the *A New Tax System (Australian Business Number) Act 1999* (ABN Act).[55] The trustee of the SPV in a securitisation arrangement will be carrying on an enterprise if its activity or activities are done:

- in the form of a business;
- in the form of an adventure or concern in the nature of trade; and
- on a regular or continuous basis, in the form of a lease, licence or other grant of an interest in property.[56]

130. The SPV in a securitisation arrangement is established for commercial reasons. Investors are invited to invest in professionally managed debt securities issued by the trustee. The relationship between investors, the trustee and manager is governed by a trust deed, a prospectus and the *Corporations Act 2001*.

[55] Paragraph 3 GSTD 2000/8.
[56] See paragraph 16 in MT 2000/1.

131. The trust incurs regular expenses for the provision of support to it by a variety of contracted service providers. Investors receive regular payments of interest and principal amounts under the debt securities program offered by the trust.

132. These activities are done in the form of a business and the trustee is therefore carrying on an enterprise and can register for GST purposes.[57]

Assignment of security interests[58]

133. In addition to the assignment of the right to the income stream many securitisation arrangements also transfer an interest in any underlying security, associated with the income stream, to the SPV. Security interests in this context range from traditional securities such as mortgages to title retention[59] arrangements encompassed in a hire purchase or lease. There may also be related security interests including guarantees, indemnities, insurance cover or any other mortgage, lien, charge, encumbrance, hypothecation, preferential right or trust arrangement.

134. Under the arrangements set out in the transaction documents the supply of the interest in these securities subsists until such time as the SPV perfects its title to the security interests or the SPV is terminated. Termination will usually occur at the time when all of the SPV's obligations to its creditors have been satisfied. In the meantime the SPV is able to perfect its title to the security interests, under an irrevocable power of attorney[60], if there is a **title perfection** event for example where the originator becomes insolvent. Following termination the transaction documents usually provide for the SPV to offer to transfer the relevant interests back to the originator.

135. The supply of the interest in the underlying security occurs at the same time as the supply of the right to the income stream. Where legal title to the underlying security remains with the originator until such time as there is a title perfection event, any consideration provided at the time of the assignment relates solely to the provision of the right to the income stream.

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[57] See also example 14 in MT 2000/1.
[58] See also earlier discussion at paragraphs 38 to 46 on Assignment of property.
[59] Title retention is largely nominal and serves simply as a security for payment of the rental. Wappett CC and Allan DE, *Securities over Personal Property*, Butterworths, Chatswood, NSW, 1999, 261.
[60] This is indicative of the fact that there may have only been an agreement to transfer the interest to the SPV beforehand. This technique avoids the need to register security interests and associated costs if assignment of the security had occurred. See R Cranston, *Principles of Banking Law*, Clarendon Press, Oxford, 1997 at 405/6.

Debt securities (borrowings) and the Financial Acquisitions Threshold

136. The SPV makes only financial supplies. These supplies are usually input taxed, or may be GST-free if they satisfy the requirements of section 38-190. Where an entity makes financial supplies that are input taxed the financial acquisitions threshold[61] (FAT) is relevant in determining whether an entitlement to input tax credits exists in relation to acquisitions for the purpose of making the input taxed supplies.

137. Entities that make financial supplies in the course of conducting their enterprise without exceeding the financial acquisitions threshold are entitled to input tax credits for acquisitions and importations that relate to making those financial supplies.[62]

138. A financial acquisition is an acquisition that relates to the making of a financial supply (other than a financial supply consisting of a borrowing). 'Borrowing' is defined in section 195-1 and includes the raising of funds by the issue of a bond, debenture, discounted security or other document evidencing indebtedness.

139. The debt securities issued by an SPV therefore constitute a borrowing. The implications for the SPV are that its financial acquisitions do not include acquisitions to the extent they relate to the issue of the debt securities.[63] The SPV also makes acquisition supplies[64] of interests in debt when it acquires the right to the income stream by way of assignment for consideration. The acquisitions that relate to this acquisition supply are financial acquisitions and will be included in the calculation of the FAT.

140. If the SPV exceeds the FAT it will be denied full input tax credits on its acquisitions to make input taxed financial supplies, but not on acquisitions related to GST-free financial supplies it makes. It is anticipated that most SPVs will exceed the FAT and therefore will only be entitled to reduced input tax credits on acquisitions mentioned in regulation 70-5.02.

141. The following table analyses acquisitions and indicates which are financial acquisitions for the purposes of the FAT.

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[61] Section 11-15 and Division 189 refer.
[62] See GSTR 2003/9.
[63] See paragraph 61 of GSTR 2003/9.
[64] See paragraph 110 of GSTR 2002/2.

Acquisition	'relates to'	Financial Acquisition
Acquisitions for the creation of the SPV (trust)	Provision of an interest in or under the capital of a trust	Yes
Acquisitions for the equitable assignment of the right to the income stream	Disposal/acquisition supply of an interest in a debt	Yes
Manager services	1) acquisition supply of interest in the debts; and 2) provision of securities (borrowing)	Subject to apportionment[65]
Trustee services	1) acquisition supply of interest in the debts; and 2) provision of securities (borrowing)	Subject to apportionment[66]
Custodian services	Acquisition supply of interest in the debts	Yes
Servicer services	Acquisition supply of interest in the debts	Yes
Ratings agency service	Provision of securities (borrowing)	No
Underwriting services (best endeavours)	Provision of securities (borrowing)	No
Security Trustee services	Provision of interest in a charge	Yes
Liquidity support facilities	Provision of credit facilities (borrowing)	No
Swap facilities	Provision of an interest in a derivative	Yes

Definitions

Assignee

142. The recipient of an interest in property by means of an assignment.

Assignor

143. The transferor of an interest in property by means of an assignment.

[65] An assessment will have to be made as to the extent the acquisition relates to making each supply. See example 6 in GSTR 2003/9.
[66] See example 6 in GSTR 2003/9.

Cash Collateral Account

144. An account in which a deposit equal to the necessary credit enhancement is held for the benefit of holders of the securities. The account will be drawn down if and when losses occur. Cash advances are made to this account by the originator or a third party lender.

Charges

145. The transaction documents will specify which entities are Chargees and will typically include:

- the Security Trustee in relation to its rights (held in its own right or for the benefit of other Chargees) under the Security Trust Deed;
- the Noteholders in relation to the rights under the Class of Notes held by them;
- any Approved Seller in relation to any relevant Accrued Interest Adjustment;
- the Chargor in relation to its rights as Trustee under the Trust Documents;
- the Manager in relation to its rights as Manager under the Trust Documents;
- the Servicer in relation to its rights as Servicer under the Trust Documents;
- any Support Facility Provider in relation to its rights under each Support Facility to which it is a party; or
- any swap provider under a Hedge Agreement in relation to its rights under that Hedge Agreement.

Chose in Action

146. An intangible personal property right recognised and protected by the law, which has no existence apart from the recognition given by the law, or which confers no present possession of a tangible object, such as the right to payment under a loan contract or the promise to pay on a bill of exchange.

Definitive notes

147. A document provided to each lender which evidences or acknowledges indebtedness to that lender for the amount recorded on the face of the note.

Depository

148. An entity which holds a financial product, or a beneficial interest in a financial product, in trust for, or on behalf of, a client or another person nominated by the client.

Equitable assignment

149. An assignment, which is not a legal assignment, but by which the creditor assigns the benefit of a contractual right owed by the debtor to an assignee by demonstrating an intention to assign.

Global Note

150. A document executed by a corporation issuing or raising debt which evidences or acknowledges indebtedness to each person named for the amounts noted in a register, rather than an individual document being provided to each lender.

Irrevocable Letter of Credit

151. A documentary credit or standby letter of credit containing a definite undertaking by the issuing bank that it will perform its obligations according to the mode of realisation of the credit, provided that the stipulated documents are presented and the terms and conditions of the credit are complied with.

Originator

152. The party that sells the assets to the SPV or, if the securitisation arrangement generates its own assets as an originator of loans etc, the party that locates (originates) the assets.

Over-Collateralisation

153. A situation where the value of the underlying assets in the pool exceeds the amount of the securities issued. In such arrangements the excess collateral must be maintained at a level sufficient to provide the agreed amount of credit enhancement. If the value declines below that level the enhancer must fill the gap with new collateral.

Ratings Agency

154. A recognised rating agency that determines the rating of the securities issued.

Security Trustee

155. The program vehicle will normally be required to give a mortgage or other securities over its assets to a security trustee, who holds the benefit of the securities on trust for all the investors from time to time.

Senior Subordinated Structures

156. An arrangement that involves the issue of several classes or tranches of securities of varying seniority. As long as losses do not exceed the face value of the subordinated class(es), the senior class(es) will be repaid in full. The most junior (usually unrated) tranche is often retained by the originating institution.

Servicer

157. This entity, often the originator, continues to manage the assets (as the servicer) after they have been acquired by the program vehicle.

Spread Account

158. A first loss account that is established to absorb credit losses ahead of any securities on issue. Funding of the account is either by initial deposit from the originating institution or a third party, and/or accumulated from excess income over and above the expenses of the transaction that would otherwise flow back to the originating institution.

Legal Assignment

159. An absolute written assignment in which notice of the assignment of the benefit of a contractual right owed is given to the debtor.

Third Party Insurance

160. A form of insurance cover against the first portion of default risk.

Title perfection

161. Action taken by the entity with a beneficial interest in the assets to obtain legal title in and to the assets following a title perfection event as defined.

Trustee

162. In structures that use a trust as the SPV, this will normally be a professional trustee company. Its role is usually fairly limited, with the day-to-day administration of the SPV being carried out by the manager.

Your comments

163. We invite you to comment on this draft Goods and Services Tax Ruling. Please forward your comments to the contact officer(s) by the due date.

Due date:	**14 January 2004**
Contact officer:	**John Challinor**
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Detailed contents list

164. Below is a detailed contents list for this draft Goods and Services Tax Ruling:

Commissioner of Taxation
19 November 2003

Previous drafts:
Not previously released in draft form

Related Rulings/Determinations:
GSTD 2000/8; GSTD 2001/2; GSTR 1999/1; GSTR 2000/2; GSTR 2000/17; GSTR 2000/34; GSTR 2000/35; GSTR 2001/8; GSTR 2002/2; GSTR 2003/9; GSTR 2003/11; GSTR 2003/D3; MT 2000/1

Subject references:
- acquisition
- apportionment
- assignment
- debt
- disposal
- financial acquisitions threshold
- financial supply
- input taxed supply
- interest
- interest in
- interest under
- provision
- taxable supply

Legislative references:
- ANTS(GST)A99 9-5
- ANTS(GST)A99 11-15
- ANTS(GST)A99 Div 21
- ANTS(GST)A99 Div 29
- ANTS(GST)A99 29-5
- ANTS(GST)A99 29-5(1)
- ANTS(GST)A99 29-5(2)
- ANTS(GST)A99 29-70
- ANTS(GST)A99 29-70(2)
- ANTS(GST)A99 38-190
- ANTS(GST)A99 Div 156
- ANTS(GST)A99 184-1
- ANTS(GST)A99 Div 189
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- ITAA 1997 17-5
- TAA 1953 37
- A New Tax System (Australian Business Number) Act 1999
- Bankruptcy Act 1966
- Corporations Act 2001
- ANTS(GST)R99 40-5.02
- ANTS(GST)R99 40-5.04
- ANTS(GST)R99 40-5.09(1)
- ANTS(GST)R99 40-5.09(3)
- ANTS(GST)R99 40-5.12
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Case references:
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- Booth v. Federal Commissioner of Taxation (1987) 164 CLR 159
- Director of Public Prosecutions v. Turner [1973] 3 All ER 124
- Norman v FCT (1963) 109 CLR 9
- Olson v Dyson (1969) 120 CLR 365
- Shepherd v. Federal Commissioner of Taxation (1965) 113 CLR 385
- Tailby v. Official Receiver (1888) 13 App Cas 523

- Valance v. The Queen (1961) 108 CLR 56
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Schedule 1

GST classification of supplies in a securitisation arrangement

Item	**Type of supply**	**Description**	**Form of consideration**	**GST Treatment of Supply**	**RITC available for Acquisition**
1	Disposal/ acquisition of interest in debt	Equitable assignment of the right to the income stream to the SPV	Net present value of Assets	Input taxed Reg 40-5.09 - item 2	Not applicable
2	Trustee services	General and specific powers and duties of the trustee as set out in the transaction documents.	Fees	Taxable Section 9-5 + reg 40-5.12, item 15	Yes Reg 70-5.02, item 29 provided services are in accordance with the duties set out in the transaction documents.
3	Servicer (performed by originator of loans)	Servicing of loan assets including loan management and debt collection services	Fees	Partly taxable and partly considerati on for a financial supply Section 9-5 + reg 40-5.12, item 13,	Yes - depending on the nature of the services provided. Reg 70-5.02, Item 17 - debt collection services
4	Servicer (performed by third party)	Servicing of loan assets including loan management and debt collection services	Fees	Partly taxable and partly considerati on for a financial supply Section 9-5 + Reg 40-5.1 2, item 13,	Yes - depending on the nature of the services provided. Reg 70-5.02, Item 17 - debt collection services

Item	Type of supply	Description	Form of consideration	GST Treatment of Supply	RITC available for Acquisition
5	Management services	A full description of the manager's duties and powers is set out in the transaction documents and includes: • 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; • Co-ordinating the issue of debt securities by the SPV.	Fees	Taxable Section 9-5 + Reg 40-5.12, item 12	Yes Reg 70-5.02, item 9 to the extent it relates to activities in preparing for the issue of securities; Item 23(b) management of the trusts investment portfolio.
6	Custodian Services	• Separation and safe storage of relevant documents. • Provision of reports on the movement of relevant documents. • Retrieval of relevant documents.	Fees	Taxable Section 9-5 + 40-5.12, item 16	No Reg 70-5.02, item 29 excludes provision of custodial services in relation to money and document security.
7	Liquidity support facilities	Provision of liquidity facilities for advances to the trustee to cover certain income shortfalls in the trust	Commitment Fees + Interest on draw downs	Input taxed reg 40-5.09, item 2	Not applicable

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