Australian Government
Australian Taxation Office

Financial services

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If you feel that the guidance in this issues register does not fully cover your circumstances, or you are unsure how it applies to you, you can seek further assistance from us.

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Introduction

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1.1. What is the meaning of hire purchase for GST purposes?

Non-interpretative – other references (see paragraphs 190–202 of GSTR 2000/29 *Goods and services tax: attributing GST payable, input tax credits and adjustments and particular attribution rules made under section 29-25*)

For GST purposes, hire purchase has the meaning given by section 995-1 of the *Income Tax Assessment Act 1997* (ITAA 1997). This provision defines a hire purchase agreement to mean a contract for the hire of goods where:

- the hirer has the right or obligation to buy the goods
- the charge that is or may be made for hire, together with any other amount payable under the contract (including an amount to buy the goods or to exercise an option to do so), exceeds the price of the goods
- title to the goods does not pass to the hirer until the option to purchase is exercised, or
- there is an agreement for the purchase of goods by instalments where title in the goods does not pass until the final instalment is paid.

Essentially, hire purchase agreements represent financing arrangements which facilitate the sale and purchase of goods. Accordingly for GST, hire purchase agreements will be treated as a sale of goods and a separate supply of finance.

Supplies of goods or credit under hire purchase agreements are not progressive supplies under Division 156 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

1.2. Which component of a hire purchase agreement entered into before 1 July 2012 is a financial supply and which component is subject to GST?

Non-interpretative – other references:

- paragraph 80 of GSTR 2004/4 *Goods and services tax: assignment of payment streams including under a typical securitisation arrangement*
- line numbers C24 and C25 of GSTR 2002/2 *Goods and services tax: GST treatment of financial supplies and related supplies and acquisitions*.

Under amendments made to the GST Regulations which became effective from 1 July 2012, the supply of the credit component will no longer be treated as a financial supply.

This applies to all hire purchase agreements entered into from 1 July 2012. For hire purchase agreements entered into before 1 July 2012 the previously existing rules apply.

The total amount payable by a recipient under a hire purchase agreement is typically made up of a principal component (that is, the amount financed) and a credit component (that is, the terms and charges). The principal component usually represents the price of the goods financed and the credit component represents the interest and associated fees and charges payable by the recipient.

Sometimes the amount financed under a hire purchase agreement includes other amounts such as registration, stamp duty and insurance which are paid by the financier on behalf of the recipient. These are not taxable supplies made by the financier to the recipient.

GST is payable on the amount of the principal component represented by the taxable supply of goods under the agreement. For hire purchase agreements entered into before 1 July 2012 the credit component will not be subject to GST if it is provided separately and disclosed to the recipient of the goods under item 8 in the table in subsection 40-5.09(3) of the GST Regulations.

The charge is 'disclosed' to the recipient of the goods for the purpose of item 8 if in the hire purchase agreement:

- the dollar amount of the credit charge
- the interest rate
- the formulas used to calculate the amount of the credit charge, or
- any other relevant information sufficient to work out the amount of the credit charge.

is made known to the recipient.

Therefore, even in the period up until 30 June 2012 if the credit component is not disclosed to the recipient, the entire hire purchase agreement (principal and credit) is subject to GST.

Under the new law all supplies of goods or credit made under a hire purchase agreement entered into on or after 1 July 2012 are fully taxable regardless of whether the interest charge is separately identified and disclosed.

This new law will not impact on amendments made on or after 1 July 2012 to an existing hire purchase agreement entered into before 1 July 2012 if the amendments do not give rise to a new hire purchase agreement.

1.3. When will entitlement to an input tax credit arise for the recipient of goods in a hire purchase agreement?

For source of ATO view, refer to paragraphs 211 and 212 of GSTR 2000/29 *Goods and services tax: attributing GST payable, input tax credits and adjustments and particular attribution rules made under section 29-25*.

For hire purchase agreements entered into before 1 July 2012:

- if the recipient accounts for GST on a cash basis and the item purchased is a creditable acquisition, the recipient is entitled to an input tax credit on the principal component, in a tax period, to the extent of payment made
- where the recipient accounts for GST on a non-cash basis and the item purchased is a creditable acquisition, the recipient is entitled to the entire input tax credit on the principal, in the tax period in which the invoice is received or in which any payment is made, whichever is earlier.

For hire purchase agreements entered into on or after 1 July 2012:

- if the recipient accounts on a cash basis the recipient is entitled to claim input tax credits on a creditable acquisition for both the principal and credit component as if they are accounting for GST on a non cash basis
- where the recipient accounts for GST on a non-cash basis and the item purchased is a creditable acquisition, the recipient is entitled to the entire input tax credit on both the principal and the credit component in the tax period in which the invoice is received or in which any payment is made, whichever is earlier.

The recipient is required to hold a tax invoice in order to claim input tax credits, irrespective of whether the recipient accounts on a cash basis or non-cash basis.

1.4. When will liability for GST arise for the financier of goods in a hire purchase agreement?

For source of ATO view, refer to paragraphs 209 and 210 of GSTR 2000/29 *Goods and services tax: attributing GST payable, input tax credits and adjustments and particular attribution rules made under section 29-25*.

If the financier accounts for GST on a cash basis, GST payable on a taxable supply under the hire purchase agreement will be attributable to the tax periods in which payments are received for the supply.

If the financier accounts for GST on a non-cash basis, GST is payable upon issuing the invoice or receiving payment for the supplies made under the hire purchase agreement, whichever is earlier. If a tax invoice is issued in the tax period in which a hire purchase agreement is entered into, all the GST payable on the taxable part of the agreement is attributable to the tax period in which the agreement is entered into.

Goods and Services Tax Ruling GSTR 2000/29 provides further information on the attribution of GST under section 29-25 of the GST Act.

1.5. Are there special rules for the phasing in of input tax credits on motor vehicles?

Non-interpretative – straight application of the law

Section 20 of the *A New Tax System (Goods and Services Tax Transition) Act 1999* (Transition Act) relates to the phasing in of input tax credits for new motor vehicles. The phasing in of input tax credits for new motor vehicles will apply to purchasers, including those who purchase under hire purchase agreements. This means that purchasers will not be entitled to input tax credits for new motor vehicles acquired under hire purchase agreements entered into prior to 23 May 2001.

A purchaser will be entitled to input tax credits for a new motor vehicle acquired under a hire purchase agreement entered into on or after 23 May 2001. This entitlement to an input tax credit will be reduced where the motor vehicle is partly for a creditable purpose or the car depreciation limit is exceeded.

The phasing in rules do not apply to new motor vehicles purchased by financiers for re-supply under hire purchase agreements, as they are holding the new motor vehicles as trading stock in accordance with subsection 20(4)(a) of the Transition Act. The provision also does not apply to second hand vehicles in accordance with subsection 20(4)(b) of the Transition Act.

1.6. What constitutes (a) an invoice and (b) a tax invoice for a hire purchase agreement?

For source of ATO view, refer to paragraphs 67-68 of GSTR 2013/1 *Goods and services tax: tax invoices*.

Where a hire purchase agreement notifies the recipient of an obligation to make a payment, this document will be treated as an invoice. This is in accordance with the definition of an invoice mentioned in section 195-1 of the GST Act.

A document, including a hire purchase agreement, will be a tax invoice if it meets the requirements of subsection 29-70(1), including containing information about the taxable supply and other matters.

Further guidelines on tax invoice requirements may be found in GSTR 2013/1 *Goods and services tax: tax invoices*

1.7. What are the GST implications for hire purchase agreements entered into before 1 July 2000?

Non-interpretative – other references (see paragraphs 200 to 203 of GSTR 2000/29 *Goods and services tax: attributing GST payable, input tax credits and adjustments and particular attribution rules made under section 29-25*).

A hire purchase agreement entered into before 1 July 2000 will not be subject to GST. This is because a hire purchase agreement is a one-off supply of goods and not a progressive supply.

1.8. How do I know which part of my hire purchase agreement is subject to GST?

For all hire purchase agreements entered into on and from 1 July 2012 the credit component will no longer be treated as a financial supply and will therefore be subject to GST.

For source of ATO view, refer to paragraph 213 of GSTR 2000/29 *Goods and services tax: attributing GST payable, input tax credits and adjustments and particular attribution rules made under section 29-25*.

For hire purchase agreements entered into before 1 July 2012 GST is payable on the principal component of your hire purchase agreement. Therefore, you will need to distinguish between the principal and credit components for GST attribution.

Some financiers have chosen to include an actual repayment schedule showing principal and credit components and instalment repayments.

As noted in the answer to question 1.2 above for hire purchase agreements entered into on or after 1 July 2012, all components supplied under the hire purchase agreement will be treated as taxable supplies.

1.9. What are the GST implications when the recipient under a hire purchase agreement obtains title to the property, either by making the final payment under the agreement or by making an early pay out of the agreement?

For source of ATO view, refer to paragraphs 208-213 of GSTR 2000/29 *Goods and services tax: attributing GST payable, input tax credits and adjustments and particular attribution rules made under section 29-25*. There will be no GST implications where the financier and recipient account for GST on a non-cash basis.

For hire purchase agreements entered into before 1 July 2012 where the financier accounts for GST on a cash basis, the financier will be required to remit 1/11th of the final payment of the principal or the early pay out to us. If the recipient accounts for GST on a cash basis, the recipient will be entitled to an input tax credit of 1/11th of the final payment of the principal or the early pay out.

For hire purchase agreements entered into on or after 1 July 2012 where the financier accounts for GST on a cash basis, there will be no change to the attribution rules and the financier will be required to remit 1/11th of the final payment to us.

For hire purchase agreements entered into on or after 1 July 2012, recipients however will be able to attribute GST on input tax credits in the same way as if they accounted for GST on a non-cash basis. This means that the recipient will generally have been entitled to claim the full input tax credit up front upon entering into the agreement. If so, there will be no GST implications when the recipient obtains title to the property by making the final payment or an early pay out of the agreement.

Where a rebate for the interest component is provided by the financier on account of the early pay out of an agreement entered into on or after 1 July 2012, adjustments may be required. A financier that accounts for GST on a non-cash basis may be required to make a decreasing adjustment and the recipient an increasing adjustment in accordance with Division 19 of the GST Act in respect of the GST paid and the input tax credits already claimed.

1.10. What are the GST implications if the recipient defaults in making payment under the agreement and the financier repossesses the goods?

For source of ATO view, refer to paragraph 215 of GSTR 2000/29 *Goods and services tax: attributing GST payable, input tax credits and adjustments and particular attribution rules made under section 29-25.*

For hire purchase agreements entered into before 1 July 2012 where the financier and recipient account for GST on a non-cash basis they may be required to make adjustments in accordance with Division 19 of the GST Act. The adjustments will be in respect of the GST previously paid and the input tax credits already claimed. The financier will be required to make a decreasing adjustment and the recipient an increasing adjustment.

Where they account on a cash basis there may not be any GST implications.

For hire purchase agreements entered into on or after 1 July 2012 the above adjustments may also be applicable in respect of the GST previously paid and the input tax credits already claimed on both the principal and the credit components.

Any subsequent sale, lease or hire purchase agreement in respect of the repossessed goods will be treated as a new transaction and the normal GST rules will apply.

1.11. What are the GST implications if the repossessed goods are subsequently sold to a third party, and the agreement provides for any excess to be refunded to the recipient or any shortfall to be recouped from the recipient?

For source of ATO view, refer to:

- paragraphs 215 and 216 of GSTR 2000/29 *Goods and services tax: attributing GST payable, input tax credits and adjustments and particular attribution rules made under section 29-25*
- paragraphs 72-106A of GSTR 2000/19 *Goods and services tax: making adjustments under Division 19 for adjustment events*.

The financier and recipient will be required to make adjustments under Division 19 of the GST Act, irrespective of whether they account for GST on a cash basis or a non-cash basis.

These adjustment events arise because the repayment of excess by the financier to the recipient, or the recoupment of shortfall by the financier from the recipient, gives rise to a change to the original contract price of the agreement.

Where the sale proceeds exceed the residual value

A decreasing adjustment event arises for the financier where the sale proceeds exceed the residual value and the financier pays the difference to the recipient. There is an increasing adjustment for the recipient.

Where the sale proceeds are less than the residual value

An increasing adjustment event arises for the financier where the sale proceeds are less than the residual value and the recipient is required to make a shortfall payment. There is a decreasing adjustment for the recipient.

1.12. Will Division 105 of the GST Act apply if the financier sells the repossessed goods to a third party in satisfaction of a debt owed to the financier by the recipient?

Non-interpretative – straight application of the law

No. Division 105 will not apply. Division 105 makes a creditor liable for GST on supplies of property 'owned by a debtor' where the supply is in satisfaction of a debt owed to the creditor. However, under hire purchase agreements the goods are not 'owned' by the debtor (recipient) – title to the goods is with the financier until final payment.

1.13. What are the GST implications if a hire purchase agreement is restructured during the currency of the agreement, where the outstanding balance is refinanced as a new hire purchase agreement?

For source of ATO view, refer to paragraphs 215 and 216 of GSTR 2000/29 *Goods and services tax: attributing GST payable, input tax credits and adjustments and particular attribution rules made under section 29-25*.

Where the original hire purchase agreement was entered into before 1 July 2012 and the new hire purchase agreement was also entered into before 1 July 2012 the following applies:

- Where the financier and recipient account for GST on a non-cash basis, they may be required to make adjustments under Division 19 of the GST Act. The financier would be required to make a decreasing adjustment and the recipient an increasing adjustment.
- There would be an adjustment to the principal component where the credit component was originally disclosed and the principal component has changed.
- However, there is no adjustment if the restructured agreement relates only to a change to the credit component and the credit component was originally disclosed.

Where the original hire purchase agreement was entered into before 1 July 2012 and the new hire purchase agreement was entered into on or after 1 July 2012 the following applies:

- For the new agreement all components of the supply will be subject to GST.

- In respect of the original agreement, where the financier and recipient account for GST on a non-cash basis, they may be required to make adjustments under Division 19 of the GST Act. The financier would be required to make a decreasing adjustment and the recipient an increasing adjustment.
- There would be an adjustment where the credit component was originally disclosed and the principal component has changed.
- Where the financier and recipient account on a cash basis there may not be any GST implications.

Where both the original hire purchase agreement and the new hire purchase agreement were entered into on or after 1 July 2012 the following applies:

- In respect of the original agreement, where the financier and recipient account for GST on a non-cash basis, they may be required to make adjustments under Division 19 of the GST Act. The financier would be required to make a decreasing adjustment and the recipient an increasing adjustment.
- Where the financier and recipient both account on a cash basis there may be no GST implications for the financier. However, if the recipient attributed the GST credit as if they accounted for GST on a non-cash basis they may be required to make adjustments under Division 19 of the GST Act.

1.14. What are the GST implications if a hire purchase agreement is terminated during its currency and the financier subsequently grants a loan to enable the recipient to purchase the goods with title passing to the recipient?

For source of ATO view, refer to paragraph 215 of GSTR 2000/29 *Goods and services tax: attributing GST payable, input tax credits and adjustments and particular attribution rules made under section 29-25*

For hire purchase agreements entered into before 1 July 2012 and on or after 1 July 2012 where the financier and recipient account for GST on a non-cash basis, they may be required to make adjustments under Division 19 of the GST Act in relation to the termination of the agreement. The financier will be required to make a decreasing adjustment and the recipient an increasing adjustment.

For hire purchase agreements entered into before 1 July 2012 where the financier and the recipient account on a cash basis there will be no GST implications.

For hire purchase agreements entered into on or after 1 July 2012 where the financier and recipient both account on a cash basis there may be no GST implications for the financier, however, if the recipient attributed the GST credit as if they accounted for GST on a non-cash basis they may be required to make adjustments under Division 19 of the GST Act.

The supply of the loan by the financier is an input taxed financial supply. Where the recipient uses the loaned funds to purchase the goods the normal attribution rules apply.

1.15. If the recipient accounts for GST on a cash basis, how does the recipient calculate entitlement to input tax credits where the agreement shows the principal and interest components separately, but the instalments do not?

For source of ATO view, refer to:

- paragraph 212 of GSTR 2000/29 *Goods and services tax: attributing GST payable, input tax credits and adjustments and particular attribution rules made under section 29-25*
- paragraphs 28-31 of TR 93/16 *Income tax: application of the Rule of 78 or other methods in calculating the interest component of instalments paid under a fixed term loan or extended credit transaction*.

For hire purchase agreements entered into before 1 July 2012 if you account on a cash basis and you pay only part of the consideration during a tax period, subsection 29-10(2)(b) attributes a corresponding part of input tax credit to that tax period. The method used to calculate the input tax entitlement must accurately compute the amount of GST or input tax credit applicable to each instalment or part instalment. The calculation method should exclude that part of the instalment relating to any input taxed component of the supply and any part that was not subject to GST.

Where the amount of interest and principal is known

If the financier provides regular accounts or statements that show the principal and interest components of the instalments, the recipient must always use that statement as the basis for calculating input tax credits in the relevant tax period.

Where the amount of interest and principal is not known

If the recipient does not know the interest and principal components of the instalment, the recipient must take reasonable steps to find out these details from the financier. Where the financier does not provide these details but provides the method of calculation of interest, the recipient should use that method of calculation.

If neither the interest component nor the method of calculation of interest can be found out from the financier, estimating the interest component is acceptable. Division 240 of the ITAA 1997 provides a specific method to determine the amount of notional interest for income tax purposes. In respect of new hire purchase agreements entered into, it is acceptable if the method described in Division 240 is used for estimating interest for GST purposes. In respect of existing hire purchase agreements, if the recipient has used the guidelines provided in Taxation Ruling TR 93/16 in estimating the interest, the recipient should continue the same methodology adopted until the hire purchase agreement ceases.

The entitlement to input tax credit arises only for items on which GST has been paid. Therefore, in order to determine the recipient's input tax credit entitlement in a tax period, the recipient will be required to exclude the portion representing the interest component from the instalment payments made in that tax period. Also, if the instalment payments made in that tax period include any fees and charges that are not subject to GST, such as stamp duty or registration fees, it is necessary to exclude the portion representing such fees and charges. The entitlement to input tax credit to the recipient will be 1/11th of the resultant principal amount of the instalments paid in that tax period.

For hire purchase agreements entered into on or after 1 July 2012 the supply of the principal and interest components are taxable regardless of whether the interest component is separately identified and disclosed. If you account on a cash basis you will be able to attribute your input tax credits on the hire purchase as though you do not account on a cash basis and will have access to input tax credits upfront. The entitlement to input tax credits will be 1/11th of the principal and interest components as set out in the agreement excluding any fees and charges that are not subject to GST.

1.16. Can a recipient who accounts for GST on a cash basis pay the GST liability up front in a tax period and claim that whole payment as input tax credit in the same tax period?

Non-interpretative – straight application of the law

For hire purchase agreements entered into before 1 July 2012:

No. For any payment made in a tax period, the recipient can only claim 1/11th of that payment in that tax period as an input tax credit. The GST Act does not allow for the treatment of a part payment as one that solely represents the GST payable on the value of a taxable supply.

Subsection 29-10(2)(b) of the GST Act states that a recipient who accounts on a cash basis and provides part of the consideration in a tax period is entitled to an input tax credit in that tax period, but only to the extent of the consideration provided.

Where a recipient who accounts for GST on a cash basis makes an instalment payment, that payment represents part of the price of the goods financed under the hire purchase agreement. Accordingly, 1/11th of the price represents the GST payable. It is not possible to pay the GST up front.

For hire purchase agreements entered into on or after 1 July 2012 the recipient will be able to attribute GST on input tax credits in the same way as if they accounted for GST on a non-cash basis. This means that the recipient will generally be entitled to claim the full input tax credit upfront.

1.17 If a recipient accounts for GST on a non-cash basis, how does the recipient calculate entitlement to input tax credits where the hire purchase agreement is for the acquisition of a car that is subject to the car input tax credit limit under section 69-10 of the GST Act?

Non-interpretative – straight application of the law

Where the GST inclusive value of a car acquired exceeds the car limit, and the other requirements of section 69-10 of the GST Act are met, the amount of input tax credits on the acquisition will be limited to no more than 1/11th of the car limit. The car limit is $57,466 for the 2012–13 financial year. Therefore, the maximum amount of input tax credits available for a car subject to the car input tax credit limit will be $5,224 in 2012–13.

A recipient that accounts for GST on a non-cash basis will be entitled to the maximum entitlement of $5,224 in the earlier of the tax period in which any of the consideration is provided or the tax period in which an invoice is issued.

1.18 If a recipient accounts for GST on a cash basis, how does the recipient calculate entitlement to input tax credits where the hire purchase agreement is for the acquisition of a car that is subject to the car input tax credit limit under section 69-10 of the GST Act?

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found here.

1.19. What is a chattel mortgage?

Non-interpretative

A chattel mortgage is a security over chattels (that is, movable articles of property) held by the lender giving the lender recourse against the chattel in the event of default by the borrower.

1.20. How does a chattel mortgage arrangement differ from a hire purchase agreement?

Non-interpretative

Under a chattel mortgage, the purchaser takes title in the chattel from the time of purchase. The purchaser (the borrower) finances the purchase price (or part thereof) of the chattel by way of a loan, obtained from a lender, and applies the borrowed funds as payment to the supplier for the chattel.

A hire purchase agreement is a contract for the hire of goods where the title in the goods remains with the financier and does not pass to the purchaser until either the option to purchase is exercised by the purchaser, or the final instalment is paid. This is a fundamental difference between a chattel mortgage arrangement and a hire purchase agreement.

For GST purposes, hire purchase has the meaning given by section 995-1 of the *Income Tax Assessment Act 1997* (ITAA 1997). Refer to Issue 1.1 above for the definition of hire purchase.

1.21. When will an entitlement to an input tax credit arise for a purchaser in relation to the acquisition of a chattel under a chattel mortgage?

For source of ATO view, refer to paragraphs 14, 18, 32 and 35 of GSTR 2000/29 *Goods and services tax: attributing GST payable, input tax credits and adjustments and particular attribution rules made under section 29-25*

Where the purchaser accounts for GST on a non-cash basis and the chattel purchased is a creditable acquisition, the purchaser is entitled to the entire input tax credit in the tax period in which the invoice is received or any payment is made, whichever is the earlier. This is similar to that under a hire purchase agreement.

If the purchaser accounts for GST on a cash basis and the chattel purchased is a creditable acquisition, the purchaser is entitled to the entire input tax credit in the tax period in which the purchaser applies the borrowed funds to make full payment of the chattel at the time of acquisition. For an explanation of the GST treatment and entitlement to an input tax credit for an acquisition made under a hire purchase agreement by a recipient accounting on a cash basis, please refer to question 1.3 of the Frequently Asked Questions on Hire purchase agreements.

The purchaser must hold a tax invoice at the time of lodging its BAS to claim an input tax credit in a tax period, irrespective of whether the purchaser accounts for GST on a cash or non-cash basis.

Loans

(a) added, (u) updated, (w) withdrawn

Issue no	Issue	Date
2.1	Are loans subject to GST?	1 April 2019(u)
2.2	Are mortgage repayments subject to GST?	1 April 2019(u)
2.3	Are establishment fees subject to GST?	1 April 2019(u)
2.4	Are interest-free loans subject to GST?	1 January 2001
2.5	Are administrative costs charged by the lender for the interest-free loan subject to GST?	1 April 2019(u)
2.6	What are the GST implications when goods are repossessed?	1 January 2001

2.1. Are loans subject to GST?

Non-interpretative – other references (see GSTR 2002/2 *Goods and services tax: GST treatment of financial supplies and related supplies and acquisitions*).

No GST is payable on a loan. It is a financial supply under item 2 in the table in subsection 40-5.09(3) of the GST Regulations and is input taxed.

2.2. Are mortgage repayments subject to GST?

Non-interpretative – other references (see GSTR 2002/2 *Goods and services tax: GST treatment of financial supplies and related supplies and acquisitions*)

No. A principal repayment of a mortgage is a consequence of a financial supply and no GST will be payable. A repayment of interest on the mortgage represents consideration for a financial supply and no GST will be included.

This is in accordance with item 3 in the table in subsection 40-5.09(3) of the GST Regulations.

2.3. Are establishment fees subject to GST?

Non-interpretative – other references (see GSTR 2002/2 *Goods and services tax: GST treatment of financial supplies and related supplies and acquisitions*)

No. Establishment fees are consideration for a financial supply and will not be subject to GST. The provision, acquisition or disposal of an interest in a debt is a financial supply under item 2 in the table in subsection 40-5.09(3) of the GST Regulations.

2.4. Are interest-free loans subject to GST?

Non-interpretative – other references (see GSTR 2002/2 *Goods and services tax: GST treatment of financial supplies and related supplies and acquisitions*)

An interest-free loan is a financial supply, where the loan is provided with the obligation to repayment. No GST is payable. Division 72 of the GST Act will not have any application where the interest-free loan is characterised as a financial supply.

2.5. Are administrative costs charged by the lender for the interest-free loan subject to GST?

Non-interpretative – other references (see GSTR 2002/2 *Goods and services tax: GST treatment of financial supplies and related supplies and acquisitions*)

The administrative costs of setting up the interest-free loan are for a financial supply and are not subject to GST.

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

2.6. What are the GST implications when goods are repossessed?

Non-interpretative – other references (see paragraphs 215 and 216 of GSTR 2000/29 *Goods and services tax: attributing GST payable, input tax credits and adjustments and particular attribution rules made under section 29-25*)

When a creditor repossesses goods and then sells them to a third party in order to recover its debt, the creditor would be liable for GST on the sale, not the debtor.

The supply by the creditor has the same GST status as if it was made by the debtor. This is in accordance with section 105-5 of the GST Act.

Bank accounts

(a) added, (u) updated, (w) withdrawn

Issue no	Issue	Date
3.1	When I deposit or withdraw money do I have to pay GST?	1 April 2019(u)
3.2	Is interest paid to, or received from, a bank subject to GST?	1 April 2019(u)
3.3	Are account keeping fees subject to GST?	1 April 2019(u)
3.4	Is a dishonoured cheque fee subject to GST?	1 April 2019(u)
3.5	Is the on-charging of a dishonoured cheque fee subject to GST?	1 April 2019(u)
3.6	Is a late payment penalty subject to GST?	1 January 2001
3.7	Are financial institutions duty (FID) and bank account debits tax (BAD or BADT) subject to GST?	18 April 2013
3.8	What are the GST implications for the following transactions in relation to credit cards:	1 January 2001

3.1. When I deposit or withdraw money do I have to pay GST?

Non-interpretative – other references (see GSTR 2002/2 *Goods and services tax: GST treatment of financial supplies and related supplies and acquisitions*)

The provision of an interest in an account by an ADI is a financial supply under item 1 in the table in subsection 40-5.09(3) of the GST Regulations. A deposit to or withdrawal from the account is not consideration for the provision of an interest in the account and therefore not subject to GST.

3.2. Is interest paid to, or received from, a bank subject to GST?

Non-interpretative – other references (see GSTR 2002/2 *Goods and services tax: GST treatment of financial supplies and related supplies and acquisitions*)

Interest paid to, or received from, a bank is not subject to GST if it is the consideration for the provision, acquisition or disposal of an interest in or under a bank account or credit account under items 1 and 2 respectively in the table in subsection 40-5.09(3) of the GST Regulations.

3.3. Are account keeping fees subject to GST?

Non-interpretative – other references (see GSTR 2002/2 *Goods and services tax: GST treatment of financial supplies and related supplies and acquisitions*)

No. Account keeping fees are not subject to GST. An account keeping fee is related to operating a bank account or credit account and is a financial supply under items 1 and 2 respectively in the table in subsection 40-5.09(3) of the GST Regulations.

3.4. Is a dishonoured cheque fee subject to GST?

Non-interpretative – other references (see GSTR 2002/2 *Goods and services tax: GST treatment of financial supplies and related supplies and acquisitions*)

GST is not payable on a dishonoured cheque fee. A dishonoured cheque fee charged by an Australian ADI (authorised deposit taking institution) in the course of its banking business is input taxed under item 1 in the table in subsection 40-5.09(3) of the GST Regulations.

3.5. Is the on-charging of a dishonoured cheque fee subject to GST?

This Issue is now superseded by Goods and Services Tax Determination GSTD 2013/1 *Goods and services tax: when a payment for a supply fails, is a failed payment fee charged by the supplier consideration for a supply?* GSTD 2013/1 was published on 27 February 2013.

This issue previously stated:

Non-interpretative – straight application of the law

The payment made in relation to the on-charge of a dishonoured cheque fee is consideration for the supply of an interest under item 2 in the table in subsection 40-5.09(3) of the GST Regulations, to the extent that the customer has a contractual obligation (express or implied) to make good the loss (the dishonoured cheque fee) incurred by the supplier.

Such a transaction will be a financial supply for the purposes of subsection 40-5(2) of the GST Act, to the extent that the further requirements of subsection 40-5.09(1) of the GST Regulations are met.This analysis is not altered by the fact that the supplier increases the value of the on-charge over and above that which was originally levied on them.

Where no contractual obligation exists, the payment of the on-charged dishonoured cheque fee is a payment made for no supply.

3.6. Is a late payment penalty subject to GST?

Non-interpretative – other references:

- GSTR 2002/2 *Goods and services tax: GST treatment of financial supplies and related supplies and acquisitions*
- GSTR 2000/19 *Goods and services tax: making adjustments under Division 19 for adjustment events*

This will depend on the facts of each case.

Where the late payment penalty is consideration for a financial supply (for example, a supply of an interest in a credit arrangement), there is no need for the supplier to account for GST for that supply. A charge for late payment penalty that is consideration for a financial supply is not an adjustment event. Where the late payment penalty charge is commercial compensation based on the time value of money (that is, interest), this will indicate that it is consideration for a financial supply.

Where a supplier makes a taxable supply and the recipient incurs a late payment penalty that is not consideration for a financial supply, and that has the effect of changing the consideration, the late payment penalty will give rise to an adjustment event.

Please refer to paragraph 29 of GST Ruling GSTR 2000/19 for further discussions on late payment charges and adjustment events.

3.7. Are financial institutions duty (FID) and bank account debits tax (BAD or BADT) subject to GST?

Non-interpretative – straight application of the law.

FID and BAD (or BADT) are not subject to GST. They were excluded from GST by the Treasurer's determination under Division 81 of the GST Act.

FID has been abolished since 1 July 2001.

BAD (or BADT) has been abolished since 1 July 2005.

3.8. What are the GST implications for the following transactions in relation to credit cards:

Non-interpretative – straight application of the law

(i) Retail sales

Under the cash basis of accounting, the retailer will account for GST on a credit card sale in the tax period in which it receives the signed credit card voucher. When a payment is made (for example, by telephone or through the internet), the consideration is provided and received when the cardholder gives the card number or other required details. (Refer to paragraph 24 of GST Ruling GSTR 2000/23.)

Under the non-cash basis of accounting, the retailer will account for GST on a credit card sale in the tax period in which any of the consideration is received. If an invoice is issued before any of the consideration is received, the retailer will account for GST in the tax period in which the invoice is issued.

This is in accordance with section 29-5 of the GST Act.

(ii) Payment of merchant fees

Generally, financial institutions will charge retailers a commission known as a merchant fee, for use of the credit card system. The commission is calculated on the GST inclusive price of the sale made by the retailer. The financial institution deducts its commission before paying the retailer the remainder of the money from the credit card sale.

The retailer will be entitled to an input tax credit for the GST included in the merchant fee in the tax period in which they receive the tax invoice, provided it is a creditable acquisition under section 11-5 of the GST Act.

Example

If the retailer makes credit card sales of $110,000, the retailer's GST liability will be $10,000. If the merchant fee is 0.55%, the retailer will be charged $605 by the financial institution which will include $55 of GST. The financial institution will deduct $605 from the $110,000 and remit the remainder of the money to the merchant.

(iii) Payment of credit card debt

Payment of a credit card debt is a consequence of a financial supply and no GST will be payable.

Securities transactions

(a) added, (u) updated, (w) withdrawn

Issue no	Issue	Date
4.1	What are the GST implications when you buy or sell shares?	1 April 2019(u)
4.2	Is brokerage on share transactions subject to GST?	1 April 2019(u)
4.3	Is stamp duty on the purchase or sale of shares subject to GST?	7 September 2012(u)
4.4	If I buy or sell shares in the course or furtherance of an enterprise I carry on, will I be entitled to input tax credits for GST paid on brokerage?	1 April 2019(u)
4.5	If I buy or sell shares, but not in the course or furtherance of an enterprise I carry on: (a) will I be entitled to input tax credits for GST on brokerage? (b) if I am not entitled to input tax credits, is the GST paid recognised as a cost for capital gains tax purposes?	1 January 2001
4.6	If I carry on an enterprise as a share trader and have a turnover of more than $75,000: (a) am I required to register for GST purposes? (b) should I register for an Australian business number (ABN)?	1 January 2001
4.7	Are dividends received from shares subject to GST?	1 January 2001

4.1. What are the GST implications when you buy or sell shares?

Non-interpretative – other references (see GSTR 2002/2 *Goods and services tax: GST treatment of financial supplies and related supplies and acquisitions*)

GST is not applicable when you buy or sell shares in the course or furtherance of an enterprise that you carry on, because the provision, acquisition or disposal of an interest in shares is a financial supply under item 10 in the table in subsection 40-5.09(3) of the GST Regulations.

Where you are not carrying on an enterprise, GST is not applicable to your buying or selling of shares.

4.2. Is brokerage on share transactions subject to GST?

Non-interpretative – straight application of the law

Yes. Broking service is a taxable supply. It is listed as 'a supply that is not a financial supply' at item 11 in the table in section 40-5.12 of the GST Regulations.

Brokerage on the supply of foreign shares traded on an overseas exchange will be GST-free under item 4 in the table in subsection 38-190(1).

4.3. Is stamp duty on the purchase or sale of shares subject to GST?

Non-interpretative – straight application of the law

The Treasurer has excluded stamp duty from GST by a determination.

4.4. If I buy or sell shares in the course or furtherance of an enterprise I carry on, will I be entitled to input tax credits for GST paid on brokerage?

For source of ATO view, refer to:

- Paragraphs 12 and 13 of GSTR 2003/9 *Goods and Services Tax: financial acquisitions threshold*
- Paragraph 285 of GSTR 2004/1 *Goods and services tax: reduced credit acquisitions*.

If you are registered for GST and buy or sell shares in the course or furtherance of an enterprise you carry on, you make financial supplies and you are not entitled to input tax credits.

However, if you do not exceed the financial acquisitions threshold (explained at question 7) you may be entitled to a full input tax credit.

If you exceed the financial acquisition threshold, you may still be entitled to reduced input tax credits on brokerage, as it is a reduced credit acquisition under item 9 in the table in subsection 70-5.02(2) of the GST Regulations. The amount of reduced input tax credit is 75% of the GST included in the brokerage fees (section 70-5.03 of the GST Regulations).

4.5. If I buy or sell shares, but not in the course or furtherance of an enterprise I carry on:

Non-interpretative – straight application of the law.

a. No, you will not be entitled to input tax credits or reduced input taxed credits for GST paid on brokerage because you have not bought or sold the shares in the course or furtherance of an enterprise.

b. Yes, the cost base of the shares will include the GST you paid on brokerage.

4.6. If I carry on an enterprise as a share trader and have a turnover of more than $75,000:

Non-interpretative – straight application of the law

a. You are required to register for GST, if you carry on an enterprise and your GST turnover, or your projected GST turnover, is $75,000 or more. However, input tax supplies are excluded when working out the GST turnover. Accordingly, you may not be required to register for GST if you carry on an enterprise as a share trader and the turnover exceeds $75,000.

b. When you register for GST you will be allocated an ABN. If you choose not to register for GST, it may still be in your interest to apply for an ABN because the ABN will be used as a means of identification when interacting with Commonwealth and state government departments and agencies. However, it will not replace the current tax file number.

4.7. Are dividends received from shares subject to GST?

Non-interpretative – straight application of the law

The receipt of a dividend is not a supply. GST is not applicable.

Foreign currency, foreign exchange rates and travellers' cheques

(a) added, (u) updated, (w) withdrawn

Issue no	Issue	Date
5.1	How do you convert the value of a taxable supply into Australian currency?	1 January 2001
5.2	What exchange rate do you use to work out the value of a taxable supply in Australian currency?	1 January 2001
5.3	Can you change the foreign exchange rate you have chosen?	1 January 2001
5.4	What exchange rate do you use to work out the value of a taxable importation in Australian currency?	15 April 2013(u)
5.5	What is a 'conversion day'?	1 January 2001
5.6	What conversion day do you choose if you account for GST on a non-cash basis?	1 January 2001
5.7	What conversion day do you choose if you account for GST on a cash basis?	1 January 2001
5.8	What happens when there is an adjustment event?	1 January 2001
5.9	How do you work out the amount of the adjustment arising from the adjustment event for a taxable supply?	1 January 2001
5.10	What exchange rate do you use to convert the corrected GST amount into Australian currency?	1 January 2001
5.11	Can you use an alternative exchange rate where the rate on the original conversion day is unavailable?	1 January 2001
5.12	What must be included in the 'tax invoice' where you make a taxable supply and the consideration is expressed in a foreign currency?	28 March 2013(u)
5.13	How do you calculate your input tax credit where the consideration for an acquisition is expressed in foreign currency?	1 January 2001
5.14	Is a foreign currency transaction a financial supply?	1 April 2019(u)
5.15	Is the fee charged by a money dealer for a foreign currency transaction subject to GST?	1 January 2001
5.16	Is an agent's fee or commission for facilitating a foreign currency transaction subject to GST?	1 January 2001
5.17	Are travellers' cheques a financial supply?	1 April 2019
5.18	What are the GST implications for the fee or commission charged on travellers' cheques transactions within Australia?	1 January 2001
5.19	Is a foreign currency gain or loss an adjustment event?	15 April 2013(u)
5.20	Do I need to show foreign currency gains or losses on my business activity statement (BAS)?	1 January 2001

5.1. How do you convert the value of a taxable supply into Australian currency?

Non-interpretative – other references (see GSTR 2001/2 *Goods and Services Tax: foreign exchange conversions*)

The Commissioner has determined that you convert the value of a taxable supply into Australian currency in accordance with section 9-85 of the GST Act by using the following formula:

Consideration expressed in a foreign currency × (1 ÷ Your particular exchange rate on the conversion day)

where:

- your particular exchange rate is the rate from the foreign exchange organisation you have chosen to use, the Reserve Bank of Australia (RBA) rate or from your agreement – whichever is applicable
- the conversion day is the date that you use to convert your foreign currency into Australian currency for GST purposes.

5.2. What exchange rate do you use to work out the value of a taxable supply in Australian currency?

Non-interpretative – other references (see GSTR 2001/2 *Goods and Services Tax: foreign exchange conversions*)

Subsection 9-85(2) of the GST Act allows the Commissioner to determine the manner in which consideration in a foreign currency is to be converted into Australia currency to work out the value of a taxable supply. You may choose a particular exchange rate from one of the three following sources:

The RBA rate

The RBA rate is the unit of foreign currency per $A calculated by the RBA at 4:00pm Australian Eastern time on each business day. You can choose the RBA rate on or prior to your conversion day.

The agreed rate

The agreed rate is the rate of exchange that you, as the supplier, have agreed with the recipient of the supply. This rate can be contained in either an implied or written agreement and only applies for supplies made under the agreement and for the period of the agreement. When using an agreed rate it should reflect the rate of a particular foreign exchange organisation or the RBA. Where the supplier and the recipient are associates, the agreed rate should reflect a rate agreed to by parties dealing at arm's length.

Foreign exchange organisation rate

You can choose an exchange rate from the publicly available rates of a foreign exchange organisation. For example, an exchange rate can be:

- a 'buying', 'selling' or 'spot' rate from a commercial bank
- a rate under a foreign exchange contract, or
- a rate based on an averaging of a foreign currency exchange rate if your use of that rate conforms with the relevant accounting standard or you use that rate for income tax purposes.

5.3. Can you change the foreign exchange rate you have chosen?

Non-interpretative – other references (see GSTR 2001/2 *Goods and Services Tax: foreign exchange conversions*)

After choosing a foreign exchange rate referred to in question 5.2 you should use it consistently for GST purposes. You may, however, change your chosen foreign exchange rate where you have sound commercial reasons. Where you alternate between exchange rates with a view to reducing your GST liability, the Commissioner considers you are using your rate inconsistently. In these circumstances, you may have understated your net amount for a tax period and the general anti-avoidance provisions under Division 165 of the GST Act may apply.

5.4. What exchange rate do you use to work out the value of a taxable importation in Australian currency?

Non-interpretative – straight application of the law

Section 13-20 of the GST Act provides that the foreign exchange rate applicable to convert the customs value for a taxable importation into Australian currency is ascertained in the manner provided under section 161J of the *Customs Act 1901*. That is, the applicable conversion rate is the ruling rate of exchange on the day of exportation of the goods to the indirect tax zone. The Australian Customs Service provides a list of the ruling rate of exchange for each currency for each day.

This same rate can also be used to convert the cost of the international transport and the cost to insure the goods for that transport into Australian currency.

Find out more:

- Forex 2017/1 *Goods and Services tax: foreign Currency conversion determination (No.1) 2017*
- GSTR 2001/2 *Goods and Services Tax: foreign exchange conversions*

5.5. What is a 'conversion day'?

Non-interpretative – other references (see GSTR 2001/2 *Goods and Services Tax: foreign exchange conversions*)

A conversion day is the date when you use your chosen exchange rate to convert foreign currency into Australian currency for GST purposes.

Find out about:

- Forex 2017/1 *Goods and Services tax: foreign Currency conversion determination (No.1) 2017*
- GSTR 2001/2 *Goods and Services Tax: foreign exchange conversions*

5.6. What conversion day do you choose if you account for GST on a non-cash basis?

Non-interpretative – other references (see GSTR 2001/2 *Goods and Services Tax: foreign exchange conversions*)

Find out about:

- Forex 2017/1 *Goods and Services tax: foreign Currency conversion determination (No.1) 2017*
- GSTR 2001/2 *Goods and Services Tax: foreign exchange conversions*

5.7. What conversion day do you choose if you account for GST on a cash basis?

Non-interpretative – other references (see GSTR 2001/2 *Goods and Services Tax: foreign exchange conversions*)

Find out about:

- Forex 2017/1 *Goods and Services tax: foreign Currency conversion determination (No.1) 2017*
- GSTR 2001/2 *Goods and Services Tax: foreign exchange conversions*

5.8. What happens when there is an adjustment event?

Non-interpretative – other references (see GSTR 2001/2 *Goods and Services Tax: foreign exchange conversions*)

Where there is an adjustment event in relation to a supply or acquisition, an adjustment to your net amount may arise because of that event. You must apply Division 19 which requires you to compare two amounts to determine whether or not an adjustment arises because of the adjustment event.

5.9. How do you work out the amount of the adjustment arising from the adjustment event for a taxable supply?

Non-interpretative – other references (see GSTR 2001/2 *Goods and Services Tax: foreign exchange conversions*)

You must work out the difference between the previously attributed GST amount (the amount of GST attributable to a tax period in respect of the supply) and the corrected GST amount (1/11th of the consideration for most supplies, taking into account the adjustment event).

5.10. What exchange rate do you use to convert the corrected GST amount into Australian currency?

Non-interpretative – other references (see GSTR 2001/2 *Goods and Services Tax: foreign exchange conversions*)

The exchange rate you should use for this conversion is the rate (where available) you used when you worked out the GST payable for the supply (the original conversion day).

5.11. Can you use an alternative exchange rate where the rate on the original conversion day is unavailable?

Non-interpretative – other references (see GSTR 2001/2 *Goods and Services Tax: foreign exchange conversions*)

You may use your chosen exchange rate from your foreign exchange organisation on the issue date of the adjustment note where you cannot calculate the adjustment amount based on the foreign exchange rate of the original conversion day. For example, where an adjustment event occurs and your records have been destroyed and the exchange rate is not available from your foreign exchange organisation.

5.12. What must be included in the 'tax invoice' where you make a taxable supply and the consideration is expressed in a foreign currency?

Non-interpretative – other references (see GSTR 2001/2 *Goods and Services Tax: foreign exchange conversions*)

For the tax invoice to be in the approved form, it must comply with the tax invoice requirements stated in GST Ruling GSTR 2013/1 and:

- include on the form the GST payable in Australian currency, or
- provide 'sufficient information' to the recipient to work out the GST payable on the supply in Australian currency.

Examples of sufficient information include:

- the price expressed in Australian currency
- the value expressed in Australian currency, or
- the GST payable, the price or value expressed in a foreign currency and the conversion rate used by the supplier, or a statement, to work out the GST payable in Australian currency.

This information can be provided on the tax invoice, or on two or more documents that together meet the information requirements of a tax invoice.

The Commissioner will allow entities an administrative concession until 30 June 2001 to comply with the additional tax invoice requirements where an entity needs to adjust their computerised accounting systems.

An example of a statement with sufficient information is as follows:

'The GST is calculated in Australian currency at the exchange rate published by the RBA at 4:00pm Australian Eastern time on the business day prior to the date of this tax invoice.'

5.13. How do you calculate your input tax credit where the consideration for an acquisition is expressed in foreign currency?

Non-interpretative – other references (see GSTR 2001/2 *Goods and Services Tax: foreign exchange conversions*)

You can use the amount of GST payable on the tax invoice to calculate your input tax credit in Australian currency. The tax invoice will include the GST payable in Australian currency or sufficient information to determine the GST payable in Australian currency. However, the amount of the input tax credit is reduced if the acquisition is only partly creditable.

5.14. Is a foreign currency transaction a financial supply?

Non-interpretative – straight application of the law

Yes. A foreign currency transaction is a financial supply under item 9 in the table in subsection40-5.09(3) of the GST Regulations. Some examples are travellers cheques and foreign currency in cash form or drafts.

5.15. Is the fee charged by a money dealer for a foreign currency transaction subject to GST?

Non-interpretative – other references (see line number F4 in Schedule 2 of GSTR 2002/2 *Goods and services tax: GST treatment of financial supplies and related supplies and acquisitions*)

No GST is payable on the fee if the money dealer buys or sells Australian or foreign currency while acting in their own right and not as an agent for someone else. The fee is consideration for the supply of an interest in the currency.

5.16. Is an agent's fee or commission for facilitating a foreign currency transaction subject to GST?

Non-interpretative – straight application of the law

Yes, this fee or commission is subject to GST, as the agent is a financial supply facilitator and is making a taxable supply under section 9-5 of the GST Act.

5.17. Are travellers' cheques a financial supply?

Non-interpretative – straight application of the law

Yes. An interest in Australian currency, the currency of a foreign country or an agreement to buy or sell the currency - such as travellers' cheques – is a financial supply under item 9 in the table in subsection40-5.09(3) of the GST Regulations.

5.18. What are the GST implications for the fee or commission charged on travellers' cheques transactions within Australia?

For GST, Luxury Car Tax and Wine Equalisation Tax purposes, from 1 July 2015, where the term 'Australia' is used in this item it is referring to the 'indirect tax zone' as defined in subsection 195-1 of the GST Act.

Non-interpretative – other references (see line number F5 and F13 in Schedule 2 of GSTR 2002/2 *Goods and services tax: GST treatment of financial supplies and related supplies and acquisitions*).

As a principal:

No GST is payable on the commission or fee when you buy or sell travellers' cheques or foreign currency and you are acting in your own right, and not as an agent on behalf of someone else. This is because you are a financial supply provider and have a direct interest in the financial supply.

As an agent:

If you buy or sell travellers' cheques or exchange foreign currency on behalf of someone else, and are acting as an agent, GST is payable on the fee or commission you receive for those agency services. This is because you are a financial supply facilitator and are making a taxable supply.

5.19. Is a foreign currency gain or loss an adjustment event?

Non-interpretative – straight application of the law

No. An adjustment event does not exist when you make a foreign currency gain or loss.

This is outlined in paragraph 39 of GST Ruling GSTR 2000/19 *Making adjustments under Division 19 for adjustment events* which states:

- 'when payment for the supply occurs, the rate of exchange may be different from that used for GST attribution purposes. The resulting gain or loss on converting the currency, whether realised or not, is not an adjustment event.'

5.20. Do I need to show foreign currency gains or losses on my Business activity statement (BAS)?

Non-interpretative – straight application of the law

Foreign currency gains or losses are not an adjustment event and are not required to be shown on the BAS.

However, foreign exchange gains and losses would need to be calculated for income tax purposes.

Super funds

(a) added, (u) updated, (w) withdrawn

Issue no	Issue	Date
6.1	Is a superannuation fund an entity for the purposes of the GST Act?	1 January 2001
6.2	Does the trustee of a superannuation fund also constitute an entity for the purpose of the GST Act?	1 January 2001
6.3	Is the superannuation fund or the trustee required to be registered for GST (subject to the enterprise test)?	1 January 2001
6.4	When is a trustee of a complying superannuation fund required to be registered for GST purposes?	1 January 2001
6.5	When is a trustee in its capacity as a trustee of a non-complying superannuation fund required to be registered?	1 January 2001
6.6	What is 'GST' turnover?	1 January 2001
6.7	If the only income of a superannuation fund consists of dividends and interest, is the superannuation fund required to register for GST?	1 January 2001
6.8	Is a GST registered superannuation fund entitled to input tax credits?	1 January 2001
6.9	Given that a superannuation fund will predominantly make financial supplies (that is the provision of an interest in the superannuation scheme), is it entitled to reduced input tax credits (RITCs)?	1 January 2001
6.10	Where the services are supplied to an employer sponsored superannuation fund by a third party, and the services are paid by the employer company, who is entitled to the input tax/reduced input tax credits?	1 January 2001
6.11	Is the superannuation fund able to claim reduced input tax credits on tax and audit fees incurred?	7 September 2012(u)
6.12	Are management fees charged by a fund manager to the superannuation fund subject to GST?	1 April 2019(u)
6.13	Are management fees charged by a superannuation fund to the members subject to GST?	1 January 2001
6.14	Are entry and exit fees charged by a superannuation fund to the members subject to GST?	1 January 2001
6.15	Can a superannuation fund issue recipient-created tax invoices?	1 January 2001
6.16	What are the GST consequences of entering into an agreement under section 275 of the *Income Tax Assessment Act 1936* (ITAA 1936)?	15 April 2013 (u)

6.1. Is a superannuation fund an entity for the purposes of the GST Act?

Non-interpretative – straight application of the law

Yes, a superannuation fund is an entity in accordance with paragraph 184-1(1)(h) of the GST Act.

6.2. Does the trustee of a superannuation fund also constitute an entity for the purpose of the GST Act?

Non-interpretative – straight application of the law

Yes, the trustee of a superannuation fund is also considered to be an entity under subsection 184-1(2) of the GST Act.

6.3. Is the superannuation fund or the trustee required to be registered for GST (subject to the enterprise test)?

Non-interpretative – straight application of the law

It is the entity comprising the trustee of the superannuation fund that is capable of being registered for GST purposes. A superannuation fund is not a legal person – it does not have the legal capacity to carry out the obligations imposed under the GST Act. The trustee of the superannuation fund has the legal capacity to carry out the obligations under the GST Act. Hence, the trustee is the entity that is capable of being registered.

Subsection 184-1(3) provides that a legal person can have a number of different capacities in which the person does things. In each of those capacities, the person is taken to be a different entity.

6.4. When is a trustee of a complying superannuation fund required to be registered for GST purposes?

Non-interpretative – straight application of the law

A trustee in its capacity as trustee of a complying superannuation fund is required to be registered for GST purposes if the GST turnover of the enterprise exceeds $75,000. Where the GST turnover is less than $75,000 the trustee may still choose to register in its capacity as trustee for the complying superannuation fund.

6.5. When is a trustee in its capacity as a trustee of a non-complying superannuation fund required to be registered?

Non-interpretative – straight application of the law

A trustee, in its capacity as a trustee of a non-complying superannuation fund is required to be registered for GST purposes if it is carrying on an enterprise and its GST turnover exceeds $75,000.

Note: All following references to the superannuation fund are taken to be a reference to the trustee in its capacity as trustee of the superannuation fund.

6.6. What is 'GST turnover?

For GST, Luxury Car Tax and Wine Equalisation Tax purposes, from 1 July 2015, where the term ‘Australia’ is used in this item it is referring to the ‘indirect tax zone’ as defined in subsection 195-1 of the GST Act.

Non-interpretative – straight application of the law

The GST turnover for an enterprise meets the turnover threshold if:

- the current GST turnover is $75,000 or above and the Commissioner is not satisfied that your projected GST turnover is below $75,000, or
- the projected GST turnover is $75,000 or above.

Current GST turnover is the sum of:

- supplies made, or likely to be made, in the current month, plus
- supplies made in the previous 11 months, less
- supplies excluded.

Supplies that are excluded in the calculation of current GST turnover are:

- supplies that are input taxed
- supplies that are for no consideration
- supplies that are not made in the course of your enterprise, or
- supplies that are not connected with Australia.

Projected GST turnover is the sum of:

- supplies made, or likely to be made, in the current month, plus
- supplies made, or likely to be made, in the next 11 months, less
- supplies excluded.

Supplies that are excluded in the calculation of projected GST turnover are:

- supplies that are input taxed
- supplies that are for no consideration
- supplies that are not made in the course of your enterprise
- supplies that are not connected with Australia
- supplies that are made by transfer of capital assets, or
- supplies that are made when an enterprise is ceased or is substantially and permanently reduced in size or scale.

Examples of supplies excluded from GST turnover are:

- dividends
- unit trust distributions
- interest
- members' contributions
- undeducted contributions
- employer contributions
- supplies to associates for no consideration
- supplies not connected with Australia
- supplies not in connection with an enterprise – for example, private sales
- payments of money made in settlement of a claim under an insurance policy.

6.7. If the only income of a superannuation fund consists of dividends and interest, is the superannuation fund required to register for GST?

Non-interpretative – straight application of the law

Dividends and interest are not included in the GST turnover. Therefore, if the income of the superannuation fund consists only of interest and dividends, the GST turnover for GST purposes will not exceed $75,000. The superannuation fund will not be required to register for GST purposes.

6.8. Is a GST registered superannuation fund entitled to input tax credits?

Non-interpretative – straight application of the law

Yes, to the extent that the acquisition does not relate to the making of financial supplies.

For example, if the superannuation fund leases out commercial premises and incurs GST on rental management fees, the superannuation fund may be entitled to the input tax credit in relation to the GST paid (to the extent that the acquisition is a creditable acquisition).

6.9. Given that a superannuation fund will predominantly make financial supplies (that is, the provision of an interest in the superannuation scheme), is it entitled to reduced input tax credits (RITCs)?

Non-interpretative – straight application of the law

Yes, it is entitled to RITCs to the extent that:

- the acquisition relates to making financial supplies
- the acquisition is listed as a reduced credit acquisition under Division 70 of the GST Regulations.

6.10. Where the services are supplied to an employer sponsored superannuation fund by a third party, and the services are paid by the employer company, who is entitled to the input tax/reduced input tax credits?

Non-interpretative – straight application of the law

The supply of services provided to the superannuation fund by the appointed third party firm will be a taxable supply subject to GST under section 9-5 of the GST Act.

Subsection 9-15(2) of the GST Act provides that the taxable nature of the supply does not alter despite the consideration for the services being provided by an entity that is not the recipient of the supply.

The company providing the consideration for the supply is not entitled to an input tax credit for the GST imposed on the services, as the supply is not a creditable acquisition. The supply of services in this circumstance is a taxable supply made to the recipient – the superannuation fund – not the company that provides the consideration. Therefore, the company has not made a creditable acquisition under section 11-5 of the GST Act.

Where the acquisition relates to financial supplies made by the superannuation fund, the superannuation fund may be entitled to a reduced input tax credit provided the fund is liable for payment of the services.

6.11. Is the superannuation fund able to claim reduced input tax credits on tax and audit fees incurred?

Non-interpretative – straight application of the law

From 1 July 2012, a new reduced input tax credit (RITC) item 32 applies to 'recognised trust schemes'. These include approved deposit funds, pooled superannuation trusts, public sector superannuation schemes and regulated superannuation funds, but do not include self-managed superannuation funds.

Under the new item 32, a superannuation fund that is a recognised trust schemes will be entitled to a reduced input tax credit at a rate of 55% for purchases to the extent those purchases are made on or after 1 July 2012 and are not specifically excluded under item 32. As expenses relating to the tax or auditing affairs are not specifically excluded from item 32 a superannuation fund that is a recognised trust scheme will be able to claim a reduced input tax credit of 55% of the GST incurred on tax and audit fees to the extent those purchases are made on or after 1 July 2012.

A superannuation fund which is not a recognised trust scheme will not be able to claim any reduced input tax credits on tax and audit fees incurred, where the expenses relate to the tax or auditing affairs of the superannuation fund.

6.12. Are management fees charged by a fund manager to the superannuation fund subject to GST?

Non-interpretative – straight application of the law

Yes, the provision of management services by a fund manager is a taxable supply.

Where the fee is charged to a superannuation fund that is not a recognised trust scheme, the superannuation fund will be entitled to a reduced input tax credit under items 23 and 24 in the table in subsection 70-5.02(2) of the GST Regulations, where the service acquired is one of those listed.

From 1 July 2012 a recognised trust scheme will be entitled to a reduced input tax credit at the reduced rate of 55% for all acquisitions of supplies made to the superannuation fund by the entity that is acting as trustee for the fund to the extent the supplies are acquired on or after 1 July 2012. However a recognised trust scheme will be entitled to a reduced input tax credit at the higher rate of 75% on acquisitions of certain supplies which are excluded from item 32 such as fund management services provided by a fund manager.

6.13. Are management fees charged by a superannuation fund to the members subject to GST?

Non-interpretative – straight application of the law

No, the management fees charged by a superannuation fund to the members are not subject to GST.

The contributions received from a member form part of the assets of the superannuation fund. The trustee notionally allocates the contributions to a notional account in the name of the member. Management fees are drawn down from these notional accounts. It is a cost allocation process rather than an actual payment for a supply. It is not consideration for any supply made by the superannuation fund to the individual members.

6.14. Are entry and exit fees charged by a superannuation fund to the members subject to GST?

Non-interpretative – straight application of the law

No, these fees are for an acquisition and a disposal of a financial supply (that is, an interest in the superannuation fund). They are considered to be financial supplies and are therefore input taxed.

6.15. Can a superannuation fund issue recipient-created tax invoices?

Non-interpretative – straight application of the law

Yes, if the superannuation fund:

- has a turnover (including input taxed supplies) of at least $20 million annually, or
- is a member of a GST group of companies, partnerships or trusts, in which one or more of that group have such a turnover.

Industry associations, whose members are registered recipients of taxable supplies who do not meet this requirement, can request that the Commissioner make a determination on issuing other classes of tax invoices.

6.16. What are the GST consequences of entering into an agreement under section 275 of the Income Tax Assessment Act 1936 (ITAA 1936)?

Non-interpretative – straight application of the law

Section 275 of the ITAA 1936 was repealed on 13 March 2007.

This Issue previously stated:

Section 275 of the ITAA 1936 allows a trustee of a complying superannuation fund or a complying approved deposit fund (ADF) to transfer taxable contributions to a life insurance company or a pooled superannuation trust (PST).

The effect of this provision is that, where the transferor purchases a life insurance policy or units in the PST, the transferor may enter into an agreement to transfer liability to tax on the contributions to the life insurance company or PST.

Entry into the section 275 agreement is not a separate supply. It is a consequence of acquiring an interest in either a life policy or a PST and is, therefore, part of the input taxed supply made when the life policy was issued or the units in the PST were acquired.

Financial acquisitions threshold

(a) added, (u) updated, (w) withdrawn

Issue no	Issue	Date
7.1	What is the purpose of the financial acquisitions threshold?	1 January 2001
7.2	What is a financial acquisition?	1 January 2001
7.3	When do I exceed the financial acquisitions threshold?	15 April 2013(u)
7.4	What is included in the denominator for the second limb calculation in paragraphs 189-5(1)(b) and 189-10(1)(b)?	1 January 2001
7.5	In relation to this test, how should the words '10% of the total amount of input tax credits to which you would be entitled ... (including financial acquisitions)' be interpreted?	7 September 2012(u)
7.6	How often should a test on whether the financial acquisitions threshold is exceeded be conducted?	1 January 2001
7.7	How can I claim input tax credits if I exceed the financial acquisitions threshold?	7 September 2012(u)
7.8	If I am a member of a GST group, when does the group exceed the financial acquisitions threshold?	7 September 2012(u)
7.9	Do the financial acquisitions threshold provisions that relate to GST groups apply to GST religious groups?	1 January 2001
7.10	How do the financial acquisitions threshold provisions apply to a GST religious group?	7 September 2012(u)

7.1. What is the purpose of the financial acquisitions threshold?

Non-interpretative – straight application of the law

The purpose of the financial acquisitions threshold is to allow entities that make a relatively small amount of financial supplies, as compared to their taxable supplies or GST-free supplies, to claim full input tax credits relating to those financial acquisitions.

Hence, if you do not exceed the financial acquisitions threshold, you will be entitled to full input tax credits for your acquisitions relating to financial supplies.

7.2. What is a financial acquisition?

Non-interpretative – straight application of the law

A financial acquisition is an acquisition, to the extent that the acquisition relates to the making of a financial supply (other than a borrowing).

Section 195-1 of the GST Act states that borrowing has the meaning given by section 995-1 of the ITAA 1997. Section 995-1 of the ITAA 1997 states that borrowing means any form of borrowing, whether secured or unsecured, and includes the raising of funds by the issue of a bond, debenture, discounted security or other document evidencing indebtedness.

An example of a financial acquisition that relates to the acquisition or disposal of an interest in shares is brokerage services.

7.3. When do I exceed the financial acquisitions threshold?

For source of ATO view, refer to paragraphs 13-22 of GSTR 2003/9 *Goods and Services Tax: financial acquisitions threshold*

Sections 189-5 and 189-10 of the GST Act set out when an entity will exceed the financial acquisitions threshold.

You exceed the financial acquisitions threshold if you make, or are likely to make, financial acquisitions where the input tax credits related to making those acquisitions would exceed the lesser of either:

- $50,000 (before 1 July 2012) or $150,000 (on or after 1 July 2012), or such other amount specified in the Regulations (first limb test), or
- 10% of the total amount of input tax credits to which you would be entitled (second limb test).

If either or both of these levels are exceeded, an entity will have exceeded the financial acquisitions threshold.

You will determine whether you exceed the financial acquisitions threshold in a given month based on your acquisitions in:

- that month and the previous 11 months, and
- that month and the next 11 months.

Example 1 – assessing whether the FAT is exceeded in a tax period before 1 July 2012

Total input tax credit of $40,000 of which:

- *$5,000 relates to acquisitions for making financial supplies*
  - *$35,000 relates to acquisitions for making taxable supplies.*

Question:

Is the entity entitled to claim full input tax credit?

Answer:

No.

Reason:

Although the entity's input tax credit relating to financial acquisitions is less than $50,000 (because it related to a tax period before 1 July 2012), it still exceeds the financial acquisitions threshold because the input tax credit relating to financial acquisitions is more than 10% of the entity's total input tax credit. The entity will not be able to claim the $5,000 credit which relates to acquisitions for making financial supplies.

Example 2 – assessing whether the FAT is exceeded in a tax period after 1 July 2012

Total input tax credit of $1,845,000 of which:

- *$155,000 relates to acquisitions for making financial supplies*
  - *$1,690,000 relates to acquisitions for making taxable supplies.*

Question:

Is the entity entitled to claim full input tax credit?

Answer:

No.

Reason:

Although the entity's input tax credit relating to financial acquisitions is less than 10% of the entity's total input tax credit, it still exceeds the financial acquisitions threshold because *the input tax credit relating to financial acquisitions is more than $150,000 (because it relates to a tax period after 1 July 2012). The entity will not be able to claim the $155,000 credit which relates to acquisitions for making financial supplies.*

Example 3 – assessing whether the FAT is exceeded in a tax period after 1 July 2012

Total input tax credit of $1,038,000 of which:

- *$100,000 relates to acquisitions for making financial supplies*
  - *$938,000 relates to acquisitions for making taxable supplies.*

Question:

Is the entity entitled to claim full input tax credit?

Answer:

Yes.

Reason:

The entity's total input tax credit relating to financial acquisitions is less than $150,000 (on or after 1 July 2012) and it does not exceed 10% of the entity's total input tax credit.

The entity will be entitled to full input tax credits.

7.4. What is included in the denominator for the second limb calculation in paragraphs 189-5(1)(b) and 189-10(1)(b)?

Non-interpretative – straight application of the law

The denominator used for the calculation of the tests imposed in paragraphs 189-5(1)(b) and 189-10(1)(b) of the GST Act includes all input tax credits relating to creditable acquisitions, creditable importations and financial acquisitions.

7.5. In relation to this test, how should the words '10% of the total amount of input tax credits to which you would be entitled ... (including financial acquisitions)' be interpreted?

For source of ATO view, refer to paragraphs 94 to 106 of GSTR 2003/9 *Goods and Services Tax: financial acquisitions threshold*.

The words 'total input tax credits to which you would be entitled' in Division 189 refer to input tax credits for any creditable acquisitions and creditable importations that you make. This does not include amounts of GST incurred on acquisitions to the extent they:

- relate to making input taxed supplies (other than financial supplies), or
- are acquisitions that are of a private or domestic nature.

The input tax credits in relation to financial acquisitions are specifically included in the calculation.

Under subsections 11-15(5) and 15-10(5), an acquisition or importation is not treated as being related to making supplies that would be input taxed, if that acquisition or importation relates to making a financial supply consisting of a borrowing and the borrowing relates to supplies that are not input taxed. For example, legal services in relation to a borrowing and the borrowing relates to refurbishing commercial properties. Input tax credits for these acquisitions or importations will be included in the calculation under paragraphs 189-5(1)(b) and 189-10(1)(b).

However, if the borrowing relates to making input taxed supplies, then acquisitions or importations that relate to that borrowing will not be for a creditable purpose. Input tax credits that relate to these acquisitions or importations will not be included in the calculation under paragraphs 189-5(1)(b) and 189-10(1)(b).

Example 4 – assessing whether the FAT is exceeded in a tax period after 1 July 2012

A	*GST incurred on financial acquisitions*	*$145,000*
B	*GST incurred on acquisitions in relation to borrowings (to fund the making of input taxed supplies)*	*$5,000*
C	*GST incurred on acquisitions relating to making taxable supplies*	*$500,000*
D	*GST incurred on acquisitions relating to making other input taxed supplies (eg residential rent)*	*$50,000*
E	*GST incurred on overhead costs in relation to making taxable supplies*	*$355,000*
F	*GST incurred on overhead costs in relation to making non-financial input taxed supplies*	*$5,000*
G	*Total GST incurred on acquisitions*	*$1,060,000*

Financial acquisitions threshold
1st test under paragraph 189-5(1)(a):

The amount of GST incurred on financial acquisitions is $145,000. This amount does not exceed $150,000 (on or after 1 July 2012). Hence, the first limb of the financial acquisition threshold is not exceeded.

Financial acquisitions threshold
2nd test under paragraph 189-5(1)(b):

The amount of GST incurred on financial acquisitions is $145,000.

For the purposes of paragraphs 189-5(1)(b) and 189-10(b), the total amount of input tax credits to which you would be entitled for all your acquisitions and importations during the stated periods (including the financial acquisitions) would include items A, C and E. This amounts to $1,000,000 ($145,000 + $500,000 + $355,000).

Item B is excluded as it is an acquisition in relation to borrowings (in relation to making input taxed supplies) and this is specifically excluded from the definition of financial acquisition under section 189-15.

Item D is excluded as it is not an input tax credit which you would be entitled to under sections 11-20 or 15-15. Similarly, this reasoning also applies to item F.

Expressed as a percentage, 145,000 ÷ 1,000,000 amounts to 14.5%. Therefore, as this exceeds 10%, the entity has exceeded the financial acquisitions threshold.

7.6. How often should a test on whether the financial acquisitions threshold is exceeded be conducted?

For source of ATO view, refer to paragraphs 192 to 197 of GSTR 2003/9 *Goods and Services Tax: financial acquisitions threshold*

The test on whether the financial acquisitions threshold is exceeded should be conducted each month.

An entity is denied input tax credits for financial acquisitions for the entire month if it exceeds the financial acquisitions threshold irrespective of when this occurs during the month. An entity may be below the financial acquisitions threshold during a particular period in the month, but exceeds the threshold when another acquisition is made in the same month. This would result in the entity being denied input tax credits for financial acquisitions for the entire month.

7.7. How can I claim input tax credits if I exceed the financial acquisitions threshold?

Non-interpretative – straight application of the law

Even if you exceed the financial acquisitions threshold, a reduced input tax credit is still available to the extent that the acquisition is a reduced credit acquisition.

Certain specified acquisitions that relate to making financial supplies can give rise to an entitlement to a reduced input tax credit. These specific acquisitions are called reduced credit acquisitions. The GST Regulations contain the complete list of reduced credit acquisitions.

7.8. If I am a member of a GST group, when does the group exceed the financial acquisitions threshold?

For source of ATO view, refer to paragraphs 107 to 146 of GSTR 2003/9 *Goods and Services Tax: financial acquisitions threshold*

For members of a GST group, the financial acquisitions threshold is a combined threshold. That is, the threshold for the whole group is the same as if they were a single entity.

If you are a member of a GST group, the GST group as a whole will exceed the financial acquisitions threshold when you or any one of the other members of the group makes financial acquisitions exceeding the threshold.

Subsection 189-5 (2) of the GST Act sets out when a member of a GST group will exceed the financial acquisitions threshold in regard to current acquisitions.

You exceed the financial acquisitions threshold at a time during a particular month if, assuming that all the financial acquisitions you or any other members of the group have made – or are likely to make – during the 12 months ending at the end of that month were made solely for a creditable purpose, either or both of the following would apply:

(a) the amount of all the input tax credits to which you or any one of the other members of the group would be entitled for those acquisitions would exceed $50,000 (before 1 July 2012) or $150,000 (on or after 1 July 2012) or such other amount specified in the Regulations, and/or

(b) the amount of the input tax credits referred to in paragraph (a) would be more than 10% of the total amount of the input tax credits to which you or any other member of the group would be entitled for all acquisitions and importations of any member of the group during that 12 months (including the financial acquisitions).

If either or both of these levels are met, you as a member of a GST group will have exceeded the financial acquisitions threshold.

You will determine whether you exceed the financial acquisitions threshold in a given month based on your acquisitions in:

- that month and the previous 11 months, and
- that month and the next 11 months.

Example 5

Entities A, B and C are members of a GST group. They have incurred the following amounts of input tax credits in relation to financial acquisitions for the period 1 July 2012 to 30 June 2013.

Entity	*ITCs for financial acquisitions*
A	*$120,000*
B	*$10,000*
C	*$25,000*

The total input tax credits in relation to financial acquisitions for the GST group exceeds $150,000 (on or after 1 July 2012). Therefore, the GST group as a whole exceeds the financial acquisitions threshold.

There is no need to consider the 10% test as the GST group has already exceeded the financial acquisitions threshold.

Example 6

Entities A, B and C are members of a GST group. They have incurred the following amounts of input tax credits in relation to financial acquisitions and acquisitions that relate to making taxable supplies for the period 1 July 2012 to 30 June 2013.

Entity	*ITCs for financial acquisitions*	*ITCs for acquisitions that relate to making taxable supplies*
A	*$120,000*	*$300,000*
B	*$1,000*	*$70,000*
C	*$2,500*	*$6,500*

The total input tax credits in relation to financial acquisitions for the GST group amounts to $123,500 and it does not exceed $150,000.

Expressed as a percentage, the input tax credits in relation to financial acquisitions amount to 24.7% of the total amount of input tax credits entitlement for all acquisitions and importations during the 12 months (including the financial acquisitions). The calculation is as follows:

($120,000 + $1,000 + $2,500) ÷ ($120,000 + $1,000 + $2,500 + $300,000 + $70,000 + $6,500)

= 24.7%

As this exceeds 10%, the GST group as a whole has exceeded the financial acquisitions threshold.

7.9. Do the financial acquisitions threshold provisions that relate to GST groups apply to GST religious groups?

For source of ATO view, refer to paragraphs 147 to 151 of GSTR 2003/9 *Goods and Services Tax: financial acquisitions threshold*.

Subsections 189-5(2) and 189-10(2) of the GST Act set out when a member of a GST group exceeds the financial acquisitions threshold.

Section 195-1 states that the GST group has the meaning given by section 48-5 of the GST Act, whilst a GST religious group is defined separately under section 49-5 of the GST Act.

Hence, the financial acquisitions threshold provisions that relate to GST groups do not apply to GST religious groups.

7.10. How do the financial acquisitions threshold provisions apply to a GST religious group?

For source of ATO view, refer to paragraphs 152 to 163 of GSTR 2003/9 *Goods and Services Tax: financial acquisitions threshold*

Subsections 189-5(1) and 189-10(1) of the GST Act will apply to a GST religious group.

You exceed the financial acquisitions threshold if you make, or are likely to make, financial acquisitions where the input tax credits related to making those acquisitions would exceed the lesser of either:

- $50,000 (before 1 July 2012) or $150,000 (on or after 1 July 2012), or such other amount specified in the Regulations (1st limb test), or
- 10% of the total amount of input tax credits to which you would be entitled (2nd limb test).

If either or both of these levels are exceeded, an entity will have exceeded the financial acquisitions threshold.

You will determine whether you exceed the financial acquisitions threshold in a given month based on your acquisitions in:

- that month and the previous 11 months, and
- that month and the next 11 months.

The financial acquisitions threshold provisions will apply to each individual member of the GST religious group. That is, the individual member of the GST religious group is required to ascertain whether it exceeds the financial acquisitions threshold.

Debt factoring

(a) added, (u) updated, (w) withdrawn

Issue no	Issue	Date
8.1	Has a debt factor made a taxable supply when it provides sales accounting services or debt collection services under a debt factoring arrangement?	1 April 2019(u)
8.2	Is a sales accounting service that is provided as part of a debt factoring arrangement an incidental financial supply?	1 April 2019(u)
8.3	Is the assignor entitled to an input tax credit (or a reduced input tax credit) for the acquisition of the sales accounting or debt collection services?	1 April 2019(u)
8.4	Is a debt factor entitled to input tax credits (or reduced input tax credits) for acquisitions it makes in relation to the financial supply of the acquisition of the interest in the debt?	1 January 2001
8.5	If you are a supplier (assignor) and you assign a debt to a debt factor, whether on a recourse or non-recourse basis, what is the consideration for the assignment?	1 January 2001
8.6	If you are a supplier accounting for GST on a non-cash basis and you assign a debt to a debt factor, whether on a recourse or non-recourse basis, when do you account for the GST on the taxable supply to which the debt relates? How much GST should you account for?	1 January 2001
8.7	If you are a supplier accounting for GST on a non-cash basis and you assign a debt to a debt factor, whether or not on a recourse or non-recourse basis, can you claim a decreasing adjustment for a bad debt?	1 January 2001
8.8	If you are a supplier accounting for GST on a cash basis and you sell a debt to a debt factor, whether on a recourse or non-recourse basis, when do you account for the GST on the taxable supply to which the debt relates? How much GST should you account for?	1 January 2001
8.9	If you are a recipient accounting for GST on a non-cash basis and you claim an input tax credit for an acquisition but do not provide all or a part of the consideration for the acquisition, do you need to make an increasing adjustment under Division 21?	1 January 2001

Preamble

Debt factoring and invoice discounting is the assignment of debts for consideration. The debt is sold to the debt factor for a price that is less than the face value of the debt. The difference between the face value and the purchase price is often called a factoring service fee. In commercial practice the term debt factoring is loosely used to also mean invoice discounting. Although there may be a difference between these two activities, for the purposes of these frequently asked questions we will just use the term debt factoring.

Also, for the purposes of these frequently asked questions, the assignment of the debt involves the disposal by the assignor of all (or part) of the right, title and interest in the debt to the debt factor.

Debt factoring assignments fall into two categories: recourse debt factoring and non-recourse debt factoring.

Non-recourse debt factoring

Non-recourse debt factoring is less common than recourse debt factoring. Under non-recourse debt factoring the debt factor acquires the debt at his own risk. That is, if the debtor does not pay the debt factor, the debt factor does not have recourse to the assignor for any amounts outstanding and so stands to lose the amount of the unpaid debt.

Recourse debt factoring

Generally, under a recourse debt factoring agreement:

- the assignor and debt factor enter into an agreement whereby, for the term of the agreement, the assignor offers debts that are due (or that will become due) for sale to the debt factor
- the debt factor has the discretion to accept or reject the offer
- if the offer is accepted by the debt factor, the debt factor purchases the debt at a price less than the face value of the debt (the difference being the factoring service fee). Under some agreements, the debt factor pays the purchase price to the assignor when the debtor has paid the debt factor, but this may not always be the case
- the debt factor can reassign certain debts back to the assignor – for example, where the debtor disputes or does not pay the debt, or where a payment instrument of the debtor (such as a cheque) is dishonoured.

For both recourse debt factoring and non-recourse debt factoring, the assignor will normally be making a financial supply when it assigns the debt (or a part of it) to the debt factor.

8.1. Has a debt factor made a taxable supply when it provides sales accounting services or debt collection services under a debt factoring arrangement?

For source of ATO view, refer to paragraphs 88 to 91 of GSTR 2004/4 *Goods and services tax: assignment of payment streams including under a typical securitisation arrangement*

Yes. Debt factoring arrangements can also include the provision of debt collection services and sales accounting services by the debt factor. Where a separate fee is charged for these services and the other requirements in section 9-5 are met, the supply of the services is a taxable supply. The fee will not be input taxed because 'debt collection services' and 'sales accounting services' are listed as supplies that are not financial supplies (see items 13 and 14 respectively of section 40-5.12 of the GST Regulations).

8.2. Is a sales accounting service that is provided as part of a debt factoring arrangement an incidental financial supply?

Non-interpretative – straight application of the law

No. Section 40-5.10 of the GST Regulations provides that for a supply to be an incidental financial supply, the services in question must be provided by the same entity that supplies the interest that was input taxed. In a factoring arrangement, the (input taxed) interest in the debt is supplied by the assignor to the debt factor, whilst the accounting services are supplied by the debt factor to the assignor. Therefore, such supplies of sales accounting services are not incidental financial supplies.

8.3. Is the assignor entitled to an input tax credit (or a reduced input tax credit) for the acquisition of the sales accounting or debt collection services?

For source of ATO view, refer to paragraphs 424 to 442 of GSTR 2004/1 *Goods and services tax: reduced credit acquisitions*.

The fee for either service is consideration for an acquisition that relates to making financial supplies and so a full input tax credit entitlement will not arise for either service. However, to the extent that the particular debt collection activity is one that is referred to in item 17 of section 70-5.02 of the GST Regulations, that debt collection activity is a reduced credit acquisition and, therefore, the assignor may be entitled to a reduced input tax credit.

8.4. Is a debt factor entitled to input tax credits (or reduced input tax credits) for acquisitions it makes in relation to the financial supply of the acquisition of the interest in the debt?

For source of ATO view, refer to:

- paragraphs 424 to 442 of GSTR 2004/1 *Goods and services tax: reduced credit acquisitions*
- paragraphs 54 to 108 of GSTR 2008/1 *Goods and services tax: when do you acquire anything or import goods solely or partly for a creditable purpose?*

Where the debt factor makes acquisitions in relation to a debt acquired from the assignor, Division 11 does not allow an input tax credit for the acquisitions. This is because the acquisitions relate to making input taxed supplies. For example, where a debt factor does not make any taxable supplies (including sales accounting and debt collection services) and he pays rent for an office from which he carries on his debt factoring enterprise, an entitlement to any input tax credit in relation to the rental payments does not arise under Division 11.

However, if an acquisition is a reduced credit acquisition, the debt factor may be entitled to a reduced input tax credit. For example, certain aspects of debt collection services acquired by the debt factor to collect the money owing on the assigned debt are reduced credit acquisitions (see item 17 of section 70-5.02 of the GST Regulations).

8.5. If you are a supplier (assignor) and you assign a debt to a debt factor, whether on a recourse or non-recourse basis, what is the consideration for the assignment?

Non-interpretative – other references (see paragraph 90 of GSTR 2004/4 *Goods and services tax: assignment of payment streams including under a typical securitisation arrangement*)

The consideration is the price for which you sell the debt to the debt factor. The consideration is not the difference between the face value of the debt and the amount the debt factor pays you for the debt.

Example – consideration for assigning a debt under a debt factoring arrangement

A makes a taxable supply of goods to B for $110. A then sells the debt (owed to him by B in relation to the taxable supply) to a debt factor for $95.

The consideration for the assignment of the debt is $95. The consideration is not $15 (being the difference between the face value of the original debt and the $95).

8.6. If you are a supplier accounting for GST on a non-cash basis and you assign a debt to a debt factor, whether on a recourse or non-recourse basis, when do you account for the GST on the taxable supply to which the debt relates? How much GST should you account for?

For source of ATO view, refer to paragraphs 44 and 47 of GSTR 2004/4 *Goods and services tax: assignment of payment streams including under a typical securitisation arrangement*

You account for the GST on the taxable supply under the normal attribution rules. That is, you attribute the GST for the taxable supply at the earlier of when you issued the invoice or when the recipient of the taxable supply makes any payment to you or to the debt factor.

The amount you must account for is 1/11th of the full face value of the invoice you issued for the taxable supply you made to the recipient. The GST for the taxable supply is not equal to 1/11th of the consideration for the supply of the debt to the debt factor.

Example

A makes a taxable supply of goods to B for $110 and issues an invoice at the same time. A then sells the debt (owed to him by B in relation to the taxable supply) to a debt factor for $95. B later pays the debt factor only $99.

The GST payable for the taxable supply A made is $10. But for the factoring arrangement, A would ordinarily account for $10 GST at the earlier of when A issued the invoice to B or when A receives any of the $110. This outcome does not change because of the factoring arrangement. A accounts for $10 GST at the earlier of when B pays the debt factor $99 or when the invoice is issued.

The GST payable for the taxable supply A made is not 1/11th of the $95 payment received from the debt factor. This payment is consideration for a financial supply made by A (being the supply of the interest in the debt to the debt factor).

8.7. If you are a supplier accounting for GST on a non-cash basis and you assign a debt to a debt factor, whether or not on a recourse or non-recourse basis, can you claim a decreasing adjustment for a bad debt?

For source of ATO view, refer to paragraphs 65 to 67 of GSTR 2004/4 *Goods and services tax: assignment of payment streams including under a typical securitisation arrangement*.

Under a non-recourse arrangement

No. The consideration for the supply of the debt will normally be less than the full face value of the invoice. Also, the recipient of the taxable supply that you made might not pay all of the consideration for that supply to the debt factor. You can not claim a decreasing adjustment under Division 21 in respect of the difference between the full face value of the invoice and:

- the consideration for the supply of the debt to the debt factor, or
- the total amount paid to the debt factor by the recipient of your taxable supply.

If you assign the debt, Division 21 can not apply to allow you a decreasing adjustment because you will not have any debt to write off or that can be overdue for 12 months or more.

However, if you only assign a part of the debt to the debt factor, you may be entitled to claim a decreasing adjustment in respect of the amount that was not assigned. This is because it is possible to either write off that unassigned part or for the unassigned part of the debt to become overdue (to you) for 12 months or more.

Example 7.1 – assignment under non-recourse arrangement

A makes a taxable supply of goods to B for $110 and issues an invoice at the same time. A then sells the debt to a debt factor for $99.

A accounts for $10 GST when the invoice is issued. B later only pays the debt factor $90 who then writes off the unpaid $9 debt as bad.

But for the factoring arrangement, A would ordinarily make a $10 decreasing adjustment under Division 21 if he wrote off the $110 as bad or the $110 was overdue for 12 months or more. However, this is not the outcome under the factoring arrangement.

A is not entitled to a decreasing adjustment under Division 21 in respect of the difference between $110 and $99. Nor is A entitled to a decreasing adjustment for the $9 that B owed the debt factor. This is because there is no bad debt (or amount overdue) for A for the $9 because the $9 is a part of the debt that was assigned to the factor on a non-recourse basis. Therefore, Division 21 (about accounting for bad or overdue debts) does not apply to A.

Note also that the debt factor is not entitled to a decreasing adjustment under Division 21 for any amount that is not paid to him by B.

Under a recourse arrangement

Yes, but only if the assigned debt is reassigned to you.

As with a non-recourse debt factoring arrangement, the consideration for the supply of the debt will normally be less than the full face value of the invoice. Also, the recipient of the taxable supply that you made might not pay all of the consideration for that supply to the debt factor. You cannot claim a decreasing adjustment under Division 21 in respect of the difference between the full face value of the invoice and the consideration for the supply of the debt to the debt factor.

However, if the debt (or a part of it) is reassigned to you from the debt factor – for example, because the debtor does not pay the debt factor – you may be entitled to a decreasing adjustment under Division 21. This is because you have a debt (owed to you by the debtor) which you can write off or which can be overdue (to you) for 12 months or more.

Example 7.2 – assignment under recourse arrangement

A makes a taxable supply of goods to B for $110 and issues an invoice at the same time. A then sells the debt to a debt factor for $99.

A accounts for $10 GST when the invoice is issued. B does not make any payment to the debt factor. Because B does not make any payment to the debt factor, the debt factor reassigns the original debt back to A.

Because A now has a debt owed to him by B, A may become entitled to a decreasing adjustment when A writes off the $110 (or it becomes overdue to A for 12 months or more).

8.8. If you are a supplier accounting for GST on a cash basis and you sell a debt to a debt factor, whether on a recourse or non-recourse basis, when do you account for the GST on the taxable supply to which the debt relates? How much GST should you account for?

For source of ATO view, refer to paragraphs 44 and 56 of GSTR 2004/4 - *Goods and services tax: assignment of payment streams including under a typical securitisation arrangement*.

You account for the GST on the taxable supply under the normal attribution rules. That is, you attribute the GST for the taxable supply when the recipient of the taxable supply makes any payment to the debt factor. The amount you must account for is 1/11th of the total consideration received by the debt factor from the recipient.

The GST payable for the taxable supply you make to the recipient is not equal to 1/11th of the consideration received by you for the supply of the debt to the debt factor.

Note that in some cases, you might not assign all of the right, title and interest in your debt to the debt factor. For example, you might assign 90% of the debt to the debt factor, with the recipient still being liable to you for 10% of the original debt. In these cases, you must account for 1/11th of the total consideration provided by the recipient to both the debt factor and to yourself.

Example

A makes a taxable supply of goods to B for $110. A then sells the debt (owed to him by B in relation to the taxable supply) to a debt factor for $95. B later pays the debt factor $99.

But for the factoring arrangement, A would ordinarily account for $9 GST when A receives the $99 from B. This outcome does not change because of the factoring arrangement. A accounts for $9 GST when B makes the $99 payment to the debt factor.

A does not account for 1/11th of the $95 payment received from the debt factor. This payment is consideration for a financial supply made by A (being the supply of the debt to the debt factor).

8.9. If you are a recipient accounting for GST on a non-cash basis and you claim an input tax credit for an acquisition but do not provide all or a part of the consideration for the acquisition, do you need to make an increasing adjustment under Division 21?

Non-interpretative – straight application of the law

Yes. You make the increasing adjustment when the debt is overdue by 12 months or more. (Note, if you are the debt factor, you are not entitled to a decreasing adjustment under Division 21 for the amount written off or overdue.)

Example

A makes a taxable supply of goods to B for $110. A then sells the debt (owed to him by B in relation to the taxable supply) to a debt factor for $95. B claims an $11 input tax credit but later only pays the debt factor $99.

But for the factoring arrangement, B would ordinarily account for a $1 increasing adjustment when A writes off as bad the outstanding amount of $11 or when the $11 amount is overdue for 12 months or more. This outcome does not change because of the factoring arrangement. B makes a $1 increasing adjustment when the debt factor *writes off as bad the outstanding amount of $11 or when the $11 amount is overdue (to the debt factor) for 12 months or more.*

The debt factor is not entitled to a decreasing adjustment in respect of the amount written off or overdue for 12 months or more.

If the agreement you have entered into is different to the general cases outlined above, you may want to request a private ruling.

Leases

(a) added, (u) updated, (w) withdrawn

Issue no	Issue	Date
9.1	Are motor vehicle or plant and equipment leases subject to GST?	1 January 2001
9.2	What happens if my lease spans the period before and after the GST implementation date of 1 July 2000?	1 January 2001
9.3	When will the GST liability and input tax credit entitlement arise if I am a lessor?	1 January 2001
9.4	When will the input tax credit entitlement arise if I am a lessee?	1 January 2001
9.5	What are the tax invoice requirements for leases?	28 March 2013(u)

9.1. Are motor vehicle or plant and equipment leases subject to GST?

Non-interpretative – straight application of the law

Generally leases – whether they are finance, operating or novated leases – will be subject to GST.

9.2. What happens if my lease spans the period before and after the GST implementation date of 1 July 2000?

Non-interpretative – other references:

- GSTR 2000/7 *Goods and Services Tax: transitional arrangements – supplies, including supplies of rights, made before 1 July 2000 and the extent to which such supplies are taken to be made on or after 1 July 2000*
- GSTR 2000/16 *Goods and Services Tax: transitional arrangements – GST-free supplies under existing agreements*.

Where a lease spans 1 July 2000, the lease will be subject to GST to the extent that the supply occurs after 30 June 2000. However, the lease may be GST-free under section 13 of the Transition Act if the lease that has been entered into is a non-reviewable agreement.

9.3. When will the GST liability and input tax credit entitlement arise if I am a lessor?

Non-interpretative – other references (see GSTR 2000/29 *Goods and services tax: attributing GST payable, input tax credits and adjustments and particular attribution rules made under section 29-25*)

If the lessor accounts for GST on a cash basis, GST liability is attributable to the tax periods in which payments for the supply are received.

The attribution rules for supplies of goods under lease agreements are provided by Division 156 of the Act. Section 156-5 of the Act has the effect of treating each progressive or periodic component as a separate supply. That is, the general attribution rules in Division 29 of the Act apply to each component of the supply.

Therefore, lessors who account for GST on a non-cash basis will be liable for GST for the supply in the tax period in which:

- payment is received by the lessor, or
- when a lease payment is due and payable by the lessee as outlined in the payment schedule contained in the lease agreement document, if this is earlier.

9.4. When will the input tax credit entitlement arise if I am a lessee?

Non-interpretative – other references (see GSTR 2000/29 *Goods and services tax: attributing GST payable, input tax credits and adjustments and particular attribution rules made under section 29-25*)

Generally, entitlement to input tax credits for lessees will arise in the tax period in which the lease payment is due and payable as outlined in the payment schedule contained in the lease agreement document. However, if the lessee accounts for GST on the cash basis, the lessee will be entitled to an input tax credit when lease payments are made.

9.5. What are the tax invoice requirements for leases?

Non-interpretative – other references (see GSTR 2013/1 *Goods and services tax: tax invoices*) provides guidelines on tax invoice requirements. A single document can be a tax invoice for a supply if it satisfies the requirements of subsection 29-70(1) of the GST Act and it shows the price of the supply. A lease agreement document may be used as a tax invoice to the extent that the requirements of subsection 29-70(1) are satisfied.

Foreign banks

(a) added, (u) updated, (w) withdrawn

Issue no	Issue	Date
10.1	Is an Australian representative office of a foreign bank entitled to an ABN under section 8 of the A New Tax System (Australian Business Number) Act 1999 (ABN Act)?	8 August 2002 (a)
10.2	Can an Australian representative office of a foreign bank register for GST?	8 August 2002 (a)
10.3	Is a foreign bank with a representative office in Australia entitled to an ABN under section 8 of the ABN Act?	8 August 2002 (a)
10.4	Can a foreign bank with a representative office in Australia register for GST?	8 August 2002 (a)
10.5	Is the customer service provided by a foreign bank at its representative office in Australia subject to GST?	8 August 2002 (a)
10.6	Is a foreign bank with its representative office in Australia entitled to claim the full amount of GST on the goods and services it purchases and utilises, if it is not generating any income in Australia?	8 August 2002 (a)

10.1. Is an Australian representative office of a foreign bank entitled to an ABN under section 8 of the A New Tax System (Australian Business Number) Act 1999 (ABN Act)?

For source of ATO view, refer to paragraphs 26 to 43 of MT 2006/1 *The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number*.

No, an Australian representative office of a foreign bank is not entitled to have an ABN.

Entities that satisfy the requirements of section 8 of the ABN Act are entitled to an ABN. Paragraphs 44 to 67 of MT 2006/1 indicate that a broad range of associations and bodies are intended to be included as entities under the category of 'any other unincorporated association or body'. However, we consider that a representative office of a foreign bank is not an entity in its own right, but is merely a part of a larger entity, being the foreign bank. This view is supported by the decisions in Anglo Australian Foods Ltd v Credit Suisse (1989) 1 ACSR 69 and South India Shipping Corp Lt v Export-Import Bank of Korea (1985) 2 All ER 219.

Under subsection 8(2) of the ABN Act, a Corporations Act company is also entitled to an ABN. However, representative offices of foreign banks have Australian Registered Body Numbers (ARBNs) and, according to paragraph 22 of MT 2006/1, bodies with ARBNs are not Corporations Act companies.

An Australian representative office of a foreign bank is, therefore, not entitled to have an ABN because it is not an entity for ABN purposes and it is not a Corporations Act company.

10.2. Can an Australian representative office of a foreign bank register for GST?

For source of ATO view, refer to paragraphs 26 to 43 of MT 2006/1 *The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number*

No, an Australian representative office of a foreign bank cannot register for GST under section 23-10 of the GST Act because it is not an entity in its own right and is not carrying on an enterprise in its own right.

10.3. Is a foreign bank with a representative office in Australia entitled to an ABN under section 8 of the ABN Act?

For source of ATO view, refer to paragraph 233 of MT 2006/1 *The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number*

Yes, a foreign bank with a representative office in Australia is entitled to an ABN under section 8 of the ABN Act.

Paragraph 170 of MT 2006/1 provides that an enterprise includes an activity, or series of activities, done in the form of a business. The phrase 'in the form of a business' is broad and has as its foundation the longstanding concept of a business. The definition clearly includes a business and the use of the phrase 'in the form of' indicates a wider meaning than the word 'business' on its own. We consider that the liaison activities carried on by a foreign bank at its representative office in Australia have the character of such activities and therefore constitute an enterprise. The decisions in Anglo Australian Foods Ltd v Credit Suisse (1989) 1 ACSR 69 and South India Shipping Corp Lt v Export-Import Bank of Korea (1985) 2 All ER 219 support this view. A foreign bank with a representative office in Australia is therefore entitled to an ABN under paragraph 8(1)(a) of the ABN Act.

A foreign bank with a representative office in Australia will also be entitled to an ABN under paragraph 8(1)(b) of the ABN Act if, in the course or furtherance of carrying on its enterprise, it makes supplies that are connected with the indirect tax zone.

A foreign bank with a representative office in Australia makes supplies that are connected with the indirect tax zone if it supplies services that are performed in the indirect tax zone or if it provides advice or information that is prepared, produced or created in the indirect tax zone. If the services are performed outside the indirect tax zone – or if the advice or information is prepared, produced or created outside the indirect tax zone – then the supply of the service, advice or information is not connected with the indirect tax zone. This is so even if the end product is delivered to a recipient in the indirect tax zone.

A foreign bank with a representative office in Australia also makes supplies that are connected with the indirect tax zone if it makes supplies of things other than goods or real property through an enterprise which it carries on through a permanent establishment (as defined) in Australia.

10.4. Can a foreign bank with a representative office in Australia register for GST?

For source of ATO view, refer to MT 2006/1 *The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number*

Yes. A foreign bank with a representative office in Australia can register for GST as it is carrying on an enterprise, even if that enterprise is carried on overseas and not in Australia.

The requirements to obtain an ABN are different to the requirements to obtain GST registration. Section 8 of the ABN Act requires that an applicant must be carrying on an enterprise in Australia or making supplies that are connected with the indirect tax zone – whereas Division 25 of the GST Act allows for GST registration where the Commissioner is satisfied that the applicant is carrying on, or intends to carry on, an enterprise and there is no requirement that the enterprise be carried on in Australia.

10.5. Is the customer service provided by a foreign bank at its representative office in Australia subject to GST?

Non-interpretative – straight application of the law

This will depend on the facts of the case.

The customer service provided by a representative office of a foreign bank will be subject to GST if the requirements of section 9-5 of the GST Act are satisfied.

Section 9-5 provides that you make a taxable supply if:

- you make the supply for consideration
- the supply is made in the course or furtherance of an enterprise that you carry on
- the supply is connected with the indirect tax zone
- you are registered or required to be registered.

However, the supply is not a taxable supply to the extent that it is GST-free or input taxed.

10.6. Is a foreign bank with its representative office in Australia entitled to claim the full amount of GST on the goods and services it purchases and utilises, if it is not generating any income in Australia?

Non-interpretative – straight application of the law

If a foreign bank with a representative office in Australia chooses to register for GST, it is entitled to input tax credits for any creditable acquisitions made by its representative office in Australia. The Australian representative office of a foreign bank is not entitled to input tax credits in its own right because it cannot register for GST.

Money transfer service

(a) added, (u) updated, (w) withdrawn

Issue No.	Issue	Date
11.1	What are the GST implications for the supply of an international inbound money transfer service to a customer overseas by an overseas money transfer service entity (via its agent overseas)?	8 August 2002(a)
11.2	What are the GST implications for the supply of an international outbound money transfer service to a customer in Australia by an overseas money transfer service entity (via its agent in Australia)?	1 April 2019(u)
11.3	What are the GST implications for the supply of an intra-Australia money transfer service to a customer within Australia by an overseas money transfer service entity (via its agent within Australia)?	1 April 2019(u)

11.1 What are the GST implications for the supply of an international inbound money transfer service to a customer overseas by an overseas money transfer service entity (via its agent overseas)?

Non-interpretative – straight application of the law

The supply of an international inbound money transfer service to a customer overseas by an overseas money transfer service entity represents the creation of a right by the overseas entity to a customer overseas. The supply is outside the scope of the Australian GST system as the supply of that right is created overseas and not in the indirect tax zone and hence not connected with the indirect tax zone.

11.2. What are the GST implications for the supply of an international outbound money transfer service to a customer in Australia by an overseas money transfer service entity (via its agent in Australia)?

Non-interpretative – straight application of the law

The supply of an outbound money transfer service to a customer in Australia by an overseas money transfer service entity is the creation of an interest in a debt under item 2 in the table in subsection40-5.09(3) of the GST Regulations and hence will be a financial supply where all the requirements of subsection 40-5.09(1) of the GST Regulations are satisfied.

11.3. What are the GST implications for the supply of an intra-Australia money transfer service to a customer within Australia by an overseas money transfer service entity (via its agent within Australia)?

Non-interpretative – straight application of the law

The supply of an intra-Australia money transfer service to a customer within Australia by an overseas money transfer service entity is the creation of an interest in a debt under item 2 in the table in subsection 40-5.09(3) of the GST Regulations and hence will be a financial supply where all the requirements of subsection 40-5.09(1) of the GST Regulations are satisfied.

Share management fishery

(a) added, (u) updated, (w) withdrawn

Issue no	Issue	Date
12.1	Is a supply of shares in a share management fishery a financial supply?	1 April 2019(u)

12.1 Is a supply of shares in a share management fishery a financial supply?

Non-interpretative – straight application of the law

A supply of shares in a share management fishery is not a financial supply.

Item 10 of subsection 40-5.09(3) of the GST Regulations provides that the provision, acquisition or disposal of securities is a financial supply. The definition of securities includes shares in a body. A share management fishery falls within the definition of a body.

A share in a company is defined in the GST Act as 'a share in the capital of the company, and includes stock'. A share in the capital of the company represents a shareholder's interest in, or right to, the capital of the company. The capital of the company represents an accumulated wealth of the company and shareholders' ownership in the company. Although shareholders in the share management fishery have an interest in the fishery, their interest is not in the capital of the fishery. The shareholders' interest is in the quota which is allocated to them in proportion to their shareholding.

Investor directed portfolio services

(a) added, (u) updated, (w) withdrawn

Issue no	Issue	Date
13.1	What is an Investors Directed Portfolio Services (IDPS)?	9 October 2002 (a)
13.2	Is an IDPS entitled to be registered for GST purposes?	9 October 2002 (a)
13.3	Is an IDPS an entity within the meaning given by the GST Act?	9 October 2002 (a)
13.4	Is an IDPS carrying on an enterprise within the meaning given by the GST Act?	9 October 2002 (a)

13.1 What is an investor directed portfolio service (IDPS)?

Non-interpretative

The term IDPS is not defined for the purposes of the GST Act or GST Regulations. Consequently, it is necessary to look towards an ordinary or technical (commercial) meaning. The Australian Securities & Investments Commission (ASIC) Policy Statement (PS) 148 – Investor directed portfolio services provides a technical meaning.

Formally, ASIC, by way of PS 148.12, considers that:

'An IDPS is a managed investment scheme having the following features:

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

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

ASIC, by way of PS 148.19, regard an IDPS as a managed investment scheme because:

- '…they involve the expectation of cost savings (for example through netting of transactions or pooling of funds for the purposes of making acquisitions) or access to investments that are not otherwise available. In this way, an IDPS differs from a nominee and custody service (NCS) to which this policy does not apply: see Policy Statement 149 Nominee and custody services [PS 149]. We consider that NCS are unlikely to be managed investment schemes'

Arrangements typically marketed as master funds or wrap accounts are likely to be an IDPS.

13.2 Is an IDPS entitled to be registered for GST purposes?

Non-interpretative – straight application of the law.

An IDPS is entitled to be registered for GST purposes if it is found to be an entity that is carrying on an enterprise (whether or not the entity's turnover is at, above or below the registration turnover threshold).

13.3 Is an IDPS an entity within the meaning given by the GST Act?

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found here.

13.4 Is an IDPS carrying on an enterprise within the meaning given by the GST Act?

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found here.

Hire purchase arrangements and apportionment methodology

(a) added, (u) updated, (w) withdrawn

Issue no	Issue	Date
14.1	How does a financier calculate entitlement to input tax credits in relation to hire purchase contracts?	1 April 2019(u)

14.1. How does a financier calculate entitlement to input tax credits in relation to hire purchase contracts?

For source of ATO view, refer to paragraphs 70 to 130 of GSTR 2006/3 *Goods and services tax: determining the extent of creditable purpose for providers of financial supplies*.

Due to amendments made to the GST law which took effect from 1 July 2012, the supply of credit under a hire purchase agreement entered into on or after that date will be subject to GST. As such the following answer is relevant only for hire purchase agreements entered into before 1 July 2012.

In calculating input tax credits you need to estimate the extent to which your acquisitions are for a creditable purpose. To the extent the acquisitions relate to making financial supplies, you do not have a creditable purpose and input tax credits are denied unless you are entitled to reduced input tax credits.

In estimating the extent of creditable purpose you need to make a reasonable estimate of the planned use of the acquisition on a fair and reasonable basis having regard to the nature of the supply. 'The criteria used in relation to any expense must therefore recognise the nature of the underlying supply to be made.' (Paragraph 75 GSTR 2006/3).

For a hire purchase agreements entered into before 1 July 2012:

The supply of goods under a hire purchase agreement entered into before 1 July 2012 continues to be a taxable supply and the supply of a separately disclosed credit component continues to be an input taxed financial supply.

Hire purchase arrangements consist of taxable and input taxed components, but the underlying nature of a hire purchase arrangement is input taxed, namely the supply of credit. The methodology used to determine the extent of creditable purpose of an acquisition in connection to the taxable and input taxed components, must be applied in this context.

The direct attribution method gives the most accurate reflection of how an acquisition is used and where an expense can be directly allocated this should be done. A direct attribution method seeks to identify the costs incurred in achieving a particular income flow. Where, for instance, computers are used by credit officers, the acquisition of those computers should be directly attributed to the activities of those officers.

Other indirect methods may be used where a direct attribution is not possible. The most appropriate indirect methodology should reflect the planned or actual usage of the acquisitions. ‘If more than one of these indirect measures is available you should select the one which most accurately reflects the relationship between the activities of your enterprise and your acquisitions or importations.’ (Paragraph 119 GSTR 2006/3).

GSTR 2006/3 provides guidance on apportionment methodologies that can be used for calculating input tax credits by providers of financial supplies.

It is assumed for these examples below that you are registered for GST and you exceed the Financial Acquisitions Threshold (Div 189). Also these examples only apply to hire purchase agreements entered into before 1 July 2012.

Example 1

Question:

A financier offers hire purchase agreements, leases and chattel mortgages. The financier's acquisitions include an introductory/arrangement service for which a dealer commission is paid. Dealer commissions are paid once the customer agrees to finance the acquisition from the dealer by accepting a hire purchase arrangement.

Is the acquisition of the introductory/arrangement service made for a creditable purpose?

Answer:

In determining whether the financier has a creditable purpose for the acquisition of introductory services, paragraph 11-15(2)(a) of the GST Act provides that you do not acquire something for a creditable purpose to the extent that the acquisition relates to you making supplies that would be input taxed.

In terms of the financier's acquisition of an introductory/arrangement service, the dealer is acting in the capacity of a financial supply facilitator in relation to the supply of the financier's interest in a credit arrangement to the customer. Furthermore, as a result of the customer entering into the hire purchase arrangement the dealer has also facilitated the financier making a supply of the relevant goods to the customer under the hire purchase agreement. As such, the activities of the dealer are considered to have a direct relationship with the financier making both input taxed and taxable (or GST-free) supplies.

Therefore, the acquisition relates to both the taxable (or GST-free) activity and the input taxed activity of the entity under a disclosed hire-purchase agreement and is a partly creditable acquisition.

The apportionment methodology adopted to determine the extent of creditable purpose for this acquisition needs to be fair and reasonable. Typically the main activity and major focus of an enterprise which is engaged in providing finance under hire purchase agreements will be the provision of credit rather than the supply of the relevant goods .Consequently, the majority of expenditure would be related to the making of input taxed supplies, and the method adopted should take this into account.

To the extent that the acquisition is not for a creditable purpose under Division 11 and relates to making financial supplies, the financier may also be entitled to a reduced input tax credit if the acquisition in question is a reduced credit acquisition as outlined in subsection 70-5.02(2) of the GST Regulations. The introductory/arrangement service qualifies as a reduced credit acquisition by virtue of item 18 or 27 of subsection 70-5.02(2) of the GST Regulations.

Example 2

Question:

A financier offers hire purchase agreements, leases and chattel mortgages. The financier's overheads include utilities, office rental, stationery, telephone etc.

Based on the number of current contracts, the financier has estimated that hire purchase represents 50% of its business, chattel mortgages 20% and leasing 30%.

Revenue received from the supplies made by the financier is as follows:

Gross revenue for non-financial supplies	
Lease payments	*$70 million*
Lease residuals	*$20 million*
Bailment income	*$10 million*
Bailment payouts	*$1,100 million*

HP supply of vehicles	*$200 million*
Total	*$1,400 million*

Net revenue for financial supplies

Chattel mortgage income	*$40 million*
Chattel mortgage fees	*$2 million*
Hire purchase interest	*$20 million*
Hire purchase credit charges	*$2 million*
Loan income	*$4 million*
Total	*$68 million*
Total Supplies	*$1,468 million*

The financier applies the general formula to estimate its extent of creditable purpose in respect of their overheads:

($1,4000m ÷ $1,468m) × 100% = 39.37%

Using the general formula approach, the financier estimates its extent of creditable purpose to be 95.37%. Accordingly, the financier intends to claim an input tax credit equal to 95.37% of the GST included in their overhead expenses.

Answer:

As discussed in paragraph 75 of GSTR 2006/3, when choosing your apportionment methodology, the apportionment methodology you select must:

- *be appropriate and reasonable*
  - accurately reflect the planned use of that acquisition
  - be well documented and justifiable.

In terms of 'overhead expenses', paragraph 103 of GSTR 2006/3 acknowledges that an indirect method of apportionment may be appropriate (as it is not cost effective to try to measure the use to which each separate overhead acquisition is put). Paragraphs 102-130 of GSTR 2006/3 provides financial supply providers with a non-exhaustive list of indirect methodologies.

Whilst the 'general formula' approach (paragraphs 105-108) is listed and discussed it will often be a less appropriate method than other indirect methods. The suitability of the general formula approach must always be assessed in light of the criteria mentioned in paragraph 75.

With regards to the use of the general formula in this example, it is clear that the result does not achieve an accurate reflection of how the overheads are likely to be applied in the operation of the financier's enterprise. This is because the general formula is influenced by the inclusion of bailment payouts and the supply of vehicles. The use of net income from financial supplies in the formula is also distortive in this instance as it understates the relative weighting of those supplies when compared to gross taxable supplies. Whilst there will be bailment related activities carried out by the financier, these activities are generally minor in comparison to those activities devoted to making input taxed supplies. As the general formula approach, in this instance, gives weighting to taxable activities which is out of proportion to the input taxed activities carried out, this methodology is not the most the appropriate basis to estimate the extent of creditable purpose in respect of the financier's overheads.

In this example, a more appropriate indirect methodology is one that takes into account the extent of the financier's input taxed activities. Whilst the Commissioner does not advocate any particular approach, in this case a methodology based on the number of current contracts (modified to reflect the extent of taxable activities associated with a hire *purchase contract) may be a more appropriate basis of indirectly estimating the extent of creditable purpose with regards to the financier's usage of overheads.*

Example 3

Question:

Incorporating the facts outlined in Example 2, the Financier also purchases two computers.

Computer 1 is used exclusively for monitoring the finance calculation on hire purchase contracts. Computer 2 is used to log customer (hire purchase/chattel mortgages/leasing) queries, keep track of all repayments and to generate reminder letters for all overdue amounts.

Both computers can generate reports on the central processing unit (CPU) time spent performing transactions (that is, it can separately report on the time taken to log in hire purchase, chattel mortgage or leasing queries). They also keep a record of the number of transactions performed (broken down into each financing category).

With regards to the planned usage of Computer 2, past experience demonstrates that 40% of the transactions performed are hire purchase related, 30% each relate to chattel mortgages and leasing. However, by the measure of time, 70% of the CPU time is spent on hire purchase transactions with the balance equally split between chattel mortgages and leasing.

In order to work out the financier's entitlement to input tax credits for the acquisition of the computers, the financier has elected to apply the general formula to estimate the extent of creditable purpose. Accordingly, the financier estimates that 95.37% of each computer is used for a creditable purpose.

Answer:

In respect of Computer 1, the facts establish that the computer is used exclusively for making financial transactions. Consequently, the financier has no creditable purpose in respect to this acquisition. Therefore, no apportionment exercise is required. Accordingly, you are not entitled to an input tax credit with regards to your acquisition of Computer 1.

In respect of Computer 2, paragraphs 95 and 100 of GSTR 2006/3 respectively explain that:

> *the Commissioner considers the direct attribution method to give the most accurate reflection of how an acquisition is used*

you should use the direct attribution method to the greatest possible extent.

However, at paragraph 101, the Commissioner acknowledges that it may not be practical for organisations to directly attribute every individual cost. In the small number of cases where direct attribution is not possible, the Commissioner recognises that other apportionment methodologies may need to be used. Paragraph 75 sets out the criteria an apportionment methodology must satisfy in order to be considered as reasonable and fair.

With regards to the facts surrounding the planned use of Computer 2, it is evident that an apportionment methodology is necessary to estimate the extent of creditable purpose. In this instance, we consider that a direct attribution method would be the most appropriate basis of apportionment. An indirect method such as the general formula approach would only be appropriate where it is difficult (and not cost effective) to directly attribute and where the methodology satisfies the criteria laid out in paragraph 75 of GSTR 2006/3.

The facts outline that the financier has the choice of directly attributing on a number of transactions performed or time spent (number of CPU minutes) basis. In this regard, direct attribution on a transaction basis estimates the extent of creditable purpose to be 30% (30% of the transaction are leasing related). Whereas direct attribution on a time-spent basis estimates the extent of creditable purpose to be 15% (that is, CPU minutes devoted to leasing transactions).

Of the two measures, the more appropriate measure is the one that aims to achieve an accurate reflex of the planned use of Computer 2. The choice of a methodology should not be dictated by the method that gives the best input tax credit result as it may not necessarily be the most appropriate. In this instance, the time-spent basis of direct apportionment gives the best reflection of how Computer 2 will be used. Accordingly, in relation to the use of Computer 2, the financier has an estimated extent of creditable purpose equal to 15%.

The facts in this case demonstrate that the process of direct attribution is not a difficult or cost prohibitive one. As a consequence, the application of an indirect method of apportionment (such as the general formula approach) would not be appropriate in these circumstances.

The acquisition of a computer is not listed as a reduced credit acquisition under subsection 70-5.02(2) of the GST Regulations. Consequently, the financier is not entitled to a reduced input tax credit in relation these acquisitions.

For hire purchase agreements entered into on or after 1 July 2012:

all components of the supply made under a hire purchase agreement entered into on or after 1 July 2012 are treated as taxable supplies regardless of whether the credit component is separately disclosed. Therefore, it is no longer necessary to apportion overhead expenses related to the making of supplies under disclosed hire purchase agreements.

Credit card surcharge

Issue no	Issue	Date
15.1	Is the surcharge part of the consideration for the supply made by the merchant?	2 April 2003(a)

(a) added, (u) updated, (w) withdrawn

One of the Reserve Bank of Australia reforms on credit card schemes is that from 1 January 2003 a merchant is allowed to charge a credit card holder a surcharge for using a credit card to pay for a supply.

This issue is withdrawn with effect from 17 December 2014 as the views covered in this issue are contained in the Goods and Services Tax Ruling GSTR 2014/2 *Goods and services tax: treatment of ATM service fees, credit card surcharges and debit card surcharges.*