Australian Government
Australian Taxation Office

Public advice and guidance compendium – GSTD 2020/1

Relying on this Compendium

This Compendium of comments provides responses to comments received on draft Goods and Services Tax Determination GSTD 2020/D1 *Goods and services tax: when is the supply of a transaction account GST-free under table item 3 or table item 4(a) of subsection 38-190(1) of the A New Tax System (Goods and Services Tax) Act 1999?*. It is not a publication that has been approved to allow you to rely on it for any purpose and is not intended to provide you with advice or guidance, nor does it set out the ATO's general administrative practice. Therefore, this Compendium does not provide protection from primary tax, penalties or interest for any taxpayer that purports to rely on any views expressed in it.

Summary of issues raised and responses

Issue number	Issue raised	ATO response
1	**Commissioner's characterisation of a transaction account facility for GST purposes** The submitter believes that the nature of the supplies made under a transaction account facility involves: • the provision of a bundle of rights at the time of entering into the contract, and • separate supplies made at the time of contractual performance being separately identifiable 'interests' for the purpose of section 40-5.09 of the GST Regulations. The submitter considers the notion that a transaction account facility constitutes a single ongoing supply is at odds with observations of the High Court in *Commissioner of Taxation v MBI Properties Pty Ltd* [2014] HCA 49. The submitter considers that this is a fundamental error which informs the other issues it has with the draft Determination.	**Characterisation of the supply** In our view, there is a single financial supply of an interest in or under an account. The various ways by which an account holder accesses an account do not in themselves result in separate supplies being made by the account provider. The access methods are merely ways by which the account holder's repayment right is exercised or facilitated. For more details of our response to the submission on the characterisation of a transaction account facility, see our Issue 4 of the Compendium to draft Goods and Service Tax Ruling GSTR 2019/D1 *Goods and services tax: determining the creditable purpose of acquisitions in relation to transaction accounts*.
2	**Commissioner's interpretation and application of table item 3 of subsection 38-190(1) to the characterisation and GST classification of a transaction account facility** The Commissioner's views regarding how table item 3 of subsection 38-190(1) of the *A New Tax System (Goods and*	Paragraph 15 of the Determination makes it clear that the thing supplied is an interest in or under an account under table item 1 of subsection 40-5.09(3) of the GST Regulations. As explained in paragraphs 27 to 29 of the Determination, the supply of a transaction account is an ongoing supply under a single continuing contract.

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	Services Tax) Act 1999[1] applies to the supply of a transaction account are in error because of the Commissioner's flawed characterisation of the essential nature of the contractual relationship between an account provider and account holder. The submitter asserts that the Commissioner has selectively applied the guidance in Goods and Service Tax Ruling GSTR 2007/2 *Goods and services tax: in the application of paragraph (b) of item 3 in the table in subsection 38-190(1) of the A New Tax System (Goods and Services Tax) Act 1999 to a supply, when does 'effective use or enjoyment' of the supply 'take place outside Australia'?* in reaching the conclusion that the application of table item 3 is limited to the category of offshore transaction account 'use' represented by account holder present transactions. The Commissioner's position that an account holder's location overseas will only be integral to the supply of a transaction account, where there is a form of physical involvement necessary for the account holder to initiate the payment transaction with a merchant or a cash withdrawal, overlooks the most obvious and intuitive factor that the singular reason for the transaction account supply needing to occur is because of the account holder's location overseas. The Commissioner's approach produces a counter-intuitive outcome that he readily accepts in Examples 1 and 2 of the draft Determination. The conclusions reached are inconsistent with those in GSTD 2017/1. In both examples, Amanda is physically in Japan and, in Example 1, Oz Bank makes a GST-free supply of the transaction account whereas, in Example 2, the extent to which Oz Bank makes a GST-free supply of the transaction account does not include Amanda's use of her debit card to	The essential characteristic of a transaction account is a debtor-creditor relationship and fundamental to that relationship is the creditor's right to repayment. This means that, when an account holder accesses its repayment right by initiating a transaction, the transaction itself does not constitute a separate supply being made by the account provider. The account transactions reflect the use of the account under that supply, and therefore are relevant in the context of applying the GST-free provisions – this is consistent with our approach to the supply of a credit card facility in Goods and Service Tax Determination GSTD 2017/1 *Goods and services tax: when is the supply of a credit card facility GST-free under paragraph (a) of Item 4 in subsection 38-190(1) of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act)?* The various methods available to the account holder to exercise its repayment right, form part of that single supply of a transaction account. When the account holder accesses its transaction account outside of Australia, the Determination recognises that the supply of the transaction account may partly be GST-free under table item 3 in subsection 38-190(1). With reference to GSTR 2007/2, in analysing the application of table item 3 to a supply, the relevant supply is the supply of the transaction account and not the supply of the thing that the account holder purchases in accessing the account. In Example 2 of the Determination, the supply that Amanda purchased (that is, the train trip in Japan) is effectively used and enjoyed outside Australia. However, the supply we are analysing is the supply of the transaction account – Amanda's use of the transaction account to purchase the ticket online is the same as if she was in Australia. We do not agree with the submitter's argument that in analysing this supply, we should look through to the purchase transaction itself and consider whether the need for that transaction arose from the individual's presence outside Australia. The outcomes in Examples 1 and 2 of the Determination are not inconsistent

[1] All legislative references in this Compendium are to the *A New Tax System (Goods and Services Tax) Act 1999* unless otherwise indicated.

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	make the online purchase. If she chose to use a credit card to carry out either of these transactions, the Commissioner would treat the resulting transaction as GST-free. On this basis alone, the formulations expressed in the Determination with regard to the interpretation and application of table item 3 of subsection 38-190(1) should be reconsidered.	with GSTD 2017/1. Table item 3 tests the effective use and enjoyment of the supply by the recipient whereas table item 4 specifically focuses on the use of the rights in relation to the supply. The difference in outcomes is due to the narrower application of table item 4 to transaction accounts, which arises because the rights in relation to the supply of a transaction account are different from those for credit cards. The difference in the rights is due to the difference in the nature of the legal relationship of the parties in a transaction account facility and in a credit card facility. In a transaction account, the customer (account holder) is the creditor and the account provider is the debtor. The relationship in a credit card context is the reverse – that is, the customer (card holder) is the debtor and the account provider (issuer) is the creditor. In a transaction account facility, the repayment right is fundamental to the debtor/creditory relationship, and the access methods are merely a means of facilitating the exercise of the repayment rights. As the repayment will be made in Australia by the account provider, and the account holder's location is irrelevant for account holder not present transactions, we consider that neither item 3 nor item 4 apply to account holder not present transactions.
3	**Commissioner's interpretation and application of table item 4(a) of subsection 38-190(1) to the characterisation and GST classification of a transaction account facility** Similar to Issue 2 of this Compendium, the submitter considers the Commissioner's views regarding how table item 4(a) of subsection 38-190(1) applies to the supply of a transaction account are fundamentally in error because of the Commissioner's flawed characterisation and classification of the essential nature of the contractual relationship between an account provider and account holder. While the submitter agrees with the Commissioner's position that the supply of a transaction account is a supply in relation to rights, and accepts the case law establishing the location principles, the submitter fundamentally disagrees that the	The Commissioner's view that the supply of a transaction account is an ongoing supply under a single continuing contract flows from the nature of the relationship of the parties involved. Fundamental to that relationship is a repayment right that the account holder can exercise. Our response to Issue 2 of this Compendium is also relevant here. In relation to an international money transfer, we recognise in paragraph 7 of GSTR 2020/1 that international money transfers or international cheques may give rise to additional supplies made by the account holder, depending on the facts (for example, in some circumstances, the account holder may need to agree to separate terms and conditions to initiate these transactions). The approach the submitter refers to in Schedule 2 to PCG 2019/8 is a compliance approach intended to alleviate compliance costs as it means that account holders will not need to identify whether these transactions are separate

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	totality of these elements provide a rationale or coherent argument for table item 4(a) having no application with regard to the supply of a transaction account. The Commissioner's view expressed in the draft Determination in relation to the application of table item 4(a) to the supply of a transaction account is inconsistent with the view expressed in a private ruling in relation to the supply of money offshore in the form of a 'wire transfer' or 'foreign currency draft /cheque', and the statement made in footnote 32 of Schedule 2 to Practical Compliance Guideline PCG 2019/8 *ATO compliance approach to GST apportionment of acquisitions that relate to certain financial supplies*. When the description of the actions taken by 'X' to transfer money overseas are compared to an account holder's performance of its contractual obligations to settle an overseas debt arising from the account holder's exercise of their 'repayment right', there is no material difference between the transactions as both involve the facilitation or dealing in a right that is for use outside Australia. The only difference is that one is a dealing in a right for offshore use that is being effected within the terms and conditions of a transaction account agreement and the other is being performed on a 'spot' basis. This distinction does not justify the Commissioner reaching different conclusions on the application of table item 4(a). The submitter notes that if the Commissioner takes the view that the account holder's location is irrelevant, then that would seemingly have implications for the interpretation of the application of table item 2 of subsection 38-190(1). That is, the Commissioner in the draft Determination appears to be advocating that consumption in this context wholly occurs within Australia leading to the inevitable question whether table item 2 can have any application where the supply of the transaction account is being made to a non-resident account	supplies in order to apply the methodology in the blue zone of the risk assessment framework (that is, regardless of whether these transactions give rise to additional supplies, this approach allows the account provider to include these transactions as reflecting GST-free use). If there is a separate supply of an international money transfer, the essential character is to transfer money to the bank account of an overseas third party. The supplier makes a supply in relation to rights when it facilitates the effective transfer of the value in the rights from the payer to the payee. In this context the relevant right is the chose in action that occurs on deposit into the overseas third party's account. As the payee's account is located outside of Australia, the rights are for use outside Australia. In broad terms, the relevant rights for table item 4 are both repayment rights in relation to accounts. For the transaction account, the repayment right is for an account in Australia; for an international money transfer, the account is outside of Australia and therefore repayment right is for use outside of Australia. Because the rights are for use at different locations, the application of table item 4 is different in the two scenarios. If there is a separate supply of foreign currency draft and cheques, the essential character of the supply is that it is a thing that derives its value from the chose in action that requires the overseas financial institution upon which it is drawn to provide funds on presentation of the draft or cheque. As the rights attach to the physical instrument, item 4(a) applies if the intended use is to have the cheque delivered to the nominated payee at a location outside of Australia. The Commissioner's view that an account holder's location is not relevant for the purposes of table item 4(a) does not impact on the application of table item 2 on the supply of a transaction account to a non-resident. In terms of determining whether a supply is GST-free under section 38-190, the tests in table items 2 and 4 are different, with table item 2 focusing on the location of the recipient of the supply. The Determination does not consider the application of table item 2 but recognises that the supply may also be GST-free under table item 2 because table item 2 specifically applies to a supply made to a non-resident who is not in Australia when the thing supplied is done.

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4	**Inconsistency with GSTD 2017/1** Guidance on the extent to which supplies to account holders are GST-free has previously been provided in the context of credit cards in GSTD 2017/1. There is a high degree of commonality between the matters under consideration in GSTD 2017/1 and the draft Determination. Indeed, in the context of functionality insofar as accessing the payment system, the use of these card products is almost identical. Further, the two products will impact on the same group of taxpayers and will in many cases involve the same accounting systems and processes. In GSTD 2017/1, the conclusion is reached that a supply of the credit card facility will be GST-free for 'card-present' and 'card not present' transactions initiated by a cardholder when that cardholder is outside Australia at the relevant time. By contrast, the draft Determination applies a further condition to the operation of the same tests in the context of transactions undertaken through transaction accounts (as opposed to credit cards) by requiring that the account holder's presence outside of Australia is integral to that transaction. Thus, a 'card not present' transaction on a credit card account undertaken while the cardholder is physically outside Australia would involve a GST-free supply to the cardholder by the account issuer in accordance with GSTD 2017/1. However, a similar transaction undertaken on a transaction account would not, on the view taken by the draft Determination, give rise to a GST-free supply by the account issuer to the account holder because the physical location of the account holder is not integral to the transaction. The conflict between GSTD 2017/1 and the draft Determination is confusing for taxpayers.	The views in the Determination are not inconsistent with GSTD 2017/1. Table item 3 considers the effective use and enjoyment of the supply by the recipient whereas table item 4 specifically focuses on the use of the rights in relation to the supply. The Commissioner recognises in paragraph 10 of Goods and Services Tax Ruling GSTR 2019/2 *Goods and services tax: determining the creditable purpose of acquisitions in a credit card issuing business* that table item 3 has a narrower application than table item 4 to the supply of a credit card facility, as consistent with GSTR 2007/2, therefore the location of the cardholder must be integral to the provision of the supply for it to be effectively used and enjoyed outside Australia. If the account holder accesses its transaction account while outside Australia in a way that requires them to be in the physical location to initiate the transaction. (that is, account holder present transaction) then the account holder's location will be integral to the provision of the supply and the effective use or enjoyment of the supply is outside of Australia. Conversely, if the account holder accesses their transaction account while overseas in a way that does not require the account holder to be physically present overseas , then the account holder's location is not integral to the transaction under the transaction account and table item 3 is not satisfied. As noted in this Compendium, the difference in outcomes is due to the narrower application of table item 4 to transaction accounts, which arises because the rights in relation to the supply of a transaction account are different from those for credit cards.
5	**Lack of analysis of the rights associated with modern**	The Commissioner's view that the supply of a transaction account is a single

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	accounts It would appear from the draft Determination that the Commissioner does not consider that table item 4 of subsection 38-190(1) necessarily extends or advances the extent to which the operation of a transaction account can be considered to be GST-free. In considering the application of table item 4(a) of subsection 38-190(1), it is critical to properly understand the character of the rights at issue. It is critically important for the ATO to properly consider the nature of a transaction account in reaching its views on the scope of table item 4(a) in this context. The submitter is concerned that the ATO's reticence to apply table item 4 arises from a lack of understanding of the complexities associated with modern transaction accounts operating within a global banking environment. Modern banking is characterised by inherent complexities and a range of circumstances which extend beyond the simplistic 'debtor-creditor relationship' that underpins much of the ATO's approach in the draft Determination. The additional services, range of access options and intertwined relationships which typify modern transaction accounts were never contemplated in cases such as *Foley v Hill* [1848] 2 HLC 28, 9 ER 1002 and *Hart (Inspector of Taxes) v Sangster* [1957] 1 Ch 329 to which we refer in the draft Determination. Given the importance of this issue for the characterisation of the supply and the application of table item 4(a), more detail should be considered by the ATO. The additional elements, when properly considered, would be expected to impact on the extent of the supplies made by account issuers that would fall within the operation of table item 4(a).	financial supply of an interest in or under an account is supported by the case law about the nature of a transaction account. The essential characteristic of the relationship between an account provider and an account holder is that of a debtor-creditor relationship. Modern transaction accounts offer a variety of methods by which the account holder can access funds deposited with the account provider. The various modern methods of accessing an account do not change the legal nature of the debtor-creditor relationship. The authorities cited by the submitter and referred to in the Determination continue to be relevantly applied in cases (for example, *Andrews v Australian and New Zealand Banking Group Limited* [2011] FCA 1376).