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)?

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This Ruling contains references to provisions of the *A New Tax System (Goods and Services Tax) Regulations 1999,* which have been replaced by the *A New Tax System (Goods and Services Tax) Regulations 2019.* This Ruling continues to have effect in relation to the remade Regulations.

Paragraph 32 of TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed and rewritten.

A comparison table which provides the replacement provisions in the *A New Tax System (Goods and Services Tax) Regulations 2019* for regulations which are referenced in this Ruling is available.

Goods and Services Tax Determination

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

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

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Ruling

1. The supply of a credit card facility is GST-free, to the extent that it is anticipated that the credit card facility will be used by the cardholder[1] to undertake transactions while they are physically outside Australia. The supply of a credit card facility is a supply made in relation to rights[2] within paragraph (a) of Item 4 in subsection 38-190(1).[3]

[1] In this Determination, 'cardholder' includes the credit card account holder and additional card holders on that account.

[2] Consistent with *Commissioner of Taxation v. American Express Wholesale Currency Services Pty Limited* (2010) 187 FCR 398; [2010] FCAFC 122; 2010 77 ATR 12, *(Amex)* at FCAFC 155, the supply of a credit card facility is a supply of an interest in or under a credit arrangement or right to credit.

2. The fact that a credit card facility allows overseas use is not sufficient evidence in itself that the facility will be used by cardholders physically outside Australia.

3. The anticipated use of the credit card facility must be determined objectively. The manner in which the cardholder intends to make use of the rights is reflected by how they intend to use the credit card facility. Anticipated use can be established by reference to past usage patterns of other cardholders for the particular credit card facility while physically outside Australia.

4. Past usage patterns do not include online, phone, fax, mail, or periodic payment transactions with overseas merchants where the cardholder is physically present in Australia ('card-not-present transactions').[4] If usage data of cardholders for that credit card facility is not available the issuer may use relevant data from a comparable credit card facility.

5. The location of the merchant accepting the credit card facility as payment does not determine where the rights are for use, and therefore doesn't determine the extent to which the supply is GST-free.

6. The actual use of the credit card facility is not known when the credit card facility is issued. The issuer will need to determine, on a fair and reasonable basis, the extent the rights are for use inside and outside Australia.[5]

Example

7. Bank Limited issues credit cards to its customers.

8. Customers may use the credit card facility for 'card-present transactions' in Australia and while travelling overseas. Cardholders may also use the facility for 'card-not-present' transactions for example via the internet and by phone both while in Australia and while travelling overseas.

9. When the credit card facility is established, it is not practical for Bank Limited to ascertain the extent to which each customer will use the card facility outside of Australia. It does, however know the pattern of past usage by cardholders of this particular category of credit card when they are physically in and outside Australia (including 'card-not-present' transactions).

10. The supply of the credit card facility by Bank Limited is GST-free to the extent that the credit card facility is used by the cardholder whilst physically outside Australia (this includes both 'card-present' and 'card-not-present transactions').

11. Bank Limited uses the pattern of past usage to make a fair and reasonable estimate of the extent to which the supply of its credit cards is GST-free.

Date of effect

12. This Determination applies from 12 July 2017.

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[3] All legislative references in this determination are to the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), unless otherwise specified.

[4] See paragraph 16 of this Determination for further explanation of 'card-present transactions' and 'card-not-present transactions'.

[5] Goods and Services Tax Ruling GSTR 2003/8 *Goods and services tax: supply of rights for use outside Australia - subsection 38-190(1), item 4, paragraph (a) and subsection 38-190(2)*, at paragraph 129.

13. In any case, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 75 to 76 of Taxation Ruling TR 2006/10).

Commissioner of Taxation
12 July 2017

Appendix 1 – Explanation

This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.

Background

14. A supply of a credit card facility is the supply of a financial interest capable of being an input taxed financial supply if the requirements of subregulation 40-5.09(1) of the *A New Tax System (Goods and Services Tax) Regulations* 1999 are met.[6]

15. Subsection 9-30(3) contemplates that to the extent a supply may be both GST-free and input taxed, it is GST-free.[7]

16. A credit card facility may be used by a cardholder in the following ways:

- 'Card-present transactions' – these are transactions where the cardholder must be physically present to use the card or facility and may provide a PIN, or use a contactless payment method ('tap and go'). A card-present transaction includes cash advances (such as ATM withdrawals or over the counter at a financial institution), and
- 'Card-not-present transactions' – these are transactions where the cardholder does not need to be present. Examples include online, phone, fax, mail, and periodic payment transactions. In such cases the cardholder may be required to provide the card number, expiry date and any other security information[8], before use of the credit card facility is accepted as payment.

Supplies in relation to rights that are for use outside Australia

17. Subsection 38-190(1) applies only to supplies that are not supplies of goods or real property.

18. Item 4 states that 'a supply that is made in relation to rights' is GST-free 'if… the rights are for use outside Australia'.

19. The broader application of Item 4 is considered in Goods and Services Tax Ruling GSTR 2003/8. This Determination sets out the Commissioner's views regarding how Item 4 applies to the supply of a credit card facility.

Is the supply of the credit card facility 'a supply made in relation to rights'?

20. Consistent with *Amex*[9], the supply of a credit card facility is a supply of an interest in or under a credit arrangement or right to credit. The supply of a credit card is a supply of rights, and therefore a supply in relation to rights for the purposes of Item 4.

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[6] Although this had long been the Commissioner's view (Goods and Services Tax Ruling GSTR 2002/2 *Goods and services tax: GST treatment of financial supplies and related supplies and acquisitions*, Schedule 2), it was confirmed by the Full Federal Court in *Amex.*

[7] Unless the provision under which it is input taxed requires the supplier to have chosen for its supplies of that kind to be input taxed.

[8] For example a Card Verification Value or Card Identification Number printed on the card.

[9] See *Amex* at FCAFC 155

21. Where reference is made to the 'supply of the credit card facility', this means the totality of the supply of the credit card facility or account made to the cardholder under the contractual arrangements with the issuer. This includes the use of the physical card and other methods that are made available to access the credit card facility.

22. Depending on the card issuer and the type of card, there may be other potential supplies such as loyalty program membership and travel insurance. Whether these supplies are separate supplies or incidental to the dominant supply under the credit card facility will depend on the facts and is not further dealt with in this Determination.[10]

To what extent are the rights 'for use outside Australia'?

23. A supply made in relation to rights is GST-free under Item 4 to the extent that the rights are intended to be used outside Australia.[11] When a cardholder initiates either a 'card-present' or 'card-not-present' transaction, they are using the rights relating to the credit card facility. The physical location of the cardholder at the time they initiate the transaction determines where the rights are 'for use'. The rights are 'for use outside of Australia' to the extent that it is anticipated that the credit card facility will be used by the cardholder to undertake transactions while they are physically outside Australia.

24. There is no requirement to apportion consideration under Division 9 or section 38-190 when a supply is partly GST-free and partly input taxed, because there is no GST payable on the supply. However, determining the extent that the supply is GST-free is a factor in determining the creditable purpose of acquisitions relating to making those supplies. An acquisition will be denied creditable purpose to the extent that it relates to making supplies that would be input taxed.[12]

[10] Incidental financial supplies are specifically dealt with in regulation 40-5.10, and explained in paragraphs 117 to 143 of GSTR 2002/2. See more generally in Goods and Services Tax Ruling GSTR 2001/8 *Goods and services tax: Apportioning the consideration for a supply that includes taxable and non-taxable parts*.

[11] GSTR 2003/8 paragraph 124.

[12] Paragraph 11-15(2)(a).

References

Previous draft:

GSTD 2014/D1

Related Rulings/Determinations:

GSTR 2001/8; GSTR 2002/2; GSTR 2003/8

Legislative references:

- ANTS(GST)A 1999
- ANTS(GST)A 1999 Div 9
- ANTS(GST)A 1999 9-30(3)
- ANTS(GST)A 1999 11-15(2)(a)
- ANTS(GST)A 1999 38-190
- ANTS(GST)A 1999 38-190(1)
- ANTS(GST)R 1999 40-5.09(1)
- ANTS(GST)R 1999 40-5.10

Cases relied on:

- Federal Commissioner of Taxation v. American Express Wholesale Currency Services Pty Ltd - [2010] FCAFC 122; 2010 ATC 20-212; (2010) 187 FCR 398; (2010) 77 ATR 12; (2010) 273 ALR 501; [2011] ALMD 3817
- Travelex Ltd v. Federal Commissioner of Taxation - [2010] HCA 33; (2010) 84 ALJR 683; 2010 ATC 20-214; (2010) 270 ALR 253; (2010) 76 ATR 329; [2010] ALMD 7981; [2010] ALMD 8066; [2010] ALMD 8091; (2010) 241 CLR 510

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