

# ***GSTR 2004/4A5 - Addendum - Goods and services tax: assignment of payment streams including under a typical securitisation arrangement***

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## Addendum

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### Goods and Services Tax Ruling

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

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends *Goods and Services Tax Ruling GSTR 2004/4* to reflect amendments made to the *A New Tax System (Goods and Services Tax) Act 1999* by *Tax Laws Amendment (2011 Measures No. 9) Act 2012* and amendments made to the *A New Tax System (Goods and Services Tax) Regulations 1999* by the *A New Tax System (Goods and Services Tax) Amendment Regulation 2012 (No. 1)*.

#### **GSTR 2004/4 is amended as follows:**

**1. Paragraph 8**

In the first sentence, omit: '[to tax periods commencing]'.

**2. Paragraph 9A**

Omit 'and 8 May 2013'; Substitute ', 8 May 2013 and 11 December 2013'.

**3. Footnote 6**

At the end of the footnote; insert 'See also [138] to [148] of *Federal Commissioner of Taxation v. American Express Wholesale Currency Services Pty Limited* (2010) 187 FCR 398; [2010] FCAFC 122.'.

## 4. Paragraph 80

Omit the paragraph (including the footnote); substitute:

80. The supply of goods and the supply of credit under a hire purchase agreement entered into on or after 1 July 2012 are taxable supplies if the requirements of section 9-5 are satisfied.<sup>46</sup> In contrast, the supply of credit under a hire purchase agreement entered into before 1 July 2012 is an input taxed financial supply if there is a separate charge for the credit component that is disclosed to the recipient of the goods.<sup>46A</sup> However, this difference in treatment is irrelevant for the purposes of determining the GST consequences of an assignment of the right to the payment stream arising from either type of agreement.

## 5. Paragraph 97

After the paragraph; insert:

97A. The GST consequences of a typical securitisation arrangement as discussed below and as set out in Schedule 1 have been constructed on the basis that a SPV in the form of a trust is a securitisation entity for the purposes of regulation 70-5.02 of the GST Regulations. A 'securitisation entity' means a trust that has the following features:

- (a) the trust was established for the purpose of managing some or all of the economic risk associated with assets, liabilities or investments (whether the trust assumes the risk from another person or creates the risk itself);
- (b) the total value of the debt interests in the trust is at least 50% of the total value of the trust's assets;
- (c) the trust is an insolvency-remote special purpose entity according to criteria of an internationally recognised rating agency that are applicable to the circumstances of the trust (regardless of whether the agency has determined that the trust satisfies the criteria).<sup>48A</sup>

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<sup>46</sup> Note that item 20 in the table in regulation 40-5.12 of the GST Regulations provides that the supply of credit under a hire purchase agreement entered into on or after 1 July 2012 is not an input taxed financial supply.

<sup>46A</sup> Item 8 in the table in subregulation 40-5.09(3) of the GST Regulations.

<sup>48A</sup> See subregulation 70-5.02(4). These conditions are the same conditions set out in subsection 820-39(3) of the *Income Tax Assessment Act 1997* which provides a carve-out from the thin capitalisation rules in Division 820 for certain special purpose entities.

97B. Acquisitions made by a SPV that is a securitisation entity are not reduced credit acquisitions under item 32 in the table in subregulation 70-5.02(2) of the GST Regulations.<sup>48B</sup> However, an acquisition made by a securitisation entity will be a reduced credit acquisition if it is covered by another item of the table in subregulation 70-5.02(2).

## 6. Paragraph 151

After the paragraph; insert

### **Securitisation Entity**

151A. For the purposes of regulation 70-5.02 of the GST Regulations, a 'securitisation entity' means a trust that has the following features:

- (a) the trust was established for the purpose of managing some or all of the economic risk associated with assets, liabilities or investments (whether the trust assumes the risk from another person or creates the risk itself);
- (b) the total value of the debt interests in the trust is at least 50% of the total value of the trust's assets;
- (c) the trust is an insolvency-remote special purpose entity according to criteria of an internationally recognised rating agency that are applicable to the circumstances of the trust (regardless of whether the agency has determined that the trust satisfies the criteria).<sup>75A</sup>

## 7. Detailed contents list

Insert:

Securitisation Entity

151A

<sup>48B</sup> Item 32 in the table in subregulation 70-5.02(2) applies to acquisitions of supplies made by a recognised trust scheme to the extent the supplies are acquired after 1 July 2012. A recognised trust scheme includes a trust that is a managed investment scheme, or part of a managed investment scheme, where the entity that acts in the capacity as trustee or responsible entity of the trust is carrying on, in its own capacity, an enterprise that includes making taxable supplies to the trust. However, a securitisation entity is expressly excluded from being a recognised trust scheme.

<sup>75A</sup> See subregulation 70-5.02(4).

# GSTR 2004/4

## 8. Legislative references

Insert:

- ITAA 1997 Div 820
- ITAA 1997 820-39(3)
- ANTS(GST)R99 70-5.02(4)

## 9. Case references

Insert:

- Federal Commissioner of Taxation v. American Express Wholesale Currency Services Pty Limited (2010) 187 FCR 398; [2010] FCAFC 122

## 10. Schedule 1

After the heading '**GST classification of supplies in a typical securitisation arrangement**'; insert footnote 75B:

- <sup>75B</sup> This Schedule has been prepared on the basis that the SPV is a securitisation entity for the purposes of regulation 70-5.02 of the GST Regulations. See paragraphs 97A to 97B of this Ruling.

This Addendum applies both before and after its date of issue, subject to the commencement and application provisions of each amending Act or Regulation to which it refers.

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**Commissioner of Taxation**

11 December 2013

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ATO references

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