GSTR 2020/1EC - Compendium

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Generated on: 2 June 2026, 09:01:02 PM

Australian Government
Australian Taxation Office

Public advice and guidance compendium – GSTR 2020/1

Relying on this Compendium

This Compendium of comments provides responses to comments received on draft Goods and Services Tax Ruling GSTR 2019/D1 *Goods and services tax: determining the creditable purpose of acquisitions in relation to transaction accounts*. 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	**Insufficient guidance on apportionment** The submitter recommends that the issuance of the draft Ruling as final should be reconsidered. Readers of the draft Ruling are unlikely to be any better informed in dealing with the challenge of complying with the requirements of the goods and services tax (GST) law in relation to claiming GST credits in respect of acquisitions with potential nexus, with both taxable and input taxed supplies. A recommended alternative to issuing a final Ruling would be to incorporate appropriate examples related to transaction accounts in an existing ruling, such as Goods and Services Tax Ruling GSTR 2006/3 *Goods and services tax: determining the extent of creditable purpose for providers of financial supplies*. There is insufficient guidance on how the apportionment of nexus between input taxed supplies, taxable supplies, and carrying on enterprise activities should be approached. It is noted that each one	We have identified the need to clearly express our views on the application of paragraph 11-15(2)(a) of the *A New Tax System (Goods and Services Tax) Act 1999*[1] to acquisitions in relation to transaction accounts, as this provides the foundation for further guidance on the apportionment of these acquisitions. The final Ruling is complemented by Schedule 2 of Practical Compliance Guideline PCG 2019/8 *ATO compliance approach to GST apportionment of acquisitions that relate to certain financial supplies*, which reflects our practical expectations for how the views in this Ruling should be reflected in the design of an apportionment method. This enables taxpayers to consider their position in our risk assessment framework, and provides our compliance approach to various apportionment methodologies used for the relevant costs.

[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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	of the acquisitions is different, and a different methodology should be adopted; and that may be beyond the intent of this intended Ruling. Another submitter said that there is no clear rationale or compelling case for why this Ruling is needed and the ATO has not articulated what uncertainty it is seeking to address.	
2	**Analysis of a 'class of acquisitions'** The submitter disagrees with the analysis that acquisitions of branch network costs, call centre services and product comparison website services only have a relevant connection with financial supplies. It is critical to determine specific suppliers' applications of its acquisitions to supplies that it makes or might make, and the draft Ruling inappropriately seems to take a 'class of suppliers' approach. Further, each individual acquisition by taxpayers must be considered, rather than a 'class of acquisitions'. Taxpayers and the Commissioner sometimes do group certain acquisitions together for practical purposes where the extent of nexus between certain acquisitions with certain input taxed supplies are the same. However, this cannot be mandated, as is implied in this draft Ruling, and should only be used after careful analysis of all individual acquisitions, all individual supplies and the broader enterprise of the supplier. The draft Ruling also inappropriately appears to refer to potential acquisitions by a 'class of customers' from the supplier in determining the application of acquisitions made by a supplier. It is not the acquisitions of a taxpayer's class of customers that is relevant, rather it is the application by the suppliers to all supplies they make or might make.	The application of paragraph 11-15(2)(a) requires the precise identification of the relevant acquisition and a factual enquiry into its connection to the making of supplies that would be input taxed. The Ruling does not refer to a 'class of supplies', 'class of acquisitions' or 'class of customers' approach to the application of the provision. The Ruling uses examples to demonstrate the analysis required under paragraph 11-15(2)(a) for a particular factual situation. Paragraph 50 of the final Ruling clarifies that the examples are not intended to address every potential variation in individual circumstances, and that there may be factual variations in the acquisitions or supplies that may need to be taken into account when determining the application of paragraph 11-15(2)(a) in particular circumstances. For completeness, we note that in relation to apportionment, paragraph 38 of GSTR 2006/3 states that in some cases it may be sufficient to make a decision in relation to the status of acquisitions of a particular class or made by a particular business area.
3	**Application of paragraph 11-15(2)(a) to acquisitions** The submitter agrees with the Commissioner's comments that 'the relevant connection does not turn upon a characterisation of the	We acknowledge the submitters' views, but our view remains that some acquisitions in a transaction accounts business are only intended for use in making the financial supply to the account holder as any connection to the supply of interchange services is too remote to establish a creditable

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	purpose or the occasions of the purpose, of the supplier in the sense of a broader commercial objective'. However, the Commissioner does not sufficiently explain that taxpayers are generally entitled to GST input tax credits in respect of all acquisitions made 'in carrying on your enterprise' (subsection 11-5(1)). The draft Ruling seems to take a position that anything other than the single most direct supply to a particular customer is all that should be considered. For example, a financial supplier acquires website services to encourage customers to open an input taxed account, but the financial supplier is equally concerned with making taxable interchange and merchant supplies as a direct result of the website. The mere fact that the content of the website appears by customers to be directed to a single supply of an account to a customer, does not mean that it is not for the purpose or intent of the financial supplier making both input taxed and taxable supplies. The submitter does not agree with the Commissioner treating the other supplies by the supplier to be a broader commercial objective of the supplier, and for these not to be taken into account in determining the nexus of acquisition of the supplier with all supplies. With reference to the Commissioner's comments that the connection may be 'direct, or indirect', the positions in relation to acquisitions of branch network costs, call centre costs and product comparison websites go beyond paragraph 11-5 (2)(a). Another submitter considered that the Commissioner has adopted a flawed approach in narrowly viewing the operation of the scheme debit, EFTPOS and BPAY payment systems through the single prism of the transaction account facility component. This has affected the Commissioner's assessment of the application of paragraph 11-15(2)(a) such that the guidance provided is not in line with the objective facts of the situation.	purpose. Our position fundamentally recognises that an account provider makes both taxable supplies of interchange services to acquiring entities, and financial supplies of transaction accounts to account holders. Where a relevant connection is established between an acquisition and both supplies for the purposes of paragraph 11-15(2)(a), the acquisition will be partly for a creditable purpose. We do not assert that, as a general proposition, a connection between acquisitions and supplies of interchange services is merely part of the supplier's broader commercial objective or is too remote for the purposes of paragraph 11-15(2)(a). Instead, paragraph 11-15(2)(a) requires an objective analysis of particular acquisitions to determine their intended use. *Rio Tinto Services Limited v Commissioner of Taxation* [2015] FCAFC 117 (*Rio Tinto – appeal*) endorsed the requirement to precisely identify the relevant acquisition and a factual enquiry into the connection between the acquisition and the making of supplies that would be input taxed. Some acquisitions that relate to the completion of account transactions that involve the account provider making supplies of interchange services have been identified as relating to both supplies. Other acquisitions are intended for use only in making the financial supply of the transaction account to the account holder (as they are intended for use solely in managing the relationship with the account holder or in managing their account, or in originating the supply of the transaction account). For instance, Example 6 of the Ruling involves the acquisition of advertising services to induce new account holders to sign up for transaction accounts. Viewed objectively, this acquisition is intended for use in originating supplies of transaction accounts, and only has a relevant connection with these supplies. The acquisition is not relevantly connected with the performance of account transactions that involve the account provider making supplies of interchange services. The connection between the acquisition and the supply of interchange services occurs only as a result of the intervening activity of the new account holder in initiating such transactions. The acquisition has a direct relationship to making financial supplies to

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		account holders, whereas the connection to taxable supplies of interchange service is too remote for the purposes of paragraph 11-15(2)(a), and is insufficient to establish a creditable purpose. This conclusion is consistent with paragraph 126 of Goods and Services Tax Ruling GSTR 2008/1 *Goods and services tax: when do you acquire anything or import goods solely or partly for a creditable purpose?* that some acquisitions are to promote specific supplies and will relate to those supplies. This can be contrasted with other acquisitions of advertising services that are to promote the entity as a whole, by increasing public awareness of the entity and the types of products that it supplies. These acquisitions do not directly relate to any specific types of supplies, and instead have an indirect relationship to all supplies made by the enterprise (including, in the case of an account provider, both the supply of transaction accounts and the supply of interchange services).
4	**Commissioner's characterisation of a transaction account facility for GST purposes** The draft Ruling should be significantly revised to clarify the Commissioner's view on the characterisation and GST classification of the entry into and performance of the terms and conditions agreed between an account provider and an account holder. The draft Ruling adopts loose and interchangeable descriptions of the supply which appear to broaden the scope of input taxed activity. At times (such as in Example 11 of the draft Ruling), the Commissioner gives the impression that the account provider is making a separate and distinct input taxed financial supply each and every time the account holder accesses a particular account function (for example, when the account holder either views their account balance / transaction records or performs a transfer between interlinked accounts). Aside from the impracticality of determining the application of paragraph 11-15(2)(a) to transaction account acquisitions on this basis, the submitter considers that a 'functional disaggregation' approach represents a departure by the Commissioner which is	**Characterisation of the supply** Paragraphs 12 to 16 have been added to the final Ruling to clarify our view that the supply of a transaction account (as defined in the Ruling) is a single financial supply of an interest in or under an account. This is supported by the case law on the nature of a transaction account. This is preferred to the view put forward by the submitter, which splits the continuing contract between the account provider and account holder into separate discrete supplies (with each withdrawal transaction or use of account functions giving rise to separate supplies), rather than focusing on the entire contractual arrangement considered contextually and as a whole. Our view that there is a single financial supply is also supported by the context of the provisions, which is that transaction accounts are identified as financial services that should be input taxed, which is achieved by including the provision of an interest in an account made available by an Australian ADI in the financial supplies provisions in the *A New Tax System (Goods and Services Tax) Regulations 2019* (GST Regulations). This is evident from the examples of financial supplies under table item 1 of subsection 40-5.09(3) of the GST Regulations provided in Schedule 2 of the GST Regulations, which recognise the ongoing nature of the transaction account facility offered to account holders by identifying common

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	inconsistent with his views expressed elsewhere (with regard to the characterisation and GST classification of a credit card facility). The submitter considers that the draft Ruling leaves the confusing impression that the Commissioner is advocating both a 'single input taxed financial supply' and a 'multiple input taxed financial supply' view on the characterisation and GST classification of a transaction account facility. The submitter therefore considers that the draft Ruling requires a detailed re-working to set out the Commissioner's views on the characterisation and GST classification of the account provider / account holder relationship. The submitter put forward the following propositions in relation to the characterisation of the supplies made: • It is settled law that when a bank receives money from a customer, or receives money from a third party for the account of a customer, the bank does so as a borrower (*N Joachimson (a Firm) v Swiss Bank Corporation* [1921] 3 KB 110). An account provider / account holder relationship is essentially a contractual arrangement involving the supply of services by the account provider to the account holder. Accordingly, the starting point for the characterisation is the contractual arrangement between the parties. • The supplies made under a transaction account facility are apt to be characterised by reference to the High Court's observations in *Commissioner of Taxation v MBI Properties Pty Ltd* [2014] HCA 49 (*MBI Properties*) (similar to any other executory contract). In this regard, the submitter considers that a transaction account contract is an executory contract that involves - the provision of a bundle of rights at the time of entering into the contract - separate supplies made at the time of contractual performance(including when a linked debit card is presented, or a BPAY facility is accessed, to initiate	transactions and features of such facilities (including the 'opening, keeping, operating, maintaining and closing of cheque, debit card, deposit and savings accounts for account holders'). These examples demonstrate that the entirety of what is supplied under a transaction account is intended to fall within scope of the financial supply provisions. **Comments on *MBI Properties*** As explained in footnote 12 of the final Ruling, *MBI Properties* focused on what is sufficient to constitute a supply, rather than whether a course of action that might involve more than one thing satisfying the definition of supply should be characterised as one or more supplies. This distinction is reflected in the High Court's observations in *Commissioner of Taxation v Reliance Carpet Co Pty Limited* [2008] HCA 22 at [5] that: > The composite expression "a taxable supply" is of critical importance for the creation of liability to GST. In the facts and circumstances of a given case there may be disclosed consecutive acts each of which answers the statutory description of "supply", but upon examination it may appear that there is no more than one "taxable supply". In our view, there is a single supply made by the account provider. In any event, the supply of the contractual performance of the account provider's obligations (referred to in *MBI Properties* at [35]) would be a single ongoing supply. This is consistent with our approach to the characterisation of the supply of the credit card facility (see GSTR 2019/2 and issue 2 of the Compendium of comments on GSTD 2018/D1 *Goods and services tax: determining the creditable purpose of acquisitions in a credit card issuing business*). **Consideration where fees are waived** Paragraph 16 has been added to the final Ruling to clarify that the consideration for the supply of the transaction account includes the credit provided by the account holder to the account provider when funds are deposited into the account. This is consistent with our longstanding view in relation to fee-free transaction accounts and interest-free loans (expressed in paragraphs 40 to 41 of GSTR 2002/2 *Goods and services tax: GST treatment of financial supplies and related supplies and acquisitions*).

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	payment). • Therefore the submitter considers that a transaction account facility is an executory contract which involves the account provider supplying two categories of financial interests, namely - at the time of entering into the contract, the account provider creates in favour of the account holder a bundle of contractual rights, which may be referred to generically as the supply of a transaction account facility. These rights will vary depending on the terms of the contract, but typically involve the right to access functions and features of the facility (sometimes for additional consideration), and - at the time of the cardholder accessing the ancillary features, the account provider supplies the cardholder with a transaction account service. • The consideration for the creation of the bundle of rights comprising a transaction account facility is principally provided in the form of the payment of an annual fee. Consequently, in these circumstances, the account holder makes an input taxed financial supply to the account holder, being the 'provision' of an interest, being the 'creation' or 'granting' (or renewal thereof) of a bundle of rights. • When an account holder accesses the functions and features of the transaction account facility and is charged a fee for doing so (in accordance with the terms of the contract), this involves the account provider making a separate input taxed supply of an interest in an account to the account holder. In the submitter's view, such input taxed financial supplies are made separate and distinct from the supply of the transaction account facility itself. • The notion that a transaction account facility constitutes a single input taxed supply provided at the time the agreement is accepted by the account holder is not reflected by the	

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	commercial reality of the arrangement and is also at odds with the views of the High Court in *MBI Properties*. **Consideration where account fees are waived** In the event that the account provider waives the payment of an annual fee or particular fees for performing specific transaction account services, the submitter considers that it is problematic whether the account provider has made an input taxed financial supply to the account holder in these circumstances.	
5	**Supply of automatic teller machine (ATM) services for no consideration** The inclusion of examples of transactions which do not give rise to taxable supplies of interchange services raises the question of whether an ATM withdrawal by a non-bank customer gives rise to the account provider making a financial supply when the ATM service is provided for no consideration.	This is outside the scope of the final Ruling, which does not address the creditable purpose of costs to provide ATMs. Goods and Services Tax Ruling GSTR 2014/2 *Goods and services tax: treatment of ATM service fees, credit card surcharges and debit card surcharges* provides our view in relation to ATM service fees.
6	**Specific account transactions where no fee is charged** Do the functions of transferring funds between linked accounts, effecting direct credits /debits or making payments via the New Payments Platform result in the account provider making financial supplies where the account holder is not directly charged a fee and/or no account service fee is charged?	As explained in Issue 4 of this Compendium, in our view there is a single financial supply of a transaction account which is for consideration. The provision of access methods for the account, such as transfer of funds between linked accounts, direct credits and debits or payments via the New Payments Platform, are part of what is supplied to the account holder under the supply of a transaction account.
7	**Reference to Table A of Schedule 2 of GSTR 2002/2** At paragraph 20 of the draft Ruling, the Commissioner confirms that the draft Ruling does not address all of the functions and features of transaction accounts and (by way of the footnote) cross-references to Table A of Schedule 2 of GSTR 2002/2 to provide a summary of fees and services in relation to transaction banking and cash management for further examples. The impression gained is that the Commissioner is taking the view that each function performed, or feature accessed, represents a discrete table item 1 financial supply being made by the account provider.	As explained in Issue 4 of this Compendium, in our view there is a single financial supply of a transaction account. Where the functions and access methods mentioned in Table A of Schedule 2 of GSTR 2002/2 are provided as part of the supply of a transaction account to an account holder, they will form part of this single supply. As noted in the Ruling, there may be additional supplies made by the account provider.

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8	**Absence of guidance on the extent to which the supply of a transaction account is GST-free** The draft Ruling does not provide a complete picture on the application of paragraph 11-15(2)(a) to acquisitions in a transaction account business, because it does not address the extent to which the supply of a transaction account is GST-free. This leaves a significant gap in the understanding of how the Commissioner intends to apply paragraph 11-15(2)(a).	We have finalised Goods and Services Tax Determination GSTD 2020/1 *Goods and services tax: determining the creditable purpose of acquisitions in relation to transaction accounts* which explains the extent to which the supply of a transaction account is GST-free under paragraph (a) of table item 4 of subsection 38-190(1). The combination of GSTD 2020/1 with this final Ruling, and Schedule 2 of PCG 2019/8, provides a comprehensive picture of our approach to acquisitions in a transaction accounts business.
9	**Commissioner's approach to out-of-scope supplies** The Commissioner appears to be taking the view that out-of-scope supplies should not be taken into account for the purposes of assessing the application of paragraph 11-15(2)(a) to acquisitions. For example, on-us transactions are not recognised as a source of non-input taxed creditable activity, and the Commissioner gives the impression that supplies of interchange provided for no consideration should also be disregarded in working out the creditable purpose of acquisitions (see footnote 9 of the draft Ruling). The submitter considers that where an acquisition has a real and substantial relationship to an entity making both input taxed and non-input taxed supplies, paragraph 11-15(2)(a) is only partly engaged. The Courts have typically referred to an entity making taxable supplies to describe when, or the extent to which, paragraph 11-15(2)(a) is not engaged. The submitter considers that in referring to an entity making taxable or GST-free supplies, the Courts are doing so in an illustrative sense to mark the limits of the application of paragraph 11-15(2)(a). There is no sense that the Courts have discerned a contextual justification for limiting the disengagement of paragraph 11-15(2)(a) solely to circumstances where an acquisition has a real and substantial relationship to a supply that has been classified as either taxable or GST-free. Where an entity finds on an objective basis that an acquisition has a real and substantial connection to making an out-of-scope supply	The Ruling does not address an example of a situation where there is a need to consider if there is a relevant connection between an acquisition and a supply for no consideration (that is, an out-of-scope supply, rather than an input taxed, taxable or GST-free supply). Where such a situation arises, the analysis will need to consider whether the supply for no consideration impacts on the extent to which the relevant acquisition relates to making supplies that would be input taxed. For example, paragraphs 127 to 130 of GSTR 2008/1 addresses the creditable purpose of promotional goods given away as part of marketing and advertising strategy. In Example 2 of that Ruling, the conclusion is that the promotional give-away of a pen by an account provider relates to all supplies made by the enterprise.

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	(for example, a supply that is not made for consideration), the acquisition will be made for a creditable purpose to the extent of that relationship, irrespective of whether it also has an real and substantial connection to making input taxed supplies. Where an account provider incurs processing costs to effect interchange services for no consideration, such costs are made for a creditable purpose to the extent of that relationship. Therefore, the relevance of the comments in footnote 9 of the draft Ruling is questionable. As noted in Issue 4 of this Compendium, the submitter considers that account providers may potentially make out-of-scope supplies when providing a transaction account facility or performing a transaction account service for no consideration (for example, 'fee-free arrangements') – in which case, the acquisitions are for a creditable purpose to the extent of their relationship to such supplies.	
10	**GST treatment of on-us transactions** The Commissioner qualifies the outcome of the analysis in Examples 7, 9, and 11 to 13 of the draft Ruling by stating that in determining the extent of the relevant connection to each supply, the account provider must have regard to the extent to which the acquisitions relate to transactions where it does not make taxable supplies of interchange services (such as any on-us transactions). When the account provider and acquiring entities are in one entity and are not separately registered GST branches, then the submitter accepts that the account provider is not making a supply in that context. Where the account provider and acquiring entities are members of the same GST group, there is no question that the account provider is making a supply of interchange services to the acquiring entity. Regardless, the submitter maintains that the absence of a supply being made does not mean that resources are not being consumed by the account provider's issuing business unit in performing such services.	The final Ruling does not address the apportionment method used to determine the extent of creditable purpose of acquisitions in a transaction account business, or whether acquisitions relate to supplies made in an acquiring business. We encourage taxpayers to engage with us on a one-on-one basis if they would like advice on this topic. Section 48-45 provides that a GST group is treated as a single entity for the purposes of deciding whether acquisitions by a member are for a creditable purpose. When considering the application of paragraph 11-15(2)(a) to acquisitions, the account provider and acquiring entity that are members of the same GST group are treated as a single entity, meaning that there is taken to be no supply of interchange services between them. Therefore, there is no supply made in respect of an on-us transaction, regardless of whether the account provider and acquirer are different business units of the same entity, or different entities that are members of the same GST group. We agree with the submitter that the mere fact an acquisition and a supply are made in different business units is not of itself a sufficient basis for concluding that apportionment is not appropriate. However, an acquisition

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	Accordingly, the number or value of on-us transactions / revenue should be included in any transaction count / revenue-based method employed to determine the relevant extent of creditable purpose rate because the account provider's issuing and acquiring operations are functionally separate business units, and the on-us transaction count or revenue properly recognises the issuing area's critical role in processing on-us transactions. In particular, the issuing business unit is involved in authorising and settling on-us transactions when, for example, a debit card issued by an account provider is presented for payment at the same entity's merchant terminal. Merchant services such as these are taxable for GST purposes. This is no different from the role played by the issuing business unit when an 'off-us' transaction is effected. That is, on-us transactions follow the same electronic payment system pathways as off-us transactions whereby transactions are authorised (that is, to validate that the account holder has sufficient funds, to screen for fraud, etc) and settled. Accordingly, without the same level of issuing business unit involvement in both on-us and off-us transactions, on-us transactions would not occur and could not be completed. The only material difference with on-us transactions is that the settlement process is directly routed through the individual account provider's network, rather than using the relevant Scheme Operator to facilitate the authorisation and settlement processes. On this basis, it is entirely appropriate to recognise on-us revenue as a proxy for the issuing business unit's consumption of resources in processing on-us transactions, which are not taken into account by the acquiring business unit when it recovers the GST incurred on its costs. That is, there is no double counting. Furthermore, there is nothing 'notional' with regard to on-us revenue as it represents the issuing business unit's portion of the (taxable) merchant service fee received by the acquiring business unit. This is the actual amount which is transferred within the account provider's accounts to reflect the issuing business unit's involvement in the transaction. In other words, the costs incurred by the issuing business unit in	that has a relevant connection with the supply of interchange services in an off-us transaction (where the account provider and acquirer are different entities) will not necessarily have an equivalent connection to the supply of merchant services in the on-us context. Interchange services and merchant services are not the same and the supplies made by the entity are factually and functionally different. An objective analysis of the facts is required to determine whether the relevant connection can be established between an acquisition made in the transaction account business and the supply of merchant services through the acquiring business. A similar analysis would be required to determine whether any of the acquisitions in the acquiring business have the relevant connection to the supply of transaction accounts by the entity, resulting in a requirement to apportion credits in the acquiring business. This analysis is required by paragraph 11-15(2)(a) and is consistent with the principles set out in GSTR 2008/1, GSTR 2006/3 and in the final Ruling. Given the different factual matrix and relationships in the on-us context, we consider that most of the acquisitions in the transaction accounts business identified in the final Ruling as having a relevant connection to interchange services do not have a relevant connection to the supply of merchant services in an on-us transaction. Any connection to the supply of merchant services in an on-us transaction is too remote. However, one area where the relevant connection might potentially be found to exist is for certain processing costs such as those necessary for authorising debit card transactions. In such a case, the corresponding processing acquisitions in the acquiring business would be expected to have a corresponding relevant connection with the supply of transaction accounts. Whether the relevant connection is established will depend on the particular facts and circumstances applicable to on-us transactions.

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	processing on-us transactions has a real and substantial relationship with the making of taxable supplies (that is, merchant services) and are therefore made for a creditable purpose to the extent of this relationship (which is being properly measured through the inclusion of on-us transaction numbers or revenue in an apportionment method). The exclusion of on-us revenue will place account providers operating scheme debit, EFTPOS and BPAY (open loop) payment systems at a potential disadvantage to the operators of closed loop payment systems. In particular, the operator of a closed loop payment system performs all of the issuing and acquiring functions in relation to a payment transaction effected over its network. This compares with the circumstances of an open loop operator that performs on-us transactions. The submitter queries the Commissioner's decision not to address in the draft Ruling the application of paragraph 11-15(2)(a) to acquiring business unit acquisitions. It is considered that the failure to address this topic represents a significant gap in the Commissioner's guidance materials and creates further uncertainty for taxpayers.	
11	**The Commissioner would be better served in expanding the Background section of the draft Ruling** The submitter considers that the Background section to the draft Ruling would benefit from the inclusion of the analysis in 'The Development and Legal Nature of Payment Facilities'.[2] The submitter also considers it would be relevant for the Commissioner to draw upon the credit card system analysis (which was accepted as correct in *Visa International Service Association v Reserve Bank of Australia* [2003] FCA 977 at [265]).	This factual background has been taken into account in our analysis, and in particular we acknowledge the inter-relatedness of the contracts that govern the operation of the relevant payment systems. However, we do not consider that it is necessary to provide additional detail in the final Ruling on these points.
12	**The Commissioner's expression of the alternative view** The submitter considers that all listed acquisitions in a transaction	The points raised indicate that the submitter considers that GSTR 2006/3 provides support for the proposition that the use of a direct estimation system

[2] Bollen, R, 'The Development and Legal Nature of Payment Facilities', *Murdoch University Electronic Journal of Law*, 2004, vol. 11, no. 2, pp. 80-99.

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	account business can be legitimately treated as being partly creditable where an account provider's costing system does not differentiate between transaction account products in allocating costs (that is, it does not differentiate between accounts which do not involve the account provider making supplies of interchange services and those that do). This is because account providers can rely on paragraphs 92 to 101 of GSTR 2006/3 to determine the extent of creditable purpose on a direct estimation or portfolio basis. In relation to transaction accounts that offer debit card / BPAY facilities to account holders, the submitter contends that the vast majority of costs will be consumed as a result of the account holder using the linked debit card or BPAY facility to effect a payment transaction with a merchant or biller. Accordingly, such costs will be made by the account provider partly for a creditable purpose. The submitter is not asserting that, as a matter of principle, all acquisitions in a transaction accounts business automatically have relevant connection to both the supply of the credit card facility and the supply of interchange services. Rather, when the facts and surrounding circumstances of a transaction account business are fully and properly described, it is clear that the majority of the listed cost categories have a relevant connection (that is, a connection that is not trivial or remote) to the supply of interchange services. The submitter further rejects the equivalence argument in paragraph 114 of the draft Ruling, which seeks to align this 'alternative view' with the unsuccessful arguments mounted in *AXA Asia Pacific Holdings Limited v Commissioner of Taxation* [2008] FCA 1834 (*AXA*) and *Rio Tinto – appea*l, to justify input tax credit entitlements. By doing so, the Commissioner fails to acknowledge that the facts and circumstances of transaction account businesses are so fundamentally different as to make the comparison with the *AXA* and *Rio Tinto – appeal* arguments meaningless. The submitter requests that the Commissioner revise the alternative view to fully and properly outline the submitter's position concerning the application of paragraph 11-15(2)(a) to transaction account acquisitions.	that allocates acquisitions to the level of a business unit means that it is acceptable to determine the connection between acquisitions and supplies at the business unit level for the purpose of paragraph 11-15(2)(a). We do not agree with this view. For an apportionment method applied to acquisitions in a transaction accounts business to be fair and reasonable, it must have regard to whether some acquisitions only relate to making financial supplies (for example, acquisitions to provide transaction accounts which do not involve supplies of interchange services, such as term deposit or online savings accounts). The points raised in relation to GSTR 2006/3 have been taken into account in finalising the draft update to that Ruling. Further explanation is provided in that Ruling and in the Compendium of comments on the draft update. We note the submitter's concerns in relation to our expression of the alternative view. The alternative view was intended to succinctly summarise views expressed by multiple stakeholders and was not intended to capture the extensive consultation with industry on these matters. We considered the detailed submissions on alternative views from various stakeholders in finalising this Ruling, as covered in this Compendium. The final Ruling provides the Commissioner's view and does not include an alternative view. *AXA, Rio Tinto – appeal* and *Rio Tinto Services Ltd v Commissioner of Taxation* [2015] FCA 94 (*Rio Tinto – first instance*) affirmed the Commissioner's view in GSTR 2008/1 that the application of paragraph 11-15(2)(a) requires an objective assessment of the surrounding facts and circumstances to determine whether the acquisition is intended to be used in making those supplies. They establish principles relevant to the application of paragraph 11-15(2)(a) more generally, notwithstanding their particular factual matrix.

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13	**The practicality of adopting the Commissioner's views and consistency with other public rulings** Adopting the Commissioner's view would be highly impractical and connotes an inappropriate and unreasonable expectation of tracing, and would impose a significant cost and compliance burden on taxpayers. The ATO's view requires the allocation and apportionment of classes of acquisitions in an entirely different manner to that expressed in GSTR 2006/3 (in particular, paragraph 38) and GSTR 2008/1. This is made clear from Examples 2 to 8 and 10 of the draft Ruling and the quote provided from *Rio Tinto – appeal* at [7] that the application of paragraph 11-15(2)(a) requires: > … the precise identification of the relevant acquisition and a factual enquiry into the connection between the acquisition and the making of supplies that would be input taxed. The Full Federal Court was expressing a broad observation in the context of the facts in *Rio Tinto – appeal* rather than a hard and fast rule that must be applied in all circumstances. At paragraph 35 of GSTR 2006/3, the Commissioner endorses the use of direct methods of allocating or apportioning acquisitions, as they best accord with the basic principles in paragraph 33 of GSTR 2006/3. The use of externally audited accounting systems has the attributes of being accurate and objective and preclude the capacity for manipulation for GST purposes. Indeed, GSTR 2006/3 is clear that a direct estimation method being a cost allocation approach provides an accurate reflection of intended use. The Commissioner has long accepted this practical accommodation on the twin basis of the limitation of account providers' costing systems and because what is given up in input tax credits (for costs that are not for a creditable purpose) is balanced by costs that are intended to be predominantly used in making supplies of interchange services (for example, scheme operator services and payment processing services which represent the vast bulk of total	The final Ruling addresses the first step in the operation of Division 11, by identifying the relevant connection between acquisitions in relation to transaction accounts and supplies for the purposes of paragraph 11-15(2)(a). The second step in the operation of Division 11 is determining an apportionment method that gives a fair and reasonable reflection of the extent of the relationships between those acquisitions and supplies. Our practical expectations for applying our views in the final Ruling in designing an apportionment method are reflected in Schedule 2 of PCG 2019/8. We consider that the final Ruling is consistent with GSTR 2006/3 and GSTR 2008/1. As noted in Issue 12 of this Compendium, the points raised in relation to GSTR 2006/3 have been taken into account in the finalised update to that Ruling. Further explanation is provided in that Ruling and in the Compendium of comments on the draft update. We consider that the statement in *Rio Tinto – appeal* at [7] that: > The application of s 11-15(2)(a) requires, therefore, the precise identification of the relevant acquisition and a factual inquiry into the relationship between that acquisition and the making of supplies that would be input taxed. is a relevant expression of the principles for applying paragraph 11-15(2)(a). It is not expressed as an observation limited to the facts in that case. We do not agree with the proposition that certain acquisitions (for example, scheme services or payment switching services) predominantly relate to the supply of interchange services, and that the relationship to financial supplies objectively amounts to little more than debiting the account to record the effect of the payment transaction. This does not give adequate recognition to the relationship of these acquisitions to the financial supply of the transaction account, as each transaction enables the account holder to access their account.

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	costs). In relation to this latter category of costs, the submitter contends that the application of existing direct estimation methods typically distorts the outcome in favour of recognising input taxed activity (which in these circumstances objectively amounts to little more than debiting the account to record the effect of the payment transaction).	
14	**Potential conflict with Practical Compliance Guideline PCG 2017/15 *GST and Customer Owned Banking Institutions*** PCG 2017/15 provides a concession to customer owned banking institutions (COBIs) which enables such entities to claim up to 18% in input tax credits on their partly creditable acquisitions. In some circumstances, where the COBI does not have the accounting or system resources to determine whether their costs are fully creditable or not fully creditable, the Guideline allows for the COBI to apply a rate up to 18% to all their acquisitions. As the vast majority of these entities offer transaction account products to their customers, it is unclear to the submitter how the guidance provided in the draft Ruling interacts with the practical guidance provided in PCG 2017/5. The submitter considers that irrespective of their size and access to resources, in the context of credit card issuing business acquisitions, non-COBIs are in a similar situation to COBIs who are unable to determine the application of paragraph 11-15(2)(a) in their particular circumstances. The submitter asks for clarification on the Commissioner's position on the application of PCG 2017/5 in light of the draft Ruling.	PCG 2017/15 reflects how the Commissioner will apply his compliance resources in respect of apportionment for COBIs, and applies to all eligible acquisitions across the whole entity. By contrast, the final Ruling sets out our view of the application of paragraph 11-15(2)(a) to acquisitions in relation to transaction accounts. PCG 2017/15 is targeted to the particular circumstances of COBIs and recognises that these entities may experience difficulties in strictly meeting the requirements of the GST law. PCG 2017/15 provides practical compliance guidance as to the Commissioner's application of resources in obtaining assurance in relation to the application of the law as outlined in the final Ruling in the circumstances described in the Guideline. We will review the rate and scope of the Guideline at least every two years. Our risk assessment framework for acquisitions in a transaction accounts business is provided in Schedule 2 of PCG 2019/8. Taxpayers applying PCG 2017/15 will fall within the white zone of PCG 2019/8.
15	**Commissioner's approach to determining the creditable purpose of global processing service arrangements** The submitter is concerned that Example 12 of the draft Ruling indicates the creditable purpose of processing services must be determined by breaking the service down into its functional elements and assessing the relationship that each functional element has to the making of supplies by the account provider.	Example 12 of the final Ruling deals with the acquisition of processing services that involve applications and functions that are only intended to manage and operate the account holder's account. The final Ruling is not intended to address factual situations where an acquisition of processing services is partly to manage and operate the transaction account (which following the analysis in Example 12, would only relate to the financial supply of the transaction account), and partly to process transactions that involve the account provider making taxable

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	Account providers often outsource their entire credit and debit card processing system to a third party which entails the global provision of services. It appears the Commissioner is asking the account provider to break down the service into groupings of functional specifications that correspond with particular supplies made by the account provider. For instance, account providers would need to break down each of the service obligations in order to objectively assess the relationship that each component has with the making of supplies by the account provider. As a matter of practical reality, it is not possible to dissect services of this nature into discrete 'account maintenance' and 'payment system' cost category pools. In this context, the service provider is supplying the account provider with services that, in an immediate sense, facilitate the real-time processing of transactions via the payments system, and which then produce results which affect the client's account. The submitter considers this functional disaggregation approach is colossally impractical and inconsistent with the guidance in GSTR 2002/2 about mixed and composite acquisitions. The acquisition of a global processing solution can be characterised as a composite acquisition of outsourced processing services. The activities assessed not to be directly related to the processing of credit/debit card transactions (for example, bespoke works directed at system enhancements) lose their identity as separate acquisitions as they are considered ancillary, integral or incidental to the dominant supply of processing services. The submitter requests that the Commissioner reconsider the views expressed in Example 12 of the draft Ruling.	supplies of interchange services (which following the analysis in Example 13 of the final Ruling, would relate to making both supplies). If one acquisition encompasses services of both types, the application of paragraph 11-15(2)(a) to this acquisition would require an objective analysis of the nature of specific IT processing services being acquired to determine the extent to which the acquisition relates to an input taxed supply. It is an established principle of apportionment that some acquisitions have distinct and severable parts that are devoted to particular uses, and which can be allocated between these uses (that is, the first category of expenditure from *Ronpibon Tin NL v Commissioner of Taxation (Cth)* [1949] HCA 15 (*Ronpibon*), as explained in GSTR 2008/1). Our practical expectations for apportionment of such acquisitions are reflected in Schedule 2 of PCG 2019/8.
16	**Accounts denominated in foreign currencies** The submitter queries why the draft Ruling does not apply to accounts denominated in foreign currencies.	Paragraph 4 of the final Ruling excludes certain accounts (including accounts denominated in foreign currencies), as the intention is to exclude specialised account-based products from the final Ruling. The focus of the final Ruling is on the most common types of accounts such

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		as everyday, savings, cheque, deposit, or transaction accounts and online savings and term deposit accounts. However, to the extent that the factual situation for other specialised accounts follows that described in the final Ruling, we would expect the same principles to apply.
17	**Reference to transaction account business** The Commissioner should provide a footnote to the 'transaction account business' reference to clarify that this is a generic description and not necessarily reflective of the manner in which account providers organise their transaction account activities.	Footnote 5 has been added to the final Ruling to state that references to acquisitions made in a 'transaction accounts business' are used generally to refer to acquisitions for use in making supplies of transaction accounts. The way these acquisitions are recognised in taxpayers' natural cost allocation or accounting systems will vary in practice.
18	**GST-free supplies of interchange services** The submitter considers that the scope of the draft Ruling should be expanded to include the Commissioner's view on the application of the GST-free provisions to interchange services supplied to a non-resident acquirer.	The application of the GST-free provisions to supplies of interchange services is not within scope of the Ruling. We encourage taxpayers to engage with us if they would like advice on this issue.
19	**Description of the surrounding legislative scheme** The draft Ruling would benefit from a more detailed explanation of the surrounding legislative scheme in order to place the application of paragraph 11-15(2)(a) in its proper context.	Paragraph 27 has been added to the final Ruling to place paragraph 11-5(2)(a) in the context of the positive test in subsection 11-15(1) and the negative test in subsection 11-15(2). Further explanation is provided in GSTR 2008/1, as noted in the final Ruling.
20	**Acquisitions to prepare account statements** This category of costs relates to the acquisition of services to effect the reporting of information related to the transaction account in a statement form to be printed and delivered to a third party for distribution to customers. Therefore, as a matter of objective fact, this cost category has a real and substantial relationship with the account provider's account maintenance activities. A real and substantial relationship can be established in that the statement issued to the customer primarily consists of a history of payment transactions, that is, the movement between opening and closing balances on the account, reflecting an overall reconciliation of all the activities on the account. Most cardholders use the statement as a means to reconcile their purchases for the period	The account statement sets out information about the transactions and fees associated with the transaction account. Although the account provider may supply interchange services when some account transactions occur, it is information about the account itself that is set out in the statement. As such, acquisitions to prepare the statement have a relevant connection only to the supply of the transaction account and the connection to the supply of the interchange service is too remote.

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	with their credit balance. Fees and credit charges are also shown, where applicable, and the fees can often relate directly to the form (channel) through which transactions were made. Consequently, the submitter considers that these acquisitions are made partly for a creditable purpose and respectfully disagree with the Commissioner's view that they only have a relevant connection to the supply of the transaction account facility (however characterised or classified for GST purposes).	
21	**Acquisitions to maintain branch network** Account providers incur branch network costs to provide customer-facing services which includes the promotion of transaction account products and the provision of customer assistance with application forms and responses to queries. As such, branch network costs support the activities of branch staff who in turn perform introductory and call-centre like functions, which are anterior and posterior costs associated with the overall operation of the transaction account business. Of itself, this evidences a real and substantial relationship with all supplies made by an account provider. Consequently, the submitter considers that these acquisitions are made partly for a creditable purpose and respectfully disagree with the Commissioner's view that they only have a relevant connection to the supply of the transaction account facility (however characterised or classified for GST purposes).	As explained in Example 4 of the final Ruling, we consider that the activities of the branch are to provide service to account holders and manage the relationship with account holders, and only have a relevant connection to the supply of the transaction account.
22	**Acquisitions of call centre services** Call centre operators regularly handle customer queries dealing with all aspects of the creation and ongoing use of a transaction account facility. This can include, for example, a cardholder querying a particular transaction, or seeking to cancel a transaction. The call centre also contacts cardholders in the case of suspicious activity on their card. Of itself, this evidences a real and substantial relationship with all supplies made by an account provider.	Although call centre queries include queries in relation to account transactions, the activities of the call centre are to provide service to account holders and manage the relationship with account holders (rather than with acquiring entities that the account provider supplies interchange services to). Our view remains that the acquisition in Example 5 of the final Ruling only has a real and substantial connection to the supply of the transaction account.

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	Consequently, the submitter considers that these acquisitions are made partly for a creditable purpose and respectfully disagree with the Commissioner's view that they only have a relevant connection to the supply of the transaction account facility (however characterised or classified for GST purposes).	
23	**Acquisition of advertising services from a product comparison website** Example 6 of the draft Ruling highlights an unrealistic expectation that account providers would be able to separately analyse each acquisition of advertising services to determine the application of paragraph 11-15(2)(a).	The final Ruling provides examples of the analysis required to apply paragraph 11-15(2)(a) to particular acquisitions. In Example 6 of the final Ruling, the content of the advertisement and its use in the business provide the objective basis for identifying that the advertising costs are intended for use in promoting the supply of the transaction account. This conclusion is consistent with our view in paragraph 126 of GSTR 2008/1 that some acquisitions are to promote specific supplies and will relate to those supplies. This can be contrasted with other acquisitions of advertising services that are to promote the entity as a whole, by increasing public awareness of the entity and the types of products that it supplies. These acquisitions do not directly relate to any specific types of supplies, and instead have an indirect relationship to all supplies made by the enterprise. Entities must use a fair and reasonable method to allocate and apportion their acquisitions (such as acquisitions of advertising services), as explained in GSTR 2006/3. Where the acquisitions are identified as being for use in making supplies of transaction accounts, Schedule 2 of PCG 2019/8 reflects the ATO's practical expectations for apportionment.
24	**Portfolio / aggregate analysis basis** The submitter expressed the following views in relation to the Examples in the draft Ruling which concluded that an acquisition only relates to the supply of a transaction account: • **Example 1** (*acquisitions in relation to a transaction account that does not involve the supply of interchange services*) –the submitter would only agree with the outcome expressed if the acquisitions are allocated to a cost centre established for online saving account products. • **Example 2** (*acquisitions to prepare account statements*),	As explained in Issue 12 of this Compendium, we do not agree with the submitter's contention that GSTR 2006/3 supports the use of a portfolio / aggregate analysis basis to determine the extent of creditable purpose of acquisitions, under which the relationship between acquisitions and supplies can be determined at the level of the business unit that the acquisitions are allocated to. The addendum to GSTR 2006/3 issued on 18 December 2019 clarifies that this is not the correct application of that Ruling.

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	Example 4 (*acquisitions to maintain branch network*), **Example 5** (*acquisition of call centre services*), and **Example 12** (*acquisition of processing services in managing and operating the transaction account*) – the submitter disagrees with the Commissioner's view that the acquisitions only have a relevant connection to making financial supplies. • **Example 3** (*acquisition of interchange services for cash-out via EFTPOS*), **Example 6** (*acquisition of advertising services from a product comparison website*) and **Example 8** (*acquisition of cheque printing, processing and clearing services*) – the submitter considers it is arguable that the acquisition does not have a real and substantial connection to the making of taxable supplies of interchange services. However, in all cases, the submitter considers that a partly creditable purpose can also be sustained on a portfolio / aggregate analysis basis. That is, account providers can rely on GSTR 2006/3 to use their costing system to determine the intended use of all transaction account business acquisitions (including statement preparation services). This approach is not distortionary as acquisitions with a purported nil credit creditable purpose are balanced by acquisitions that objectively have a greater relationship to making non-input taxed supplies.	
25	**Examples of acquisitions that relate to both supplies** The submitter agrees with the conclusion that the acquisitions in Examples 7, 9, 10, 11 and 13 of the draft Ruling relate to both supplies. However, the submitter raised the concerns expressed in Issue 10 of this Compendium in relation to on-us transactions.	The submission is noted.
26	**Date of effect** The proposed date of effect has seriously underestimated the extent to which taxpayers will be required to alter their current practices in order to comply with the views expressed. The Commissioner must negotiate a suitable transitional period with	The final Ruling has prospective effect from tax periods commencing on or after 1 October 2020 (which aligns with the date of effect of Schedule 2 to PCG 2019/8). We have sought to minimise the compliance impact for taxpayers through extensive consultation and the practical compliance approach provided in Schedule 2 to PCG 2019/8. Where ATO review activity for a particular taxpayer involves apportionment

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	taxpayers. The submitter believes it is incumbent on the Commissioner (consistent with Law Administration Practice Statement PS LA 2011/27 *Determining whether the ATO's views of the law should be applied prospectively only*) to determine whether previous publications or conduct could have conveyed a different view in relation to the application of paragraph 11-15(2)(a) in this context. The finalised version of the draft Ruling should contain a statement on whether compliance action would be on a go-forward basis or not and provide reasons for such a position.	of acquisitions to provide transaction accounts for earlier tax periods, we will apply PS LA 2011/27 in determining whether it is appropriate to apply the ATO view on a prospective basis only, in relation to specific issues identified. These decisions must be made in the context of each taxpayer's particular facts and circumstances.