

PCG 2019/8EC1 - Compendium



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Public advice and guidance compendium – Schedule 2 to PCG 2019/8

❗ Relying on this Compendium

This Compendium of comments provides responses to comments received on draft Schedule 2 (Transaction accounts) to Practical Compliance Guideline PCG 2019/8 *ATO compliance approach to GST apportionment of acquisitions that relate to certain financial supplies*. 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	<p>Green zone requirement for >50% transaction accounts</p> <p>The green zone can only be used if more than 50% of the total number of transaction accounts provided do not involve the taxpayer making any taxable supplies of interchange services.</p> <p>It is recommended that the green zone should be available if interchange services could be provided to 50% of accounts regardless of whether the account holder uses that functionality. It would seem impractical to require the individual institution to have to periodically assess whether interchange has been used.</p>	<p>The final Guideline has been updated to clarify that taxpayers can determine the 50% threshold by reference to the number of transaction accounts where the taxpayer provides access methods (for example, a linked debit card) that involve them making taxable supplies of interchange services, irrespective of whether those interchange services are actually supplied in relation to the transaction account. This is practical and reasonable and will assist in reducing taxpayer's compliance costs.</p>
2	<p>Weighted average extent of creditable purpose rate in the green zone</p> <p>The extent of creditable purpose (ECP) rate stipulated in the green zone (20% as a weighted average across all acquisitions to the extent they are for use in making supplies in transaction accounts business) is significantly below a fair and reasonable rate. It remains unclear as to how this rate was derived by the ATO and the data that was used to calculate the rate.</p>	<p>In calculating this ECP rate, we have had regard to the application of the method in the blue zone to available information on the typical acquisitions and supplies relating to transaction accounts. We recognise that some taxpayers may have different business arrangements such that it may be more appropriate in their circumstances to instead apply the approach outlined in the blue zone.</p>

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3	<p>Eligibility for the green zone</p> <p>The requirement that a taxpayer is not eligible to use the green zone if they do not meet the 50% threshold materially narrows the scope for a taxpayer to benefit from the green zone approach. The ATO should consider a broader range of circumstances in which taxpayers can satisfy the requirements of the green zone.</p> <p>Draft Schedule 2 to PCG 2019/8 does not provide any clarity on the ECP rate that taxpayers should apply in the event they have not met the 50% transaction accounts requirement for the green zone.</p>	<p>The final Guideline provides a specific framework for how we assess risk associated with apportionment methods for these acquisitions. The green zone reflects our assessment of the likelihood that a taxpayer has correctly applied the law and therefore reflects our compliance approach.</p> <p>The 50% threshold reflects that the ECP rate stipulated in the green zone is unlikely to appropriately reflect the circumstances of ADIs who mainly provide accounts that do not involve interchange supplies (for example, online savings or term deposit accounts, accounts primarily to settle trades). The ECP of the costs to provide such accounts is limited to the GST-free percentage (if any).</p> <p>Where a taxpayer does not meet this requirement, the remainder of the risk assessment framework in the final Guideline will remain relevant. We also encourage taxpayers to contact us to discuss their circumstances if they would like additional certainty in relation to their arrangements.</p>
4	<p>Features of an arrangement that would place the use of the green zone in doubt</p> <p>The green zone is not a 'safe harbour' and the ATO should expand upon the circumstances (not included in the red zone triggers already) which would put a taxpayer's use of the green zone into doubt.</p>	<p>The final Guideline sets out our compliance approach and the green zone reflects our assessment of the likelihood that a taxpayer has correctly applied the law and thus, our compliance approach as set out in the final Guideline is based on our risk assessment where the ECP rate is within the green zone. It does not absolve taxpayers from applying the relevant GST provisions in determining their ECP rate and the final Guideline makes this clear.</p> <p>If a taxpayer is in the green zone, we will generally only apply compliance resources to confirm they meet the requirements for this risk rating. This means we will not apply compliance resources to consider whether the apportionment method used is fair and reasonable, unless there are exceptional circumstances. Where a taxpayer is not in the green zone, they may be in the blue, yellow or red zone depending on the facts of their specific arrangements. Note that taxpayers are only in the red zone if they exceed the ECP rate stipulated to be in the green zone and have features in the red zone.</p> <p>In addition to this, paragraph 7 of the final Guideline explains that certain acquisitions are outside the scope of this Guideline, and that we may apply compliance resources to test risks that are beyond what is covered. Examples of risks we may test include whether taxpayers have</p>

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		<p>correctly identified whether an acquisition is a reduced credit acquisition, and whether taxpayers have correctly identified an obligation to apply the reverse charge provisions.</p> <p>We have made it clear that it is not possible for this Guideline to address every potential variation in individual circumstances and we encourage taxpayers to engage with us if further guidance or additional certainty is required.</p>
5	<p>On-us transactions</p> <p>In relation to on-us supplies, the ATO refers to issue 12 of the Compendium of comments on PCG 2019/D7 <i>ATO compliance approach to GST apportionment of acquisitions that relate to certain financial supplies</i> as the rationale for the ongoing treatment of on-us transactions as having no connection with taxable supplies. This rationale (as currently articulated) is not technically sufficient to sustain the ATO's position.</p>	<p>We consider Issue 12 of the Compendium of comments on PCG 2019/D7 explains our approach to on-us transactions in the context of a credit card issuing business (with similar issues arising in respect of debit card transactions). The final Guideline sets out our compliance approach in this area.</p> <p>If further interpretive guidance is required, taxpayers may engage with us (noting that the application of paragraph 11-15(2)(a) of the <i>A New Tax System (Goods and Services Tax) Act 1999</i> will require a factual analysis of acquisitions from the perspective of both the issuing and acquiring business, as explained in Issue 12 of that Compendium).</p>
6	<p>Onerous requirements for blue zone</p> <p>The requirements for a taxpayer to fall within the blue zone are extremely complex, onerous and necessitate that taxpayers comply with ATO views on contentious technical issues.</p> <p>Further, the level of protection that is afforded to a taxpayer in the blue zone is limited to the taxpayer being regarded as 'Low to moderate priority for review'. As such, the requirements are disproportionate to the benefits obtained.</p>	<p>The blue zone methodology reflects the fact that there are different types of transaction accounts (some of which do not involve taxable interchange supplies), and the accounts can be used for different types of transactions (some of which do not involve taxable interchange supplies). It is the complex nature of transaction accounts that necessitates multiple steps in the blue zone methodology, and we have sought to simplify steps where appropriate.</p> <p>The final Guideline provides a comprehensive risk assessment framework for apportionment methods for transaction account acquisitions. With regards to the level of protection provided in the blue zone, it is noted that a taxpayer will only be in the blue zone if the ECP rate exceeds the rate stated in the green zone.</p>

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7	<p>Transaction count methodology in the blue zone</p> <p>In relation to the transaction count method (the methodology used for the formula at Step 4E of paragraph 65 of the draft Guideline to determine the ECP for other costs not identified in Steps 4A to 4D) reflects the ongoing misunderstanding that an interchange (taxable) supply is not a valid separate transaction to the related account supply. These are different supplies (with different GST classifications governed by different provisions in the Act and Regulations).</p>	<p>The method used in Step 4E of paragraph 65 of the final Guideline is a transaction count method, where each account transaction is weighted equally – each account transaction involving taxable interchange supplies is treated as equally relating to these taxable supplies and to the financial supply of the account. This reflects the fact that each of these account transactions involves the account holder accessing their transaction account (that is, part of the financial supply of the account), and the taxable supply of interchange services being made.</p>
8	<p>Closer relationship to interchange supplies</p> <p>The red zone includes any methodology which results in ‘some acquisitions as having a closer relationship to the supply of interchange services than to the supply of the transaction account’. This suggests that in the ATO view, it is never possible to demonstrate a fair and reasonable apportionment methodology resulting in a recovery rate of >50% for any class of acquisitions. The ATO is yet to clearly outline the technical basis for this position.</p>	<p>This position is based on an objective analysis of common acquisitions relating to transaction accounts. For the acquisitions that are identified as relating to both supplies in Steps 4B and 4C of paragraph 65 of the final Guideline, we have not seen anything to suggest that there is an objective basis for considering that these acquisitions are more closely related to the supply of interchange services than to the supply of transaction accounts.</p> <p>As such, an apportionment method that treats some acquisitions as having a closer relationship to the supply of interchange services than to the supply of the transaction account will be a high priority for review and is therefore in the red zone.</p> <p>The aim of the final Guideline is to be transparent as to our compliance approach according to our assessment of risk in this area. It is open for a taxpayer to demonstrate that an apportionment method is fair and reasonable in their circumstances and therefore reflects the correct application of the law (even if it has features within the red zone).</p> <p>However, the final Guideline reflects the compliance approach we will consider necessary to gain assurance as to whether an apportionment method that is not in the blue zone is in fact fair and reasonable in the circumstances. This position is based on our analysis of transaction accounts, outlined in GSTR 2020/1 <i>Goods and services tax: determining the creditable purpose of acquisitions in relation to transaction accounts</i>.</p> <p>Note that the final Guideline does not limit the operation of the law or replace, alter or affect our interpretation of the law in any way. We also note that it is not possible for this final Guideline to address every potential variation in individual circumstances, including every potential acquisition.</p>

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		This is consistent with the approach to similar issues raised in relation to Schedule 1 (see Issue 13 of the Compendium of comments on PCG 2019/D7).
9	<p>Pejorative labelling of the red zone</p> <p>The Guideline uses pejorative labelling, such as labelling the red zone as 'high risk'. The Guideline also indicates that the ATO's compliance approach will consider methodologies that have features in the red zone as high priority for review.</p> <p>In addition, it is considered that the red zone, as identified in draft Schedule 2 to PCG 2019/8, is too broad as:</p> <ul style="list-style-type: none"> • simply because a taxpayer's rate of input tax credit entitlement exceeds that set out in the green zone and the taxpayer does not adopt the convoluted process set out in the blue zone, the taxpayer will find themselves classified within the red zone • if a taxpayer takes a different view to the ATO on one of numerous contentious technical issues, that taxpayer will be classified within the red zone unless their extent of creditable purpose is less than that stated in the green zone. 	<p>The language used is not intended to be pejorative – it is intended to provide a clear and transparent statement of the ATO's compliance approach given a taxpayer's position within the risk assessment framework. The features listed in the red zone are those which we consider to be high risk and will be reviewed as a priority.</p> <p>The apportionment methods included are for risk assessment purposes only and should not be taken as prescribing a specific method. Furthermore, the final Guideline is not to be taken as a statement that a method that is not within the green or blue zone will never be fair and reasonable.</p> <p>However, it reflects the compliance approach we consider necessary to gain assurance as to whether an apportionment method that is not in the green or blue zone is fair and reasonable.</p>
10	<p>The appropriateness of draft Schedule 2</p> <p>Draft Schedule 2 to PCG 2019/8 targets highly factually specific scenarios and it is not possible for 'broad brush' guidance products to have sufficient regard to the individual circumstances of the target audience or to provide certainty.</p>	<p>The intention of the final Guideline is to provide practical guidance and a transparent framework for how we assess risk associated with apportionment methods for transaction account acquisitions. We note that it is not possible for this Guideline to address every potential variation in individual circumstances. We encourage taxpayers to contact us to discuss their circumstances if they would like additional certainty in relation to their arrangements.</p>