GSTD 2020/D1 - Goods and services tax: when is the supply of a transaction account GST-free under table item 3 or table item 4(a) of subsection 38-190(1) of the A New Tax System (Goods and Services Tax) Act 1999?

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Draft Goods and Services Tax Determination

Goods and services tax: when is the supply of a transaction account GST-free under table item 3 or table item 4(a) of subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*?

Relying on this draft Determination

This publication is a draft for public comment. It represents the Commissioner's preliminary view on how a relevant provision could apply.

If this draft Determination applies to you and you rely on it reasonably and in good faith, you will not have to pay any interest or penalties in respect of the matters covered, if this draft Determination turns out to be incorrect and you underpay your tax as a result. However, you may still have to pay the correct amount of tax.

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Ruling

1. The supply of a transaction account[1] is GST-free under table item 3 of subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*[2] to

[1] For the purpose of this Determination 'transaction account' has the same meaning and scope as used in paragraph 3 and 4 of draft Goods and Services Tax Ruling GSTR 2019/D1 *Goods and services tax: determining the creditable purpose of acquisitions in relation to transaction accounts*.

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

the extent that the account holder's[3] effective use or enjoyment of the transaction account takes place outside of Australia.[4]

2. Effective use or enjoyment of a transaction account will take place outside of Australia to the extent that:

- transactions under the account are undertaken while the account holder is physically outside of Australia, and
- the account holder's presence outside of Australia is integral to that transaction.

3. An account holder's presence outside of Australia is integral to a transaction under the account if the account holder must be physically present at a specific location (outside of Australia) in order to initiate the transaction. The presence of the account holder outside Australia is integral to the performance, receipt or delivery of the supply of the transaction account as the account holder requires immediate access to the transaction account at that time and place.

4. An account holder's presence is integral to transactions where the account holder makes a cash withdrawal (at an automated teller machine (ATM) or branch), or the transaction under the account requires the account holder to be physically present at the merchant or counterparty location. In this Determination, we refer to these transactions as 'account holder present transactions'.[5]

Example 1 – account holder's presence outside of Australia is integral to the transaction

5. *Oz Bank supplies Amanda with a transaction account that includes a debit card. Amanda uses the debit card at an ATM in Japan to withdraw cash from the account.*

6. *Amanda's presence in Japan is integral to her withdrawal of cash from her transaction account because Amanda requires immediate access to her transaction account in Japan in order to obtain the cash. Accordingly, the extent to which Oz Bank makes a GST-free supply of the transaction account includes Amanda's use of her debit card to make the ATM withdrawal in Japan*.

7. Neither table items 3 or 4(a) of subsection 38-190(1) apply to the extent that the account holder uses the transaction account to undertake transactions where the account holder is not physically present at the location of the merchant or other counterparty in relation to the underlying transaction. As such, these transactions do not contribute to the extent to which the supply of a transaction account is GST-free. In this Determination, we refer to these transactions as 'account holder not present transactions'.[6]

8. The location of the merchant in relation to the underlying purchase transaction does not of itself determine the extent to which the supply is GST-free.

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[3] 'Account holder' includes a person authorised by the account holder to use the account.

[4] In this draft Determination, the 'indirect tax zone' is referred to as 'Australia'. All further references to 'this Determination' refer to the Determination as it will read when finalised. Note that this Determination will not take effect until finalised.

[5] See paragraphs 35 and 36 of this Determination for further discussion on account holder present transactions.

[6] See paragraphs 43 to 45 of this Determination for further discussion on account holder not present transactions.

Example 2 – account holder's presence outside of Australia is not integral to the transaction

9. *Following from Example 1, while in Japan, Amanda uses a Japanese booking website to buy a bullet train ticket from Hiroshima to Osaka.*

10. *Amanda's location has no relevance to Amanda's method of accessing her transaction account. This access method is activated, carried out and processed in the same way regardless of Amanda's location, the location of the merchant, or what she is buying. Accordingly, the extent to which Oz Bank makes a GST-free supply of the transaction account does not include Amanda's use of her debit card to make online purchases.*

11. Where the supply of a transaction account is partially GST-free, the account provider will need to consider the apportioning of its acquisitions between creditable and non-creditable purposes. In doing so, the account provider should consider GSTR 2019/D1 and may wish to consider the practical compliance guidance contained in Schedule 2 of the draft update to Practical Compliance Guideline PCG 2019/8 *ATO compliance approach to GST apportionment of acquisitions that relate to certain financial supplies.*

Date of effect

12. When the final Determination is issued, it is proposed to apply from 1 October 2020. However, 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 *Public Rulings*).

Commissioner of Taxation
3 June 2020

Appendix 1 – Explanation

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

Legislation

13. The supply of a transaction account is an input taxed financial supply of the provision of an interest in or under an account under table item 1 of subsection 40-5.09(3) of the *A New Tax System (Goods and Services Tax) Regulations 2019*, except to the extent it is GST-free (if any).

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

GST-free supplies

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

16. Relevantly, the supply of a transaction account may fall within:

- table item 3 of subsection 38-190(1) (table item 3) – supplies used or enjoyed outside Australia, or
- table item 4(a) of subsection 38-190(1) (table item 4(a)) – supplies in relation to rights that are for use outside Australia.

17. The supply of a transaction account to a non-resident outside of Australia may also be GST-free under table item 2 of subsection 38-190(1). This Determination does not consider circumstances where table item 2 may apply.

Supplies used or enjoyed outside Australia

18. Table item 3 operates to make the supply of a transaction account GST-free to the extent that:

- the supply is made to the account holder when the account holder is not in Australia when the thing supplied is done, and
- the account holder's effective use or enjoyment of the transaction account takes place outside of Australia.

19. The general application of table item 3 is considered in Goods and Services Tax Ruling GSTR 2007/2 *Goods and services tax: in the application of paragraph (b) of item 3 in the table in subsection 38-190(1) of the A New Tax System (Goods and Services Tax) Act 1999 to a supply, when does 'effective use or enjoyment' of the supply 'take place outside Australia'?.* This Determination sets out the Commissioner's views regarding how table item 3 applies to the supply of a transaction account.

[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.

20. Effective use or enjoyment of the supply of a transaction account will take place outside Australia to the extent the account holder is outside of Australia at the time they undertake a transaction to access their account, and their presence outside of Australia is integral to the account holder's accessing of their account.

21. Determining whether an individual's presence at a particular location is integral, as distinct from being merely coincidental to the provision of the supply, requires an examination of the facts and circumstances. The factors relevant for determining whether an individual's presence is integral to a supply are discussed in GSTR 2007/2.[8]

Supplies in relation to rights that are for use outside Australia

22. Table item 4(a) states that 'a supply that is made in relation to rights' is GST-free 'if… the rights are for use outside Australia'.

23. As discussed in paragraphs 26 to 30 of this Determination, at the centre of the supply of a transaction account is the debt owed by the account provider to the account holder. The debt gives the account holder the right to repayment, in accordance with the contractual agreement. Therefore, the supply of a transaction account is a supply in relation to rights for the purposes of table item 4(a).

24. The general application of table item 4(a) is considered in 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)*. This Determination sets out the Commissioner's views regarding how table item 4(a) applies to the supply of a transaction account.

What is the nature of the supply of a transaction account?

25. The essential characteristic of a transaction account is the debtor-creditor relationship.[9] Fundamental to any debtor-creditor relationship is the debtor's right to repayment. As the Court stated in *Andrews v Australian and New Zealand Banking Group Limited*[10]*:*

> …The bank borrows the money and proceeds from the customer and undertakes to repay them on demand. The bank's undertaking includes a promise to pay any part of the amount due against the written order of the customer addressed to the branch of the bank where the account is kept: *Joachimson*([11]) at [127]. Conversely, the bank will not pay any part of the amount due to the customer without such an order or some other compulsion or entitlement recognised by law; …

26. On opening a transaction account (generally through the initial deposit, which creates the debtor-creditor relationship) the parties will contractually agree to a range of terms and conditions, including the ways in which the account holder can access their account (that is, the access methods) and other features. There is a single continuing contract between the parties.[12]

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[8] See paragraphs 95 and 107 of GSTR 2007/2.
[9] *Foley v Hill* [1848] 2 HL Case 28; 9 ER 1002.
[10] [2011] FCA 1376 (*Andrews*), at [82].
[11] *Joachimson v Swiss Bank Corporation* [1921] 3 KB 110.
[12] *Hart (Inspector of Taxes) v Sangster* [1957] 1 Ch 329.

27. The supply of a transaction account is an ongoing periodic or progressive supply under that single continuing contract, which means that each transaction by the account holder which will involve the use of their repayment rights, will not constitute a separate supply being made by the financial institution.[13]

28. The access methods and other features provided by an account provider are not a separate supply in themselves but are an integral part of the modern transaction account and form part of the single supply made to the account holder. That is, the access methods and other features are economically dissociable from the bundle of rights and features that comprise the transaction account.[14]

29. The various ways in which an account holder can access their account does not change the essential nature of the relationship between the parties, but facilitate the account holder's use of the transaction account, including by providing various options for exercising their repayment right.

Where is the account located?

30. A transaction account is located where the account provider such as the authorised deposit-taking institution is located.[15] Similarly, as a general rule debts are deemed to be situated where the debtor resides.[16] Therefore, when the account holder demands payment[17] from an account held with an account provider at a branch in Australia, the debt is situated in Australia and the repayment is made in Australia.[18]

31. As such, when an account holder opens a transaction account with an Australian account provider, the account will remain in Australia, irrespective of whether the account holder is in Australia at any particular time.

Accessing the account

32. Modern transaction accounts offer a variety of methods by which the account holder can access funds deposited with the account provider, including some or all of the following:

- branch network
- ATMs
- debit cards (potentially for both card present and card not present transactions)

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[13] In *Commissioner of Taxation v MBI Properties Pty Ltd* [2014] HCA 49 (*MBI Properties*) at [35], the High Court noted that a transaction that involves a supplier entering into and performing an executory contract will in general involve the supplier making at least two supplies. However, *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. In focusing on the entire contractual arrangement considered contextually and as a whole, a single financial supply is made to the account holder. In any event, the supply of the contractual performance of the issuer's obligations (referred to in *MBI Properties* at [35]) would be a single ongoing supply.

[14] Paragraph 51 of GSTR 2001/8, referencing Millett LJ in *Customs and Excise Commissioners v Wellington Private Hospital Ltd* [1997] BVC 251 at [266].

[15] *European Bank Ltd v Citibank Ltd* [2004] NSWCA 76*, Rataplan Pty Ltd v Commissioner of Taxation* [2004] FCA 920.

[16] *Haque v Haque* [1965] HCA 39; 114 CLR 98 at p137.

[17] Regardless of whether the account holder is outside of Australia.

[18] *European Bank Ltd v Citibank Ltd* [2004] NSWCA 76.

- BPAY
- online banking
- phone banking
- 'app' banking
- smart wallets (for cardless payments), and
- the New Payments Platform.

33. Similarly, an amount can be deposited into a transaction account through a range of options including direct credits, cash, cheques and transfers.

34. For the purposes of this Determination we have considered the access methods in two broad groups based on the type of transactions undertaken:

- account holder present transactions, and
- account holder not present transactions.

Account holder present transactions

35. Account holder present transactions are those transactions where the account holder must be physically present to access their transaction account by making a cash withdrawal or completing a purchase transaction while physically present at the location of the merchant.

36. Account holder present transactions include:

- cash withdrawals (such as cash withdrawals via an ATM, scheme debit, EFTPOS or over the counter at a branch of the account provider)
- purchase transactions effected by physically presenting a debit card to the merchant, including using a contactless payment method (tap and go), and
- purchase transactions and cash withdrawals where the account holder is physically present to use a digital wallet (which may be contained on a device such as a smart phone or watch) or code (such as cardless cash) in place of the card.

Table item 3

37. As the account holder must be physically present at a specific location (outside of Australia) in order to initiate an account holder present transaction, the account holder's location is integral to their use of the transaction account.[19] The presence of the account holder outside Australia is integral to the performance, receipt or delivery of the supply as the account holder requires immediate access to the account at that time and place in order to physically withdraw cash or enable payment at the merchant's physical location. In such cases, the effective use or enjoyment of the transaction account will be where the

[19] Paragraphs 106 and 294 of GSTR 2007/2 indicate that the 'effective use or enjoyment outside Australia' of a supply occurs if the supply is provided to an individual that is located outside Australia, provided the individual's presence at that location is integral to, as distinct from being merely coincidental with, the provision of the supply.

account holder is located when they undertake the transaction that results in a repayment from the transaction account.

38. As such, to the extent that a transaction account is used for account holder present transactions while the account holder is outside of Australia, the supply of the transaction account will be GST-free pursuant to table item 3.

Example 3 – account holder present transactions

39. *Big Bank uses a transaction count methodology to determine the extent to which the supply of its transaction accounts is GST-free.*

40. *In reviewing its apportionment methodology for its transaction accounts for the 2021 financial year, Big Bank considers the historic usage of its transaction accounts during the 2020 financial year to estimate the split of the intended use of its transaction accounts in the 2021 financial year.*

41. *Big Bank identifies that Fredrick holds a transaction account which includes a debit card. In December 2019, Fredrick travelled to Norway for a holiday. While there, Fredrick used his debit card to pay for his breakfast at Viking Café.*

42. *Big Bank includes Fredrick's use of his transaction account at Viking Café in its count of transactions that reflect the extent to which the supply of its transaction accounts is GST-free.*

Account holder not present transactions

43. Account holder not present transactions are those transactions where the account holder is not physically present at the location of the merchant or counterparty for the underlying transaction when they undertake the transaction under the transaction account.

44. Account holder not present transactions include those undertaken using:

- scheme debit (where the account holder is not physically present at the location of the merchant, such as for online purchases)
- online banking
- phone banking
- BPAY
- direct debit/direct credit payment authorities, and
- other payment methods where the account holder does not need to be physically present to complete a purchase transaction using their transaction account.

45. For account holder not present transactions, the location of the account holder when they use the transaction account is not integral to their use of the account. Rather, the location of the account holder is merely coincidental to the provision and use of the transaction account. This includes online transactions where an account holder accesses the account provider's website (or app) to make a payment, or uses a third-party merchant's website to complete an underlying purchase transaction, which can be completed without regard to where the account holder is located.

Table item 3

46. The supply of the transaction account will be GST-free under table item 3 to the extent that the supply is provided to the account holder at a particular location outside Australia, and the account holder's effective use or enjoyment of the transaction account requires that the person be present at that location.

47. The account holder's location generally does not impact on the initiation and completion of an account holder not present transaction. That is, technology means that in these cases the account holder need not be present at a bank or at the merchant's location to initiate a transaction that accesses their transaction account. The account holder's location is irrelevant and is therefore not integral to the performance, receipt or delivery of the supply of the transaction account. As such, account holder not present transactions will not contribute to the extent to which a transaction account is GST-free under table item 3.

Table item 4(a)

48. When the account holder exercises their repayment rights they will make a demand for repayment on the account provider through one of the access methods offered by the account provider.[20] Upon receiving a repayment demand, the account provider will discharge their existing obligation through following the directions in the repayment demand.

49. It is settled law that the repayment right will be exercised where the account is located.[21] Similarly in *European Bank v Citibank*[22], the Court noted that regardless of the mechanism through which the parties contemplated repayment would be made, the debt was situated where the account is located, and that is where repayment would occur.

50. As the repayment will be made in Australia by the account provider, and the account holder's location is irrelevant for account holder not present transactions, the rights will not be for use outside Australia for the purposes of table item 4(a).

Example 4 – account holder not present transactions

51. *Following on from Example 3, Big Bank also identifies that in August 2019 while Fredrick is at home in Australia he uses his debit card to book a train ticket from Oslo to Trondheim on a Norwegian booking website as part of his Norwegian holiday. Neither Fredrick's location nor that of the merchant affects Fredrick's method of accessing his transaction account. This method is activated, carried out and processed in the same way regardless of Fredrick's location, the location of the merchant and what he is buying.*

52. *Big Bank does not include Fredrick's use of his transaction account to purchase the ticket on the booking website in its count of transactions that reflect the extent the supply of its transaction accounts is GST-free.*

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[20] The nature of the transaction account is discussed in paragraphs 25 to 29 of this Determination.
[21] *Andrews* at [82], *inter alia*.
[22] *European Bank Ltd v Citibank Ltd* [2004] NSWCA 76.

Example 5 – bill payment transactions

53. *Following on from Example 3, Big Bank also identifies that Michelle holds a transaction account with Big Bank and is aware that Michelle travelled to Dubai for work in November 2019.*

54. *During the time Michelle was in Dubai her monthly home loan repayment is debited to her transaction account.*

55. *While she was in Dubai, Michelle also used Big Bank's mobile banking app to set up and complete payment for her home electricity bill using BPAY.*

56. *For both the loan repayment and the BPAY transaction, Michelle's location has no relevance to her method of accessing her transaction account. This method is activated, carried out and processed in the same way regardless of Michelle's location, the location of the counterparty (that is, bank and the electricity supplier) and what she is paying.*

57. *Big Bank does not include Michelle's home loan repayment or the electricity bill payment in its count of transactions that reflect the extent the supply of its transaction accounts is GST-free.*

Appendix 2 – Your comments

58. You are invited to comment on this draft Determination, including the proposed date of effect. Please forward your comments to the contact officer by the due date.

59. A compendium of comments is prepared when finalising this Determination, and an edited version (with names and identifying information removed) is published to the Legal database on ato.gov.au. Please advise if you do not want your comments included in the edited version of the compendium.

Due date: 3 July 2020

Contact officer details have been removed following publication of the final ruling.

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

GSTR 2001/8; GSTR 2003/8; GSTR 2007/2; GSTR 2019/D1; TR 2006/10

Legislative references:

- ANTS(GST)A 1999 11-15(2)(a)
- ANTS(GST)A 1999 Div 9
- ANTS(GST)A 1999 9-30(3)
- ANTS(GST)A 1999 38-190(1)
- ANTS(GST)A 1999 38-190(1) item 2
- ANTS(GST)A 1999 38-190(1) item 3
- ANTS(GST)A 1999 38-190(1) item 4(a)
- ANTS(GST)R 2019 40-5.09(3)

Cases relied on:

- Commissioner of Taxation v MBI Properties Pty Ltd [2014] HCA 49; 254 CLR 376; 2014 ATC 20-474; (2014) 92 ATR 241
- Andrews v Australian and New Zealand Banking Group Limited [2011] FCA 1376; 288 ALR 611; (2011) 211 FCR 53
- European Bank Ltd v Citibank Ltd [2004] NSWCA 76; (2004) 60 NSWLR 153; (2004) 1 BFRA 178
- Rataplan Pty Ltd v Commissioner of Taxation [2004] FCA 920; 2004 ATC 4800; 56 ATR 407
- Haque v Haque [No 2] [1965] HCA 38; (1965) 114 CLR 98; [1966] ALR 553; 39 ALJR 144
- N Joachimson v Swiss Bank Corporation [1921] 3 KB 110
- Foley v Hill [1848] 2 HL Cas 28; 9 ER 1002
- Hart (Inspector of Taxes) v Sangster [1957] 1 Ch 329
- Customs and Excise Commissioners v Wellington Private Hospital Ltd [1997] BVC 251

Other references:

- PCG 2019/8DC1

ATO references

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