# *GSTR 2003/D3 - Goods and services tax: reduced credit acquisitions*

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There is an Erratum notice for this document.
This document has been finalised.

# Draft Goods and Services Tax Ruling
Goods and services tax: reduced credit acquisitions


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***Preamble***

*This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered views of the Australian Taxation Office. This draft may not be relied on by taxpayers and practitioners, as it is not a ruling or advice for the purposes of section 37 of the* ***Taxation Administration Act 1953****. The final Ruling will be a public ruling for the purposes of section 37 and may be relied upon by any entity to which it applies.*

## What this Ruling is about

1. This Ruling explains the application of Division 70 of *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) and Division 70 of Part 4-2 of *A New Tax System (Goods and Services Tax) Regulations 1999* (GST regulations) in relation to reduced credit acquisitions.

2. This Ruling provides guidance on which acquisitions are reduced credit acquisitions that entitle a ***financial supply provider*** to a reduced input tax credit under Division 70 of the GST Act.

3. This Ruling applies to all entities that are registered or required to be registered that make ***financial supplies*** and exceed the financial acquisitions threshold.

4. This Ruling deals only with acquisitions listed in subregulation 70-5.02(2) of the GST regulations. It does not deal with concepts stated or acquisitions listed in regulations 70-5.02A, 70-5.02B or 70-5.02C. Acquisitions listed in subregulation 70-5.02(2) are reduced credit acquisitions.

5. This Ruling is to be read in conjunction with GSTR 2002/2, Goods and Services Tax: GST treatment of financial supplies and related supplies and acquisitions.

6. Certain terms used in this Ruling are set out and explained in the glossary section of the Ruling. These terms, when first mentioned in the discussion for each item in the body of the Ruling, appear in **bold type**. Terms contained in the glossary section of GSTR 2002/2 appear in ***bold italics*** the first time they are mentioned in the discussion of each item.

7. Unless otherwise stated, all legislative references in this Ruling are to the GST Act and all references to the regulations are to the GST regulations.

8. Where an item is referred to by number only, (for example, item 2) unless otherwise indicated, it is an item mentioned in subregulation 70-5.02(2) of the GST regulations.

9. Examples in this ruling are drafted on the assumption that the entity that makes the acquisition mentioned in subregulation 70-5.02(2) is not entitled to an input tax credit except to the extent it is so entitled under Division 70.

# Date of effect

10. This draft Ruling represents the preliminary, though considered view of the Australian Taxation Office. This draft may not be relied on by taxpayers or practitioners. When the final Ruling is officially released, it will explain our view of the law as it applies from 1 July 2000.

11. The final Ruling will be a public ruling for the purposes of section 37 of the *Taxation Administration Act 1953* and may be relied upon, after it is issued, by any entity to which it applies. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and our view of when you can rely on our interpretation of the law in GST public and private rulings.

12. If the final public ruling conflicts with a previous private ruling that you have obtained, the public ruling prevails. However, if you have relied on a private ruling, you are protected in respect of what you have done up to the date of issue of the final public ruling. This means that if you have underpaid an amount of GST, you are not liable for the shortfall prior to the date of effect of the later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

# Background

13. Goods and Services Tax Ruling GSTR 2002/2 deals with the treatment of financial supplies and acquisitions, including those to which regulation 70-5.02 applies, in some detail. Relevant parts of GSTR 2002/2 are reproduced or summarised in the background to this Ruling.[1] This Ruling also discusses some other concepts introduced and discussed in GSTR 2002/2. The reasoning underlying

[1] Particularly paragraphs 198 to 278 excluding paragraphs 217 to 222.

the treatment of these concepts is consistent with GSTR 2002/2 although not necessarily expressed in the same terms.

14. In some cases, acquisitions that relate to making financial supplies may attract a reduced input tax credit, even though no input tax credit would arise under Division 11. These acquisitions are reduced credit acquisitions[2], and are listed in regulations 70-5.02 and 70-5.02B.

15. If a reduced credit acquisition is not wholly for a creditable purpose[3] under Division 70 of the GST Act (for example, if it relates to making other input taxed supplies) the entity needs to determine its extent of creditable purpose. Subsection 70-20(2) contains a formula for working out input tax credits in these circumstances. This is further explained in Goods and Services Tax Ruling GSTR 2000/22 (determining the extent of creditable purpose for providers of financial supplies).[4]

16. The list of items under regulation 70-5.02 is intended to be exhaustive. This is clear from the language in subregulations 70-5.02(1) and (2). Therefore, if something is not specified as an item within the table, it is not a reduced credit acquisition. While an acquisition must fall within one of the items, it is not necessary that a particular acquisition must be mentioned in an item, unless it is clear from the wording of the item that this is the case.

17. An acquisition is not a reduced credit acquisition to the extent that an entity is entitled to an input tax credit for the acquisition outside of Division 70 of the GST Act.[5]

18. For the purposes of subsection 70-5(2), the GST regulations specify that the percentage of the input tax credit for each reduced credit acquisition is 75%.[6]

19. Acquisitions that relate to the making of financial supplies by either the supplier or the acquirer of the financial supply may be reduced credit acquisitions.

### Is subregulation 70-5.02(2) inclusive or exclusive?

20. Division 70 of Part 4-2 of the GST regulations provides an exhaustive list of items that are reduced credit acquisitions for the

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[2] Subsection 70-5(1).
[3] An acquisition or importation is not for a creditable purpose to the extent that the acquisition or importation relates to making other input taxed supplies or is of a private or domestic nature.
[4] See paragraphs 80 to 90 of GSTR 2000/22.
[5] Subsection 70-5(1A).
[6] Subsection 70-5(2), regulation 70-5.03.

purposes of Division 70 of the GST Act. However, some of the things listed under items are listed on an 'inclusive' basis.

21. GSTR 2002/2, at paragraphs 198 to 216, provides an explanation of how the terms used in the items in the table in subregulation 70-5.02(2) apply and this ruling explains this application in relation to each item.

22. Items listed in the GST regulations contain the expressions *'including'*[7], *'the following'* or *'of the following kind'*[8], and *'the following, ... including'* or *'including the following'*.[9] The words 'the following' are used in those items where the list is intended to be exhaustive. 'Including' is used where the list is not exhaustive.

23. The word *including* has been considered in numerous cases.[10] In some instances, the word *including* is used as an extension of the thing defined or described and at other times to provide clarification. In the GST regulations, the expression is used in a variety of constructions, and each item in the regulation should be looked at separately to see the sense in which it is used. It is often used to simply make clear what the item in the regulation intends to cover, by describing a practical activity or acquisition intended to be covered by the general expression used at the commencement of the item.

24. For example, the paragraphs in item 2 provide some of the 'processing services in relation to account information' that are covered by the item. They are not the only types of 'processing services in relation to account information' that item 2 is intended to cover. We interpret similarly constructed items on the same basis.

25. To give an item its correct context, each paragraph in the item needs to be read with reference to the commencing words of the item. For example, an 'archive destruction service' mentioned in item 2(a) is a processing service and a reduced credit acquisition if it is a destruction service 'in relation to archived account information for an account provider'. This means that a service acquired to destroy account information for an account provider is a reduced credit acquisition. However, the acquisition of services to destroy other papers, records or assets does not come within the item and is not a reduced credit acquisition.

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[7] Items 2, 8, 10, 24 and 29 of subregulation 70-5.02(2) and regulation 70-5.02B.
[8] Items 1, 6, 7, 11, 14, 15, 17, 26 and 30 of subregulation 70-5.02(2).
[9] Items 1, 9, 23 and 24 of subregulation 70-5.02(2).
[10] *Re Proprietary Articles Trade Association of South Australia Inc.* [1949] SASR 88; *Lippett v. Robertson* [1953] SASR 13; *In the Estate of Nicholas* [1955] VLR 291 and *Cuisenaire v. Reed* (1962) 5 FLR 180, *YZ Finance Co. Pty Ltd v. Cummings* (1964) 109 CLR 395, *Cohns Industries Pty Ltd v. Deputy Federal Commissioner of Taxation (Cth)* (1979) 37 FLR 508 at 511 per Young CJ, Starke and Gray JJ; *Marsal Pty Ltd & Ors v. Comptroller of Stamps (Vic)* (1982) 82 ATC 4536.

## Apportioning acquisitions

26. The supplier of something that is identifiable as having more than one part where each part is taxable does not need to apportion the consideration for the supply. This is because GST is payable on the whole supply. Similarly, if all of the parts of a supply are identifiable as being non-taxable, GST is not payable on any part of the supply.

27. However, a supply consisting only of taxable parts may not be wholly a reduced credit acquisition to the acquirer. Only those parts that are reduced credit acquisitions give rise to reduced input tax credits.

28. It is not necessary to separate parts of an acquisition into things that are mentioned in subregulation 70-5.02(2) and parts that are not, unless these are separately identifiable parts of the acquisition. Where there are no separately identifiable parts of the acquisition, the acquisition should be examined as a whole to determine whether it is a reduced credit acquisition specified in subregulation 70-5.02(2).

### *Reduced credit acquisition is acquired together with something that is not a reduced credit acquisition*

29. If something that is listed as a reduced credit acquisition is acquired together with something that is not listed as a reduced credit acquisition, those parts may need to be treated separately. This depends on whether the acquisition is a *mixed acquisition* or a *composite acquisition*. These terms are intended to be similar to the concepts of a mixed supply[11] and a composite supply and to adopt similar principles. The difference is that these terms are used to describe an acquisition that consists of parts that are reduced credit acquisitions and parts that are not.

30. GSTR 2002/2 at paragraphs 223 to 256, explains the terms mixed acquisition and composite acquisition, gives examples of mixed and composite acquisitions, and provides guidance on how to decide whether a particular supply is mixed or composite.

[11] A mixed supply is a supply that consists of taxable and non-taxable parts. See GSTR 2001/8 (apportioning the consideration for a supply that includes taxable and non-taxable parts) for an explanation on how to apportion between taxable and non-taxable parts.

**What is a financial supply facilitator?**

31. The regulations distinguish between a supply made by a financial supply facilitator and one made by a financial supply provider. As discussed in paragraph 103 of GSTR 2002/2, the definitions of these terms serve to avoid confusion between the provision of actual financial supplies and other supplies made in connection with them.

32. A financial supply facilitator is defined in regulation 40-5.07 to be an entity facilitating the supply of an interest for a financial supply provider. The *facilitating* of a supply refers to activities that help forward (assist) the supply[12], rather than those that simply assist the financial supply provider. An entity facilitates the supplies of an interest where its activities have the effect of helping forward or assisting the supply, therefore, the activities must have a sufficient nexus with the supply of a financial interest by a financial supply provider.

33. To have a sufficient nexus, the activities of the entity must have an identifiable association with the supply that goes beyond a mere general association. An identifiable association does not mean that the activities have to be directly linked to the supply, however it does require that there be a substantial connection so as to exclude activities that are only generally related. The activities must relate to and assist a particular supply, not merely contemplated supplies. In the absence of this identifiable association, an entity will not be a financial supply facilitator of the supply of the interest.

34. An entity is a financial supply facilitator of a particular supply. The fact that an entity is a financial supply facilitator in relation to one, or a number of transactions does not necessarily make it a financial supply facilitator in relation to another transaction. Being a financial supply facilitator is not a characteristic of an entity, but describes the entity's role in a particular transaction.

35. As a general rule, acting in an agent-like capacity on behalf of a financial supply provider (including the acquirer of a financial interest in relation to a particular transaction) indicates an identifiable association with the supply of an interest, as the activities of the agent are substantially connected with the supply of the interest. Acting as an agent, or in an agent-like capacity is the most common way in which the activities of an entity can have an identifiable association with the making of a financial supply, however, we recognise that it may not be the *only* way.

36. The term financial supply facilitator is specific to subregulation 70-5.02(2) and to those items listed in the

[12] Based on the *Macquarie Dictionary* (3rd Edition) definition of facilitate 'to make easier or less difficult; to help forward (an action, a process etc)'.

subregulation. The term is defined in regulation 40-5.07. The services acquired from financial supply facilitators that are eligible for a reduced input tax credits are outlined in the relevant items in subregulation 70-5.02(2). For the purposes of these items, if a financial supply facilitator does not provide the specific service mentioned, the service is not a reduced credit acquisition. For example, an entity may be a financial supply facilitator in relation to the supply of an interest in an account, but the service it provides will not be a reduced credit acquisition unless it is the service of opening, issuing, closing, operating, maintaining, or performing a transaction in respect of, the account.[13]

### What is an 'interest' in relation to a financial supply?

37. The concept of *financial supply facilitator* rests on an understanding of what is the provision, acquisition or disposal of a financial interest. Regulation 40-5.02 provides that an *interest* is anything that is recognised at law or in equity as any form of property.[14]

38. The term *interest* is taken to be very broad even taking into account the use of the word *property*. The examples provided in regulation 40-5.02 are property or proprietary rights on a broad interpretation of the term and do not extend or contradict the generally accepted concept of *property*. The examples indicate that the term is given its broadest application so that an interest is as wide as the legal and equitable concept of property, including rights arising under a contract.

39. This view is supported by judicial decisions that look to the relevant legislation for assistance in interpreting the term *property*. The fact that a right is not assignable does not mean that it cannot be a proprietary right.[15]

### When does an acquisition relate to making a financial supply?

40. Where a financial supply provider acquires the services of a financial supply facilitator to effect a financial supply, the complexity of the transaction may require that the facilitator supply services over an extended period. The financial supply provider is entitled to reduced input tax credits from the time it forms the

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[13] Subregulation 70-5.02(2) item 1.
[14] See paragraph 78 of GSTR 2002/2.
[15] *FC of T v. Orica Limited* (1998) 194 CLR 500; 98 ATC 4494; (1998) 39 ATR 66; [1998] HCA 33; (1998) 154 ALR 1; (1998) 72 ALJR 969, *National Trustees Executors & Agency Co. of Australasia Ltd v. FC of T* (1954) 91 CLR 540 at 583 and *ICI Australia Ltd v. FC of T* (1996) 68 FCR 122; (1996) 33 ATR 174; 96 ATC 4680.

intention to make a financial supply. That is, the financial supply provider does not have to wait until the financial supply has been concluded before the entitlement arises.

41. How much reduced input tax credit an entity can claim, and when it can be claimed, depends on the usual attribution rules. If the entity's actual use of the acquisition changes from its planned use, it may need to make an adjustment to reflect any changes in the extent of creditable purpose.[16]

**Something acquired to make a reduced credit acquisition is not a reduced credit acquisition**

42. Something that is used in making a reduced credit acquisition is not, for that reason, a reduced credit acquisition.[17] This means that an input used by a supplier in providing something that is a reduced credit acquisition in the hands of the recipient, is not itself a reduced credit acquisition.

43. Inputs into a supply that become an integral part of that supply do not need to be segregated out. While these things are not themselves reduced credit acquisitions, the supplier does not need to separately identify the inputs into the supply made to the financial supply provider.

# Ruling with explanation

44. Division 70 of the GST Act deals with reduced credit acquisitions. When an acquisition is not for a creditable purpose under paragraph 11-15(2)(a) because it relates to making supplies that would be input taxed financial supplies, the acquisition may be a reduced credit acquisition.

45. Entitlement to reduced input tax credits is dealt with in subsections 70-10(1), 70-10(2) and 70-10(3). Subsection 70-10(1) states that the fact that a reduced credit acquisition relates to making financial supplies does not stop it being for a creditable purpose to the extent it relates to making financial supplies. Subsection 70-10(2) states that the fact that a reduced credit acquisition is applied in making financial supplies does not stop it from being applied for a creditable purpose (despite sections 11-15 and 129-50[18]). The effect of this approach is to allow a reduced credit for an acquisition without altering the status of the supply to which it relates.

[16] See Goods and Services Tax Ruling GSTR 2000/24.
[17] Subregulation 70-5.02(3).
[18] Subsection 70-10(3).

46. To determine whether it is entitled to a reduced input tax credit for a particular acquisition, an entity needs to establish whether the supply in relation to which the acquisition was made would be a financial supply. Financial supplies are input taxed under subsection 40-5(1) and, consequently, acquisitions relating to these are not for a creditable purpose under paragraph 11-15(2)(a).[19] The entity should then determine whether the acquisition is mentioned in the table in subregulation 70-5.02(2). If so, it is a reduced credit acquisition and gives rise to a reduced input tax credit under subsection 70-5(1), provided it is not excluded by subsection 70-5(1A).

## Acquisitions that attract reduced input tax credits: general

47. An object of Division 70 of the regulations is to specify the reduced credit acquisitions that relate to making financial supplies that give rise to an entitlement to reduced input tax credits.[20]

48. Subsection 70-5(1) states that the regulations may provide that certain acquisitions that relate to making financial supplies can give rise to an entitlement to a reduced input tax credit. Subregulation 70-5.02(1) indicates that acquisitions mentioned in subregulation 70-5.02(2) are those which give rise to this entitlement. The use of the expression *an acquisition ... that relates to making financial supplies* in subregulation 70-5.02(1) clarifies that, from the range of acquisitions that relate to making supplies that would be input taxed, regulation 70 applies only to acquisitions by financial supply providers.

### The use of 'and'

49. The term *and* when used in the table in regulation 70-5.02, is non-cumulative. This means that each acquisition co-joined to another by *and* is to be read separately. These word strings are not to be read as requiring all of the things listed to be acquired together.

## Reduced credit acquisitions: the items

### Transaction banking and cash management services

50. Items 1 to 5 are grouped under *transaction banking and cash management services*. Each of these items deals with a different set of acquisitions by ***account*** providers, including providers of

[19] Subject to subsections 11-15(3), (4) and (5).
[20] Regulation 70.5.01.

accounts to which paragraph (b) of the definition of account in the Dictionary[21] to the regulations (the Dictionary) applies.

### *Account*

51. For the purposes of the regulations, the expression *account* has the meaning given by the Dictionary. Paragraph (a) of the definition establishes the meaning of account for the purposes of item 1 of subregulation 40-5.09(3) and subregulation 40-5.09(4). Paragraph (b) of the definition extends the meaning to include accounts with institutions other than ***authorised deposit-taking institutions*** (ADIs). Accounts offered by non-ADIs fall within the scope of the definition where the requirements of subparagraphs (i) to (iii) of the definition are satisfied in relation to the account offered.

52. The meaning of *account* in the context of subregulation 70-5.02(2) is further defined by the item in which it appears. For the purposes of the regulations, an account that is not with an ADI is required to meet the tests imposed by the definition in the Dictionary. One of these tests is that the customer has a right to repayment of the amount credited to the account by the provider. This requirement indicates that the credit to the account must be recorded in ***money***. If there is no amount recorded, the account-holder can not have the right to repayment of an amount credited.

53. Where the term *account* extends to accounts offered by non-ADI financial institutions, it excludes those accounts that record non-monetary balances such as reward/loyalty point and frequent flyer point balances. Even where the reward point account holder redeems reward points for dollar value vouchers or offsets their charge account balance by the redemption of reward points, this does not alter the character of the reward point account as there is no amount in the account to be repaid.

### *Account provider*

54. *Account provider* refers to any entity that supplies another entity with an interest[22] in an account. In this context, an account provider also refers to any entity that supplies or has supplied an entity with an interest in an account whatever that account's current status.

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[21] Regulation 3 of the GST regulations.
[22] *Interest* is defined by regulation 40-5.02.

**Item 1**

*The service of opening, issuing, closing, operating, maintaining, or performing a transaction in respect of an* ***account*** *by a financial supply facilitator, including by using the following facilities:*

*(a)* **telephone banking*;***

*(b)* **Internet banking*; and***

*(c)* ***GiroPost***

55. An acquisition is a reduced credit acquisition under item 1 where it is the acquisition of the service of opening, issuing, closing, operating, maintaining, or performing a transaction that is:

- in respect of an account; and
- provided by a financial supply facilitator.

56. Item 1 also incorporates arrangements whereby the services described in the item are provided through the facilities listed in items 1(a) to 1(c). An acquisition of these services is a reduced credit acquisition under item 1 where it is in respect of an account and the services are provided by a financial supply facilitator.

57. It is important to note that items 1(a) to 1(c) illustrate the types of facilities through which item 1 services can be provided, but do not illustrate the types of acquisitions that are reduced credit acquisitions under item 1.

58. In this context, the words *opening, issuing, closing, operating, maintaining, or performing a transaction* have no particular trade, industry or legal meanings and are given their ordinary meanings.

59. The service comprising one or more of the listed activities must be *in respect of* an *account*. The meaning of the expression *in respect of* has been the subject of much judicial interpretation and depends on the context in which it is found.[23] In his judgment in *Trustees Executors & Agency Co Ltd v Reilly*[24] Mann CJ considered that the words *in respect of*:

> …have the widest possible meaning of any expression intended to convey some connection or relation between the two subject-matters to which the words refer.

60. The use of the expression *in respect of* in item 1 indicates that the requisite connection between the service and an account is a broad one. Consequently, item 1 contemplates services (of opening,

[23] *Club Motor Insurance Agency Pty Ltd v Sargent* (1969) 118 CLR 658.
[24] *The Trustees Executors & Agency Co Ltd v Reilly* [1941] VLR 110 at 111.

issuing, closing, etc) that are directly or indirectly connected to an account.

61. Provided an entity is a financial supply facilitator in relation to the supply of an interest in an account by an account provider, the services it supplies are reduced credit acquisitions under item 1 where they involve opening, closing, operating, maintaining, or performing a transaction in respect of, an account.

*Example 1 – chemist sub-agency of a bank*

62. *The Country Care Chemist (Chemist) operates a RiverBank sub-agency. Under the terms of the agency agreement between the two parties, Chemist acts as RiverBank's agent in the performance of deposit, withdrawal and account balance transactions initiated by RiverBank customers. Chemist also facilitates the opening and closing of accounts for RiverBank. On a monthly basis, RiverBank pays Chemist a fee calculated on the number, type and quality of transactions performed by Chemist during the month.*

63. *In this instance, RiverBank's acquisition from Chemist falls under item 1 and is a reduced credit acquisition. This is because RiverBank acquires services described in item 1 that are in respect of RiverBank, accounts and are provided by a financial supply facilitator. Chemist is a financial supply facilitator as its activities have a sufficient nexus with RiverBank's continuing supply of an account to its customers. (The acquisition made by RiverBank may also fall within items 2, 5 or 27.)*

*Example 2 – reward point account*

64. *Big Department Store(Big) offers their charge card account customers membership in a reward program. Charge card account customers who accept this offer receive reward points each time they make purchases using their Big charge card. In turn, customers are entitled to redeem the reward points for Big goods and services. In respect of these reward points, Big establishes a separate account that records the customer's reward point balance and transactions. The reward point account records a non-monetary balance (of points) the value of which can only be obtained through the redemption of points for Big goods or services. The account does not record an amount.*

65. *The reward point account established by Big is not an 'account' within the scope of item 1. As there is no amount recorded, the account-holder can not have the right to repayment of an amount credited, which is a fundamental requirement of an account under item 1.*

66. *The acquisition of services of opening, issuing, closing, operating, maintaining or performing transactions in respect of the reward point accounts by Big is not a reduced credit acquisition under item 1.*

*Example 3 – telephone call centre service*

67. *Big supplies its customers with a reward program in conjunction with its supply of a charge card facility. The reward program element is ancillary to the charge card facility which is the dominant element of the transaction. (The reward program represents a marginal proportion of the cost of the total package, and the right to reward program membership enables the customer to better enjoy the benefits of the charge card facility.)*

68. *Big outsources its charge card customer service telephone operations, to Third Generation Phone Services (Third Generation). Third Generation is responsible for handling all charge card and reward program account queries. These queries involve Third Generation performing certain account-related transactions (for example, account balance, account correction, account closing and reward point redemption transactions). Third Generation is able to distinguish between charge card and reward program account related queries/transactions.*

69. *Third Generation is a financial supply facilitator, and the services it supplies are specified in item 1. However, in part, these activities relate to a reward program account that is beyond the scope of item 1. Consequently, Big makes a reduced credit acquisition under item 1 of only those services relating to its charge card accounts.*

70. *As Third Generation can identify individual parts of the supply it makes to Big, Big is making a mixed acquisition from Third Generation. The acquisition of Third Generation's services in relation to the charge card accounts is a reduced credit acquisition under item 1, as it relates to opening, issuing, closing, operating, maintaining or performing transactions on account information.*

71. *Big's acquisition of Third Generation's services in relation to the reward program is not a reduced credit acquisition as the reward program account is not an account for the purposes of item 1. As Big has made a mixed acquisition, it is not entitled to reduced input tax credits for the part that relates to the reward program.*

*Example 4 – Internet banking facility: reduced credit acquisition*

72. *The Core Bank website provides customers with access to CoreNet, a full-service* **Internet banking** *facility. Through CoreNet, account-holders can view their account balances and transaction history, transfer funds between linked Core Bank accounts and to accounts held at other financial institutions and use* ***BPAY*** *services. The CoreNet Internet banking facility is operated and maintained by Digerinet Solutions (Digerinet). Through the use of the CoreNet facility, Digerinet facilitates the operation and maintenance of Core Bank's Internet accounts together with the performance of account transactions.*

73. *Core Bank acquires a service of operating, maintaining and performing transactions in respect of an Internet account through the use of an Internet banking facility. Digerinet's service is provided as a financial supply facilitator and involves activities that satisfy the requirements of item 1. The acquisition of those services is a reduced credit acquisition by Core Bank. To the extent that Core Bank also acquires the service of setting up the internet facility from Digerinet, it has not made a reduced credit acquisition under item 1.*

*Example 5 – Internet banking: not a reduced credit acquisition*

74. *RiverBank engages Dog-Gone Dotcom to establish hyperlinks from all its sub-agent websites to enable RiverBank customers to access RiverBank's Internet banking facility.*

75. *RiverBank is not making a reduced credit acquisition under item 1 when it acquires this service from Dog-Gone Dotcom. Item 1(b) mentions Internet banking, however item 1 requires that the service must be of opening, issuing, closing, operating, maintaining or performing a transaction in respect of an account and that it be supplied by a financial supply facilitator.*

76. *In this example, Dog-Gone Dotcom is merely establishing connections that will allow customers to directly navigate their way to RiverBank's Internet banking facility and the service they provide does not meet the requirements for a reduced credit acquisition under item 1.*

**Item 2**

*Processing services in relation to* ***account*** *information for account providers, including:*

*(a) archives storage, retrieval and destruction services; and*

*(b) statement processing and bulk mailing; and*

*(c) processing and manipulation of information relating to accounts, including information about transactions to which item 7 applies*

77. An acquisition is a reduced credit acquisition under item 2 if it is the acquisition of *processing services* in relation to *account information* for *account providers.* Any reference to an account in this item is a reference to an account described in paragraph 51.

78. The breadth of item 2 depends on whether or not items 2(a) to 2(c) add to, or provide examples of, the term *processing services*. If the things listed at items 2(a) to 2(c) provide examples of the types of activities that are *processing services* covered by the item, things akin to those examples will also be processing services. Processing services under this reading is a wide concept.

79. However, if the things listed at items 2(a) to 2(c) add to the meaning of *processing services*, each paragraph deals with an acquisition that would not normally be a processing service, but is taken to be a processing service for the purposes of the item. The effect of this reading is that the meaning of processing services is relatively narrower.

80. Under either reading of item 2, the things listed in the items 2(a) to 2(c) are not the only things covered by the item.

### *Approach 1 - paragraphs provide examples*

81. Where the item is read on the basis that the paragraphs provide examples of things that *are* processing services, all of the things listed in items 2(a) to 2(c) are things that fall within the meaning of processing services for the purpose of the item. The term *processing services* encompasses archives storage, archives retrieval, archives destruction services, statement processing and statement bulk mailing, as well as processing and manipulation of information relating to accounts. Under this approach, the term processing services is read as incorporating things not normally considered to be within the expression's meaning.

82. Other acquisitions by the account provider in relation to their account information are considered in the light of this wider meaning of processing services. That is, in determining whether or not something not listed in item 2 is a *processing service*, regard could

be had to the examples. This approach is not the preferred ATO view.

### *Approach 2 - paragraphs add to the meaning*

83. Where the item is read on the basis that the paragraphs add to the normal meaning, the things listed in items 2(a) to 2(c) are not necessarily included within the meaning of *processing services*. They are specific inclusions that enlarge the meaning of the term, but only in relation to those specific inclusions. *Processing services* still retains its normal meaning, but archives storage, archives retrieval, archives destruction services, statement processing and statement bulk mailing, as well as processing and manipulation of information relating to accounts are also taken to be processing services for the purpose of item 2.

84. Other acquisitions by the account provider in relation to their account information are examined in light of this narrower meaning of processing services.

85. The view that the things listed in the paragraphs add to the meaning of the term *processing services*, is supported by the fact that archives storage, archives retrieval and archives destruction services are included not only in *processing services* but also in *administrative functions* in item 24, and *administration services* in item 26. The inclusion of these things for three different terms suggests that they are not examples of those terms, but that they are not normally included in the meaning of the terms, and are specifically included to enlarge the scope of the items (but only to the extent of the specific inclusions).

86. The view adopted in this Ruling is that the paragraphs add to the meaning of the term, but only to the extent of the specific inclusions. *Processing services* has its normal meaning, and each of the things in items 2(a) to 2(c) is a processing service by specific inclusion. Things not specifically mentioned are only reduced credit acquisitions if they are processing services under the normal meaning of that expression, and are in relation to account information for an account provider. (Please note that this preferred approach is consistent with the view expressed in GSTR 2002/2, although the item is expressed as being 'illustrative'.)

### *Processing services*

87. *Processing services* is to be read as a single term, rather than as two separate and distinct words. This is supported by the fact that the phrase *processing services* occurs in a number of items (for example, items 2, 5 and 14) while the words *processing* and *services*

occur individually in other items (for example, items 7 and 8). It is reasonable to conclude that the expression *processing services* is to be read differently from *processing* on its own.

88. Neither the words *processing* or *services,* nor the phrase *processing services* are defined in the GST Act or regulations. Nor does the expression *processing services* have a legal[25] or a particular technical meaning in the financial services industry.

89. The meaning of *processing services* is determined by reference to:

- the ordinary or general understanding of the expression; and
- the context in which it is used.

90. The word *services,* when interpreted in conjunction with the word *processing,* is more than an alternative to *supply.* It implies responsibility for processing functions. The fact that an entity with responsibility for the processing functions in relation to account information sub-contracts the performance of processing activities to a third party, does not alter the conclusion that an acquisition of processing services has been made from the principal entity.

91. The acquisition of capacity (for example, acquisition of the use of computer based infrastructure) is not within the ambit of item 2 as this item contemplates the acquisition of *processing services,* rather than the mere acquisition of *processing* or processing capability.

92. In the context of item 2, *processing services* means *services performed by an entity that have the character of being steps or actions directed towards achieving a specific processing outcome* in relation to account information for an account provider.

### *Information technology (IT) outsourcing agreements*

93. Entities such as banks and other financial institutions process extremely large quantities of data in the course of their business operations. This data includes customer records, transactional information and other information that relates to the making of financial supplies.

94. Predominantly, this processing is performed electronically and may be undertaken by ***the financial supply provider*** itself on facilities it controls, or on facilities which are controlled by a facility manager. Alternatively, the financial supply provider may contract

[25] A number of sales tax cases consider the meaning of *process* or *processing.* However, as the sales tax context is the manufacture of goods, the judgments cannot be applied meaningfully to *processing services.*

another party to do the processing. That is, it may outsource its processing to a provider of IT outsourcing services.

95. The question arises as to whether the acquisition or acquisitions made under these IT outsourcing agreements are reduced credit acquisitions, and particularly whether they are *processing services* to which item 2 applies.

96. IT outsourcing for the purposes of this ruling can be described as:

> …the activities associated with acquiring IT services from one or more external providers. During outsourcing, a client organization transfers responsibility for one or more IT services to one or more external providers. This responsibility is executed through control and management of the processes, people, and technology associated with these services.[26]

97. Financial supply providers may outsource a single function, for example, credit card processing, or their whole IT department under a complex IT outsourcing agreement. Furthermore, financial supply providers may outsource parts of their processing to different IT outsourcing service providers. For example, a bank may outsource the proofing[27] of transaction vouchers such as cheques and deposit slips to one IT provider, and outsource the processing of the data produced from the proofing process against customers' accounts to another IT provider.

98. An IT outsourcing agreement may involve the transfer of equipment or infrastructure by the financial supply provider to an IT provider. This entity then provides computer time or computing capacity to the financial supply provider, but the financial supply provider remains responsible for and controls the processing. In this case, the acquisition is not one of processing services to which item 2 applies.

99. In other cases, the IT outsourcing agreement may involve the handing over of some or all, of the financial supply provider's processing functions to the IT provider, such that the IT provider is responsible for and controls the particular processing function. In this situation, the financial supply provider is acquiring a processing service from the IT provider. The acquisition of this processing service is a reduced credit acquisition under item 2 to the extent that it is the processing of account information for an account provider.

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[26] Definition of IT outsourcing contained in 'Leading Commercial Practices for Outsourcing of Services' a report by the United States General Accounting Office to the Chairman and Ranking Minority Member, Subcommittee on Readiness and Management Support, Committee on Armed Services, U.S. Senate, November 2001.

[27] Proofing involves the recording of the transactions in a form which is suitable for later processing against the customers' account.

***Complex IT outsourcing agreements***

100. A complex IT outsourcing agreement is one under which the financial supply provider outsources its entire IT department. This type of agreement may include the acquisition of processing services in terms of item 2 from the IT provider. This will be the case where it is evident that the IT provider is responsible for and controls a particular processing function in relation to account information for an account provider.

101. Because of their nature, complex IT outsourcing agreements also include the acquisition of services that fall beyond the scope of item 2, or any of the other items listed under subregulation 70-5.02(2). These acquisitions include IT services which support the financial supply provider's corporate functions such as internal accounting, procurement, human resource management or payroll functions, supply of telecommunication services and contract management services.

102. Where the acquisitions under a complex IT outsourcing agreement include services listed as reduced credit acquisitions in regulation 70 (including processing services to which item 2 applies), the financial supply provider is entitled to a reduced input tax credit to that extent. The financial supply provider is required to apportion the consideration under the IT outsourcing agreement on a fair and reasonable basis, between listed reduced credit acquisitions (including item 2 processing services) and other acquisitions to determine its entitlement to input tax credits.

103. Complex IT outsourcing agreements are typically large and complicated documents. As the form of the agreement is directed more at management and pricing than at a plain description of the services provided, a superficial examination may not give a clear indication of the substance of the contract. For example, they may be structured around 'towers' for host and mid-range computing, distributed computing (desktops and peripheral input and output devices) and networking, rather than plainly stating that the IT provider is responsible for and controls particular processing functions. However, it is still necessary to determine the character of acquisitions made under a complex IT outsourcing agreement, including whether those acquisitions are of IT capacity or of processing services, and whether processing services are of account information.

104. An examination of all of the circumstances surrounding the agreement will provide the information required to distinguish between agreements that include only the supply of capacity, and those that include the supply of processing services.

105. The distinction between an acquisition of computing time or capacity and an acquisition of processing services is one of fact and degree. To assist entities to make the distinction, the table below sets out the essential features commonly found in the two types of arrangements. The table is not intended to be used to determine whether any particular function in isolation is, or is not, a reduced credit acquisition for the purposes of item 2. It will be necessary to consider all of the features of an arrangement in relation to the functions listed in the table to discern its true character. The presence or absence of a single feature is not necessarily conclusive.

*Processing Services table*

| **Function** | **Performed by IT Capacity Service Provider** | **Performed by IT Processing Services Provider** |
|---|---|---|
| ***Hardware*** | | |
| Owns hardware or leases from the owner | Yes | Yes |
| Provides infrastructure for hardware | Yes | Yes |
| Responsible for repairs and maintenance of hardware | Yes | Yes |
| ***Infrastructure Software*** | | |
| Supplies operating system/infrastructure software | Yes | Yes |
| Installs operating system/infrastructure software | Yes | Yes |
| ***Application Software*** | | |
| Undertakes sociability (compatibility) testing of application software and upgrades | No | Yes |
| Installs application software | No | Yes |

| ***Operations*** | | |
|---|---|---|
| Schedules operations including batch processing where applicable | No | Yes |
| Schedules maintenance activities | Yes with agreement of acquirer | Yes |
| Has responsibility for services levels to customers of acquirer | No | Yes |
| Responsible for availability of online channels that process customer transactions (e.g. Internet, ATM, point of sale) | No | Yes |
| Decides how it will deliver service levels | No | Yes |
| Responsible for tools and processes to monitor service level delivery and any delays | No | Yes |
| Manages changes to production environment | No | Yes |
| Responsible for management of disaster recovery planning and execution | No | Yes |
| Provision of help lines and training regarding processing | May be help lines for infrastructure, otherwise no. | Yes |

*Example 6 – complex IT outsourcing agreement – including a processing service*

106. *Turnup Bank (Turnup) elects to outsource its entire information technology (IT) function following a decision to focus on its core banking business. Turnup awards the IT outsourcing contract to Systemtronics. The contract is in two parts.*

107. *Under the initial part of the agreement, Turnup sells its IT hardware including mainframe, mid-range and desktop computers, ATMs, EFTPOS terminals, data links, peripheral devices and its*

*operations software to Systemtronics. Applications software remains with Turnup, but is made available to Systemtronics. Most of Turnup's IT personnel are transferred to Systemtronics.*

108. *For its part, Systemtronics is responsible for providing Turnup with IT services (detailed in a service schedule) that are grouped under the following categories: distributed computing; mainframe and mid-range equipment and software; managed network services; and cross-functional services.*

109. *Under each of these particular categories, the service schedule further details the specific services and functions that are the responsibility of Systemtronics. For example, the service schedule establishes that, among other things, Systemtronics is responsible for: repairs and maintenance of hardware; installation of operations, infrastructure and applications software, and upgrades; compatibility testing and fixing software operations faults; online availability of channels that process customer transactions; monitoring of service delivery; management of disaster recovery planning and execution; contract management services; and telecommunications services. Service level standards pertain to the performance of each of these. Consideration for the services rendered by Systemtronics is calculated by monitoring the outputs attributable to each category.*

110. *An examination of the functions mentioned in the service schedule establishes that, amongst other things, Systemtronics has responsibility for and control over the processing of Turnup's data. This confirms that Turnup acquires processing services rather than IT capacity from Systemtronics.*

111. *Under the complex IT outsourcing agreement, Turnup makes a reduced credit acquisition of processing services to which item 2 applies, to the extent the processing is of Turnup's account information. To the extent the processing services involve processing of data that is not account information (for example, Turnup's payroll, human resource, procurement, management, and accounting data), the acquisition of those processing services is not a reduced credit acquisition under item 2 or any other item in subregulation 70-5.02(2). Turnup's acquisition of contract management and telecommunication services from Systemtronics under the complex IT outsourcing agreement is also not a reduced credit acquisition.*

*Example 7 – IT outsourcing agreement - acquisition of processing capacity*

112. *Other than during peak periods, Century Bank has mid-range and mainframe computing capacity that is surplus to its needs.*

*Century Bank enters into an IT outsourcing agreement with ComAccess. Under this agreement, Century Bank transfers its surplus mid-range and mainframe computers (and associated data links) to ComAccess, which provides Century Bank with computer time (such as, access to mid-range and mainframe computing capacity) for a fee whenever it is needed.*

113. *Century Bank provides the application software, determines when it needs to use the computing capacity, and is responsible for availability of the online channels to process customer transactions. It is also responsible for monitoring service level delivery and delays. In this way, Century Bank is responsible for, and has control over, the processing of its ATM and EFTPOS transactions.*

114. *In the pre-Christmas period, Century Bank acquires computer time from ComAccess to ensure that it has the capacity to validate and process the increased volume of ATM and EFTPOS transactions during this period.*

115. *While ComAccess owns the hardware and related infrastructure, and is responsible for repairs and maintenance, it is not responsible for, or in control of, the processing of Century Bank's ATM and EFTPOS transactions. Under the IT outsourcing agreement, ComAccess provides Century Bank with IT services in the form of capacity rather than processing services to which item 2 applies. Century Bank does not make a reduced credit acquisition under item 2 in relation to the services acquired from ComAccess.*

### *In relation to*

116. The words *in relation to,* as used in item 2, are not defined in the GST Act and should be read in the context in which they appear. The courts have ruled that the term is to be interpreted in accordance with the intent of the relevant statute. In *Hatfield v. Health Insurance Commission*[28], at page 491 Davies J stated:

> Expressions such as 'relating to', 'in relation to', 'in connection with' and 'in respect of' are commonly found in legislation but invariably raise problems of statutory interpretation. They are terms that fluctuate in operation from statute to statute... The terms may have a very wide operation but they do not usually carry the widest possible ambit, for they are subject to the context in which they are used, to the words with which they are associated and to the object or purpose of the statutory provision in which they appear.

117. In the context of item 2, the expression *in relation to* is not intended to convey the widest possible connection between processing services and account information. Rather, the processing

[28] *Hatfield v. Health Insurance Commission* (1987) 15 FCR 487.

service and the account information are related, for the purposes of item 2, where there is an identifiable (as opposed to general) association between them. Item 2 therefore does not apply to those processing services that have only a general association with account information.

### *Account information*

118. *Account information* means information that identifies the account. For the purposes of this item, account information also includes information that relates to non-current accounts. It is information about a particular account type, or account types, rather than the general information about an account. Specific details, features and conditions that relate to an account holder's account, or accounts that are *account information* include:

- the name and address of the account holder;
- type of account;
- the balance in the account;
- interest earned;
- fees and charges;
- transaction summaries of such things as ***deposits*** and withdrawals;
- information about options or changes to an existing account but not information about a potential account; and
- information about transactions to which item 7 applies, where such information is in respect of an existing or a non-current account.

### *Item 2(a) - archives storage, retrieval and destruction services*

119. The acquisition of archives storage, retrieval and destruction services are processing services for item 2. These services, acquired individually or as part of a global archiving service, are reduced credit acquisitions where the services are in relation to account information for an account provider. The phrase *archives storage, retrieval and destruction services* is to be read as *archives storage services*, *archives retrieval services*, and *archives destruction services*.

*Archives storage services*

120. When read in isolation, the component words *archives* and *storage* refer respectively to 'the non-current documents or records relating to the activities…'[29] of an entity, and 'the act of storing'.[30] However, when read as a single expression, *archives storage* connotes more than mere storage of non-current documents and records. The expression implies a large scale and the provision of particular expertise, being the skill and judgment required to ensure information is properly preserved and readily accessible.

121. An *archives storage service* for the purposes of item 2(a) involves both the performance of functions concerned with the storage of physical and/or electronic non-current documents or records of an entity and the provision of expertise in the field of archives storage. The acquisition of an archives storage facility, as distinct from the archives services themselves, is not a reduced credit acquisition under this item.

122. An acquisition that is an *archives storage service* for item 2(a) is only a reduced credit acquisition where it is also in relation to account information for an account provider.

*Example 8 – archives storage service*

123. *The Vanderlay Archiving Services Company (Vanderlay) contracts with financial institutions to provide archives storage services. The service involves Vanderlay staff packing documents (including microfiche, magnetic tapes and optical imaging materials) into appropriate storage containers, labelling, cataloguing, and transporting containers to Vanderlay's archives storage facility and storing them in the Vanderlay facility.*

124. *The Lipmann Building Society (Lipmann) engages Vanderlay to provide these services in relation to its customer account statements in microfiche and magnetic tape form. Vanderlay invoices Lipmann for the initial packaging, removal and storage, itemising the cost of the containers, labels and transportation. Vanderlay invoices Lipmann for the storage of the archived materials each month.*

125. *The provision of an itemised invoice doesn't necessarily indicate separate acquisitions of the things itemised. Lipmann's acquisition of the invoiced items is the acquisition of archives storage services. The acquisition is a reduced credit acquisition under item 2, as the archives storage service is in relation to account information for an account provider.*

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[29] The *Macquarie Dictionary* (3rd Edition).
[30] The *Macquarie Dictionary* (3rd Edition).

*Example 9 – not an archives storage service*

126. *The Fine & Dandy Credit Union (Fine & Dandy) rents a storage locker from We Store It P/L. Fine & Dandy uses the locker to store surplus furniture and to archive material that includes account information.*

127. *We Store It is supplying a facility that merely enables Fine & Dandy to store its archive materials. This is not the provision of an archives storage service for the purposes of item 2(a).*

*Archives retrieval service*

128. The expression *archives retrieval service*, similarly to the expression *archives storage service*, has a more specific meaning than suggested by the terms archives and retrieval. It implies a service involving the retrieval of non-current documents or records presently stored in an archives facility.

129. An archives retrieval service for the purposes of item 2(a) involves the recovery of physical and/or electronic non-current documents or records from the place in which the documents or records are stored in an archives facility.

130. The service may also include the delivery of the documents or records; however, this is not the case where the delivery is not part of a service that includes recovery from the archives facility. The acquisition of a transportation service is not a retrieval service under this item

131. An acquisition that is an *archives retrieval service* in item 2(a) is only a reduced credit acquisition under item 2 in relation to account information for an account provider.

*Example 10 – archives retrieval service: physical documents*

132. *In addition to supplying archives storage services, for a separate fee, Vanderlay Archiving Services (Vanderlay) provides a document retrieval service. Vanderlay locates and extracts specific documents and arranges for their delivery to clients on demand. The fee charged by Vanderlay for this service includes packaging and freight costs.*

133. *The Serenity Now Building Society (Serenity) stores its non-current account records with Vanderlay. It also acquires Vanderlay's retrieval services as required. Serenity instructs Vanderlay to retrieve all of the account records for a particular customer. As this service is an archives retrieval service in relation*

*to account information for an account provider, Serenity makes a reduced credit acquisition under item 2.*

*Example 11 – archives retrieval service: documents in an electronic form*

134. *The Clayburn Mercantile Bank (Clayburn) stores its account information with Datatronics which provides a data-warehouse service to clients. Datatronics also offers a data retrieval service for a separate fee. When Clayburn wishes to take advantage of this service, it e-mails Datatronics with a request detailing the specific data to be retrieved and specifying whether the data is to be formatted in a particular way. Datatronics locates, formats and downloads the data into a secure file and e-mails it to Clayburn.*

135. *The service acquired by Clayburn is an archives retrieval service that is in relation to account information for an account provider. Clayburn makes a reduced credit acquisition under item 2.*

*Example 12 – not an archives retrieval service*

136. *The Easy Credit Company Ltd (Easy) engages Speedy Couriers to pick up a box of credit account related documents from the premises of Vanderlay Archiving Services.*

137. *Easy is acquiring a courier service rather than a retrieval service, and is not making a reduced credit acquisition under item 2. Although the courier service completes the process of retrieval and delivery, the delivery of the documents has no element of archives retrieval.*

*Example 13 – not an archives retrieval service: access to a database*

138. *Infotronics supplies data-warehouse services to clients with direct 24 hour access to its database, so they can retrieve and download data themselves. Each time a client accesses the database, Infotronics charges the client an access fee.*

139. *The service acquired by Infotronics' client is not an archives retrieval service for the purposes of item 2(a). The client is acquiring the means by which it can retrieve the data, rather than Infotronics retrieving the data for the client. The service acquired from Infotronics for which the access fee is paid is not a reduced credit acquisition.*

*Archives destruction service*

140. An *archives destruction service*, in the context of item 2(a), is the service of destruction or deletion of physical or electronic documents or records presently stored in an archives storage facility. The acquisition of an archives destruction service requires that the documents, physical or electronic, are destroyed rather than merely disposed of. Examples of destruction include the incineration, shredding, or recycling of paper-based records, and the permanent deletion of electronic records.

141. An acquisition, that is an *archives destruction service* in item 2(a), is a reduced credit acquisition where it is in relation to account information for an account provider.

*Example 14 – archives destruction service*

142. *In addition to supplying archives storage and retrieval services, for a separate fee, Vanderlay Archiving Services (Vanderlay) provides a document destruction service. Vanderlay locates and extracts documents, arranges for their secure transportation to the destruction site and their secure destruction on request, subject to a client's standing authority. The fee charged by Vanderlay for the archives destruction service includes packaging and freight costs.*

143. *The Grey Suit Building Society (Grey Suit) archives its non-current account records with Vanderlay. From time to time, it also acquires Vanderlay's destruction services where account information files have reached their destruction date. Vanderlay extracts the relevant account information files from its filing range and packages the documents into secure bins. Vanderlay then transports the bins to a council owned incinerator where it oversees the physical destruction of the files.*

144. *As this service is an archives destruction service and is in relation to account information for an account provider, the acquisition of this service by Grey Suit is a reduced credit acquisition under item 2.*

*Example 15 – not an archives destruction service*

145. *The Credit It Credit Union (Credit It) contracts with Tenor Rubbish Removers (Tenor) to dispose of its shredded confidential documents. This involves Tenor unloading the contents of Credit It's specially marked bins into its truck and dumping the contents into a secured rubbish site.*

146. *In this instance, Credit It acquires a garbage disposal service rather than an archives destruction service, as Tenor does not destroy the documents. The acquisition of the garbage removal service is not a reduced credit acquisition under item 2.*

*Processing both account and non-account information for an account provider*

147. Where an archives storage, retrieval, or destruction service relates to documents or records that do not contain account information, this service is outside the scope of item 2. However, where the service is in relation to both account and non-account information, a proportion of the service may give rise to a reduced credit acquisition under item 2.

148. We accept that in these circumstances, it may not be practicable to determine the relative proportions of account and non-account information being processed. In this case, we may not require the entity to apportion between account and non-account information stored, retrieved or destroyed where it can establish that it has made a single acquisition of these services.

149. We consider that an account provider has made a single acquisition, the dominant part of which is an archives storage, retrieval, or destruction service in relation to account information, in certain circumstances. These circumstances exist where the entity establishes that a minor or ancillary part[31] of the information being processed is information other than account information. This can be established by examining a representative sample of the documents or records being processed through a storage, retrieval or destruction service.

*Example 16 – archives storage service in relation to information that is partly account information*

150. *The Pennypacker Bank (Pennypacker) engages Vanderlay to provide it with archives storage services in relation to its head office documents. These documents are a mixture of account information spreadsheets and human resource management files.*

151. *Pennypacker makes a reduced credit acquisition under item 2 where Vanderlay's archives storage service relates to account information. Because the archives storage service also relates partially to non-account information, Pennypacker needs to determine whether its acquisition is predominantly in relation to account information, or non-account information. Pennypacker*

[31] See paragraphs 247 to 256 in GSTR 2002/2 for a discussion of what is a 'minor' or 'ancillary' part.

*determines from a representative sample of information being processed that non-account information represents only a minor component relative to account information.*

152. *As the proportion of non-account information being processed is minor in comparison with the proportion of account information, Pennypacker has made a single acquisition of archives storage services in relation to account information. Pennypacker makes a reduced credit acquisition under item 2.*

### *Item 2(b) – statement processing and bulk mailing*

153. The acquisition of statement processing and statement bulk mailing is the acquisition of processing services for the purposes of item 2. An acquisition of these services is a reduced credit acquisition if it is in relation to account information for an account provider.

*Statement processing*

154. *Statement processing* involves a methodical set of actions directed towards the production of an account summary (statement) including an electronic account summary. The acquisition of statement processing services is a reduced credit acquisition if it is in relation to account information for an account provider.

155. An acquisition of the means to perform statement processing (for example, a software package) is not an acquisition of statement processing for the purposes of item 2(b). This is because the entity supplying the capability is not actively processing the statements.

*Example 17 – statement processing*

156. *The Commercial Internet Bank (CIB) provides account-holders with on-line access only to their account statements. The preparation, production and up loading of the on-line account statements has been outsourced to Springer Enterprises (Springer). Via direct access to CIB's account database, Springer downloads the relevant monthly account information, constructs the account statements and loads the information onto CIB's website. Account-holders can then view their account statement and print it out if they wish.*

157. *While Springer's services are performed electronically, they consist of a systematic series of actions directed at producing account statements for CIB. CIB's acquisition from Springer is statement processing in relation to account information for an account provider and is a reduced credit acquisition under item 2.*

*Example 18 – not statement processing*

158. *Square Ox Solutions (SOS) supplies consultancy services and customised software tools which provide clients with the capability to produce, publish and collate their own documents (including account statements) in house. Clearwater Bank engages the services of SOS to provide it with this capability.*

159. *SOS is merely providing Clearwater Bank with statement processing capability rather than a service of statement processing. Clearwater Bank's acquisition from SOS is not a reduced credit acquisition under item 2.*

*Statement bulk mailing*

160. *Statement bulk mailing* is a term used for a range of services directed at preparing a large number of account statements for posting. Statement bulk mailing does not include postal services for the delivery of statements to account holders.

161. *A statement bulk mailing service* may include, but is not limited to, the following activities: printing, collating, folding, trimming; enveloping of statements; complying with the requirements for entitlement to discounts; addressing, bar-coding, sorting and lodgment of mail items.

162. An arrangement may also involve the bulk mailing service provider paying the postal charge and incorporating this cost into the overall fee for bulk mailing services rendered. Under this arrangement, the postal services have been supplied to the account provider, but paid by the entity supplying the statement bulk mailing services. The acquisition of the postal services is not part of the acquisition of statement bulk mailing.

163. An acquisition of *bulk mailing* is a reduced credit acquisition under item 2 if it is in relation to account information for an account provider.

*Example 19 – statement bulk mailing service*

164. *Bulky Services offers specialised services including printing, collation, folding, enveloping, mail preparation and documentation, lodgment, sorting and delivery to certain customers.*

165. *Sackamento Building Society (Sackamento), produces 10,000 monthly customer account statements in electronic form, but outsources the subsidiary activities associated with the bulk creation and lodgment of the statements to Bulky Services. For a fee that includes the postage fees paid by Bulky Services on behalf of*

*Sakamento, Bulky Services prints, collates, folds, envelopes, sorts and lodges with the mail service provider, the mail items containing customer account statements.*

166. *The acquisition made by Sackamento is a reduced credit acquisition under item 2 as it is an acquisition of statement bulk mailing in relation to account information for an account provider. However, the portion of the fee attributable to Sakamento's postage expenses is not consideration for the supply of statement bulk mailing.*

*Example 20 – statement bulk mailing*

167. *Ausletter, the mail service provider, also offers specialised services including printing, collation, folding, enveloping, mail preparation and documentation, lodgment, sorting and delivery to certain customers. Ausletter provides these services for a fee which includes a postal charge, but is not wholly a postal charge.*

168. *Sackamento acquires the services of Ausletter to print, collate, fold, envelope, sort and deliver 10,000 mail items containing customer account statements.*

169. *In this instance, Sackamento has made a mixed acquisition of something that is a reduced credit acquisition (statement bulk mailing) and something that is not (mail delivery services). Sakamento is entitled to a reduced input tax credit only in respect of that part that is statement bulk mailing.*

*Example 21 – not statement bulk mailing (mail delivery service)*

170. *Tigerland Credit Union (Tigerland) produces its account statements in-house (approximately 10,000 a month). It also does its own enveloping, sorting to the requirements of the mail service provider and lodges the mail items at the bulk mailing centre of that mail service provider. Tigerland is entitled to a discounted postage fee as the bulk mail items are sorted to the requirements of the mail service provider.*

171. *In this instance, Tigerland acquires from the mail service provider a mail delivery service in respect of bulk mail items. This service is not a bulk mailing service for the purpose of item 2(b), as it doesn't involve any of the activities specified in paragraph 161 that characterise bulk mailing. Tigerland has acquired a mail delivery service for which a postage fee is charged and not an acquisition of statement bulk mailing services that is a reduced credit acquisition under item 2.*

*Example 22 – not statement bulk mailing (pick-up by mail service provider)*

172. *Following from the previous example, instead of lodging the bulk quantity of account statements, Tigerland engages the mail service provider to pick up the mail items from its premises. The fee charged by the mail service provider includes the transport costs and the postage fee (less the discount). The character of the acquisition made by Tigerland is still of a mail delivery service that in this instance, includes ancillary transportation services. The acquisition does not constitute a statement bulk mailing service for the purposes of item 2.*

### *Item 2(c) – processing and manipulation of information relating to accounts, including information about transactions to which item 7 applies*

173. An acquisition of processing and/or manipulation of information relating to accounts, including item 7 transactions, for an account provider are processing services for the purposes of item 2. Item 2(c) is a specific inclusion that adds to the meaning of *processing services*, but only in relation to the specific inclusion.

174. That is, for the purposes of item 2, *processing services* includes processing and/or manipulation activities directed towards achieving a specific outcome. Item 2(c) extends the range of information that may be the subject of processing and/or manipulation to information about transactions to which item 7 applies. A listing of these transactions is provided in item 7.

175. The acquisition of data processing services that include responsibility for a manipulation outcome, or processing and/or manipulation of information about transactions to which item 7 applies are *processing services* under item 2(c). Services acquired under a complex IT outsourcing agreement are *processing services* only if they fall within item 2(c) or are processing services as described in paragraphs 87 to 92.

176. In the context of item 2 the words *processing and manipulation* are to be read as *processing and manipulation services*. The words *processing* and *manipulation* take their ordinary meanings, and respectively refer to the doing of 'a systematic series of actions directed to some end'[32], and 'skilful or artful handling, management, or use.'[33]

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[32] The *Macquarie Dictionary* (3rd Edition).
[33] Drawing on the *Macquarie Dictionary* (3rd Edition) definitions for *manipulate* and *manipulation*.

177. We consider that *processing* in item 2(c) has the same meaning as *processing services* except that the processing outcome is in respect of information relating to accounts which includes information to which item 7 applies.

178. Similarly, *manipulation* refers to services performed by an entity, where the entity is responsible for handling, managing or using with skill, in some process or performance, information relating to accounts, including information to which item 7 applies.

179. In the context of item 2, *information relating to accounts* and *information about transactions to which item 7 applies*, is account information. An acquisition of the service of processing and/or manipulation of account information is a reduced credit acquisition under item 2 where the service is acquired by an account provider.

180. The fact that an entity with the responsibility for the processing and/or manipulation of account information sub-contracts the performance of these activities to a third party, does not alter the conclusion that an acquisition of processing and/or manipulation has been made from the principal entity.

181. An acquisition that provides the means by which processing and/or manipulation occurs, without the supplier being responsible for and having control over particular processing and/or manipulation functions, is not a reduced credit acquisition for the purposes of item 2.

182. Alternatively, it has been argued that, if what is produced is processed data, then what is acquired from the entity that facilitated the processing is processing and/or manipulation of data. This applies whether the processing is provided actively or by provision of interactive hardware and software.

183. Under this view, the acquisition of access to hardware and software that enables the entity to produce processed data itself would also be a reduced credit acquisition. However, we consider that the acquisition of processing capacity is not the acquisition of processing and manipulation of information relating to accounts.

*Example 23 – processing service under item 2(c)*

184. *The Boom to Bust Building Society (Boom to Bust) entered into an outsourcing agreement for its cheque-processing function with BTK Ltd from 1 July 2001. Under the agreement, BTK Ltd is responsible for value-encoding and sorting the cheques into those drawn on Boom to Bust and those drawn on other financial institutions, arranging clearance of the cheques, settling Boom to Bust's net position, and posting debits and credits to Boom to Bust customer accounts.*

185. *BTK Ltd electronically processes and manipulates information relating to both Boom to Bust accounts and cheque transactions. The acquisition of these services is an acquisition that comes within the scope of item 2(c). BTK Ltd does not merely provide Boom to Bust with the capacity to process and/or manipulate its own data electronically. BTK Ltd is responsible for the processing and manipulation of Boom to Bust's data.*

186. *As BTK is responsible for providing Boom to Bust with a processing and manipulation outcome, the acquisition made by Boom to Bust has the character of a service of processing and manipulation. The other requirements of item 2 are also satisfied as the processing and manipulation is in relation to account information for an account provider. Boom to Bust makes a reduced credit acquisition under item 2 in respect of its acquisition from BTK Ltd.*

*Example 24 – acquisition of processing capacity*

187. *ComAccess provides small regional building societies with computer services in relation to the operation of savings accounts. These services involve the provision of access to customised software loaded on a ComAccess computer server which facilitates the processing of account information. The data is input by building society tellers.*

188. *The provision of access to the software and hardware is a service acquired by the building societies. However, the acquisition is not the processing and/or manipulation of information relating to accounts, because ComAccess is not responsible for performing any operations on account information. ComAccess merely provides the building societies with the capacity to electronically perform processing and/or manipulation of their own account information. As such the acquisition of computer services from ComAccess is not a reduced credit acquisition under item 2.*

**Item 3**

*Acquisition of **transaction cards** by card **account** providers*

189. An acquisition under item 3 is a reduced credit acquisition if it is the acquisition of *transaction cards* by *card account providers*. The scope of item 3 depends on the meaning given to the expressions *transaction cards* and *card account providers*.

### *Transaction cards*

190. The expression *transaction cards* has the meaning given in the Dictionary.[34] The Dictionary provides that *transaction card* means a ***debit card***, ***charge card***, ***credit card*** or smart card. The items listed are articles that enable their holder to perform a range of financial/account related functions, such as acting as a payment instrument for the acquisition of goods and services, facilitating the ***deposit*** or withdrawal of ***money*** into or from an account, or recording financial transactions.

191. This contrasts with an article that acts as a means of verifying some particular entitlement or clearance. Examples are a *cheque card* which, for the purposes of making a payment by personal ***cheque***, evidences that the holder has passed a credit-worthiness test and a card that enables access to a secured area (for example, a security card). These articles are not transaction cards within the Dictionary meaning of the term, and the acquisition of them, in whatever state, is not a reduced credit acquisition under item 3.

192. Item 3 excludes the acquisition of articles that are not operational as transaction cards. In this context, *operational* is taken to mean an article that has the capacity to be functional as a transaction card subject to a final security activation process. The bulk acquisition of card blanks that require further processing before use is not the acquisition of transaction cards for the purposes of item 3. However, card blanks may be acquired as part of an agreement under which cards are supplied and prepared for use by the card provider over a period of time. Although there is a staggering of the processing activities, the acquisition under the agreement is the acquisition of transaction cards.

193. Underlying the supply of a transaction card is the performance of a number of specialised services directed towards making the card operational. These activities may include, but are not limited to, artwork design, application of magnetic strips, processing, loading, encryption and protection of data/password/pin numbers, and embossing and personalisation of card holder details. The supplier may also include the cost of mailing cards to account holders in the price of the supply. Where these processes are undertaken as part of the supply of transaction cards they merely represent inputs into the acquisition of the transaction cards and are not separate acquisitions.

[34] Regulation 3.

194. However, one or more of these activities acquired other than as part of the acquisition of transaction cards is not an acquisition within the scope of item 3.[35]

*Example 25 – acquisition of transaction cards*

195. *Under an agreement between State Federation Credit Union (State) and Cardtrans, Cardtrans is engaged to provide State with operational debit cards. However, the details of the agreement specify that State is able to take possession of the debit card blanks and have Cardtrans perform the processing services of embossing, magnetic strip insertion, and data lodgment at a time, or times, of its choosing.*

196. *In this case, notwithstanding that processing services are supplied independently, the substance of the agreement provides for the acquisition of operational transaction cards, and is therefore an acquisition within the scope of item 3.*

*Example 26 – not an acquisition of transaction cards*

197. *Sandy Bank acquires 1 million card blanks and subsequently engages Card Service Ltd to install magnetic strips on the card blanks.*

198. *Sandy Bank's acquisition of the services of Card Service Ltd is beyond the scope of item 3 as it represents an acquisition of a service that is not part of the acquisition of transaction cards.*

***Card account providers***

199. Item 3 further requires that the acquisition of transaction cards be made by *card account providers*. The word *card* should be read as a reference to *transaction cards* and, therefore, has the same meaning. The expression *card account providers* is a reference to an ADI or a non-ADI financial institution that provides its customers with an account (other than an account that records non-monetary balances) that is linked to a debit, charge, credit or smart card that it supplies.

[35] However, this may be a reduced credit acquisition under another item of subregulation 70-5.02(2).

*Example 27 – acquisition of transaction cards by card account providers*

200. *The Park Avenue Department Store (Park Avenue) offers customers a charge account facility that operates through the use of a charge card. Upon the approval of an application, successful applicants receive a Park Avenue charge card and a terms and conditions brochure separately.*

201. *Park Avenue customers are supplied with a new charge card (and terms and conditions brochure) under an agreement between Park Avenue and Iclonic Industries (Iclonic). Under the terms of the agreement, Iclonic produces and distributes new Park Avenue charge cards. The invoice issued by Iclonic to Park Avenue is for the production and distribution of charge cards. The invoice itemises the costs attributable to each part of the process including: card blanks; artwork; magnetic strips; data management; personalisation; and collation, enveloping, dispatch and mailing.*

202. *Park Avenue is a card account provider that has acquired transaction cards (charge cards) from Iclonic. The acquisition made by Park Avenue falls within the scope of item 3 and is a reduced credit acquisition. The service of packaging and distributing the cards (and terms and conditions brochures) to card account holders by Iclonic is ancillary to the acquisition of the transaction cards and does not have the character of a separate acquisition by Park Avenue. The other specific costs itemised on the invoice merely represent the inputs that Iclonic has applied in making the supply, and are not separate acquisitions made by Park Avenue.*

**Item 4**

*Acquisition of **passbooks**, **deposit** and withdrawal forms and **cheques** and chequebooks by **account** providers*

203. An acquisition under item 4 is a reduced credit acquisition where it is the acquisition by an account provider of one or more of the articles listed. The range of item 4 depends on the meaning attributed to each of the listed articles and the expression *account providers*.

204. Item 4 deals with articles that are a means of facilitating or recording transactions on an account. As the articles are not defined in the GST Act or regulations, each takes the meaning by which it is understood in the financial services industry.

### *Passbooks*

205. Within the financial services industry, a passbook is a book issued by an account provider to an account-holder, which records deposit and withdrawal transactions. The acquisition of passbooks is a reduced credit acquisition under item 4 where the acquisition is made by an account provider.

### *Deposit and withdrawal forms*

206. For the purposes of item 4, the use of *and*, between the words *deposit* and *withdrawal* is merely for the purpose of listing similar articles and allows for separate acquisitions of deposit or withdrawal forms.

207. *Deposit forms* and *withdrawal form*s are forms with blank spaces for the insertion of deposit or withdrawal related information that facilitates deposits into or withdrawals from an account.

208. The scope of item 4 includes the following documents, provided they have the characteristics discussed in paragraph 207:

- agency/sub-branch deposit or withdrawal slips;
- ***ATM*** and non-teller deposit envelopes;
- deposit and/or withdrawal books; and
- term deposit, prepayment, redemption and reinvestment forms.

209. The acquisition of deposit or withdrawal forms is a reduced credit acquisition under item 4 where an account provider makes the acquisition.

### *Cheques*

210. The term *cheque* has a legal meaning provided by subsection 10(1) of the *Cheques Act 1986*. Subsection 10(1) states:

> A cheque is an unconditional order in writing that:
>
> a. is addressed by a person to another person, being a financial institution and
>
> b. is signed by the person giving it; and
>
> c. requires the financial institution to pay on demand a sum certain in money.

211. In this context, the term *cheque* incorporates ***bank cheque***s, bank ***drafts*** and traveller's cheques.[36]

212. The acquisition of cheques is a reduced credit acquisition under item 4 where an account provider makes the acquisition.

### *Chequebooks*

213. A chequebook is a book consisting of a number of cheques. The acquisition of chequebooks is a reduced credit acquisition under item 4 where an account provider makes the acquisition.

### *Incorporations and additions*

214. The acquisition of passbooks, books of deposit or withdrawal slips, cheques and chequebooks may incorporate specialised services directed towards personalising, encoding or safeguarding the article. Where such services are acquired as part of the acquisition of the article, they are merely inputs into the acquisition of the article and are not separate acquisitions.

215. The acquisition of passbooks, books of deposit/withdrawal slips and chequebooks may also include the acquisition of ancillary items such as inserts (for example, inserts that specify government charges), and wallets. Where such items are acquired as part of the acquisition of the articles they are ancillary to, and part of, the single acquisition of the articles. Any of these items acquired independently of the acquisition of the things mentioned in item 4 are not reduced credit acquisitions under that item.

*Example 28 – acquisitions covered by item 4*

216. *The Bricks & Mortar Building Society (Bricks & Mortar) has a contract with Financial Stationery Supplies (FSS) to supply it with all of its stationery needs (including the supply of savings account passbooks, savings/cheque/term account deposit and withdrawal forms and chequebooks). Each month, FSS gives an invoice to Bricks & Mortar detailing the type and quantity of, and individual charges for, the stationery items supplied during the month.*

217. *In respect of its supply of passbooks, deposit and withdrawal forms and chequebooks, FSS also details costs associated with personalising, encoding, and securing these articles and the costs attributable to the production of passbook and chequebook inserts.*

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[36] Section 5 of the *Cheques Act 1986.*

218. *Bricks & Mortar has made a separate acquisition of each of the items detailed on the FSS invoice except those items that are inputs into the acquisition of passbooks, deposit and withdrawal forms, chequebooks and inserts for passbooks and chequebooks.*

219. *Bricks & Mortar has made a mixed acquisition from FSS as it includes the separate acquisition of items that are reduced credit acquisitions under item 4. To determine its entitlement to input tax credits, Bricks & Mortar must apportion the GST inclusive total of the consideration for those acquisitions between those, for which it is entitled to a reduced input tax credit, and those for which it is not.*

**Item 5**

*Processing services in relation to* ***account*** *applications for account providers, including providing credit reference and credit scoring assessment*

220. An acquisition under item 5 is a reduced credit acquisition if it is the acquisition of *processing services* in relation to *account applications* by an *account provider*. Item 5 also includes the acquisition of the service of providing *credit reference* assessment and *credit scoring* assessment services in relation to account applications for account providers.

221. The scope of item 5 depends on the meaning of the expressions: *processing* services*; in relation to; account applications; account providers; credit reference assessment* and *credit scoring assessment*.

### *Processing services*

222. The expression *processing services* is explained at paragraphs 87 to 92. That is, the expression processing services implies the entity has the responsibility for the processing, and is either actively involved in or engages other entities to take an active role in the processing.

### *In relation to*[37]

223. Processing services are *in relation to* account applications in the context of item 5, where there is an identifiable association between them, as opposed to general association.

[37] The expression '*in relation to*', is explained at paragraphs 116 to 117 in the discussion of item 2.

***Account applications***

224. *Account applications* are any formal request, in written or electronic form, to open an account.

*Example 29 – acquisition of processing services in relation to account applications*

225. *The Dominant Bank has an agency arrangement with the Central West Rural Transaction Centre (CWRTC). Under the agency agreement, CWRTC opens saving accounts for Dominant Bank customers for which it receives a fee each time a new account is opened. CWRTC is responsible for processing the account applications (including those received electronically) which involves a series of verification and clerical steps. For this service, CWRTC receives a fee, regardless of whether the application is approved or not.*

226. *In acquiring this service, Dominant Bank makes a reduced credit acquisition under item 5 as it is an account provider and acquires processing services that have an identifiable association with account applications.*

*Example 30 – acquisition of Internet-based application processing service*

227. *Fraternity Bank (Fraternity) sells home loans using employees known as mobile lending consultants. From an applicant's residence the consultant can, through their laptop computer, arrange for an electronic loan application (which incorporates a re-draw loan account facility) to be conditionally approved within minutes. This is achieved by the consultant accessing a customised Internet-based application processing service provided by Laptop Apps Corp.*

228. *From the data input by the consultant, Laptop Apps Corp processes the application. It accesses internal and external databases to obtain a credit history, score the credit information and evaluate the score relative to Fraternity's credit policy. Laptop Apps Corp then feeds the result (on-line) back to the consultant. For each Internet driven application processed, Laptop Apps Corp charges Fraternity a fee based on the time taken to perform the processing.*

229. *In acquiring these services, Fraternity makes a reduced credit acquisition under item 5 as it is the acquisition of processing services in relation to account applications for an account provider. Laptop Apps Corp's service may also be a reduced credit acquisition under item 14(a).*

*Example 31 – not an acquisition of processing services in relation to account applications*

230. *Magic Credit Union (Magic) offers credit card products to its customers. Magic purchases from Design-Ideas, a customised software package which automates both the application and decision making processes. The software package provides Magic with the ability to: capture and record application details, access external credit bureau databases; score credit information, and automatically apply data for decision-making purposes. The package also includes regular software up-grades and software support services.*

231. *Magic has not made a reduced credit acquisition under item 5. This is because Design-Ideas is not responsible for the processing of account applications and has no active role in the processing. It is merely supplying Magic with capacity in the form of software (and related software support services).*

### *Credit reference assessment*

232. For the purposes of item 5, the expression *credit reference assessment* has a technical meaning derived from its use in the financial services industry. In this context, *credit reference assessment* refers to a written or electronic report, which details the credit history of a particular entity, for ***risk management*** purposes. A service of providing a credit reference assessment will normally involve the supplier accessing, (including through a credit bureau), public and/or private databases, which store credit reference data.

### *Credit scoring assessment*

233. The expression *credit scoring assessment* has a technical meaning derived from its use in the financial services industry. In this context, *credit scoring assessment* is a written or electronic report which details a numerical score attributable to a particular entity for the objective of predicting the risk associated with a particular application the entity has made. The credit score is normally derived from statistically derived algorithms which are applied against credit reference data. The scoring process may be customised to accommodate the particular needs of a customer.

234. In a credit reference or credit scoring assessment service the entity providing the service is actively involved in the steps or actions that contribute to the production of the report. The fact that the account provider acquires a fully automated service, or deals with the supplier purely through an electronic interface, does not alter the conclusion that a processing service has been acquired.

235. An acquisition of the capacity to perform credit reference assessments or credit scoring assessments by the account provider, or initial access to a particular credit bureau database for which an access fee is charged, is not the acquisition of a processing service for the purposes of item 5. However, where the fees are ongoing, even if they are called access fees, they may be for the acquisition of a processing service under item 5.

*Example 32 – credit reference assessment service*

236. *Exchange Credit Union (Exchange) is a subscriber to Riskinfo's credit reference service. Exchange accesses the service through Riskinfo's website each time an Exchange customer applies for a credit card product. It logs onto Riskinfo's credit reference page and inputs relevant client information which is downloaded to Riskinfo. Riskinfo then performs credit bureau database searches and compiles the results into a credit reference report, which is downloaded to Exchange. Riskinfo charges a set fee for each credit reference report it produces for Exchange*.

237. *Exchange is an account provider and makes a reduced credit acquisition under item 5 as the acquisition of a credit reference assessment is an acquisition that is a processing service in relation to account applications.*

*Example 33 – not a credit scoring assessment service*

238. *The Hamptons Credit Union (Hamptons) in-sources the credit scoring assessment function in relation to its account applications. It acquires from Tedesco Ltd a customised software package that provides it with this capability.*

239. *The acquisition in this circumstance is one that provides Hamptons with the capacity to perform its own credit scoring function. The acquisition is not a reduced credit acquisition under item 5, as it is not the acquisition of a processing service in relation account applications*.

***Payment and fund transfers services***

240. Items 6, 7, and 8 are grouped under *payment and funds transfer services* and deal with the services provided within payment systems. *Payment system* is defined as *a funds transfer system that facilitates the circulation of money*[38]*, including any procedures that relate to the system.*

[38] As defined in the Dictionary section of the regulations (regulation 3).

241. Within this context, a funds transfer system generally includes the following elements:

- participants (as defined in the Dictionary);
- instructions to make a payment;
- the instruments or means to facilitate a payment;
- the infrastructure to convey the payment instructions; and
- activities associated with clearing and settling the payment instructions.

**Item 6**

*Supplies to which the following **payment system** fees relate:*

*(a) fees charged by the operator of a payment system to a participant in the system;*

*(b) fees charged by a participant in a payment system to a third party in relation to access to the system;*

*(c) fees charged between **participants** in a payment system*

242. An acquisition under item 6 is a reduced credit acquisition where it is an acquisition of a supply to which a payment system fee that comes within the scope of items 6(a) to 6(c) relates. The range of item 6 depends upon the meanings given to the expressions *payment system*, *operator of a payment system*, *participant in a payment system* and *third party*.

***Payment system***

243. The term *payment system* can be used to refer to the wider Australian financial system. However, its use in item 6 pertains to those specific systems established to facilitate the circulation of money. This involves the circulation of:

- cash;
- ***cheque***s (including bank cheques/***drafts***/***warrants*** and travellers cheques);
- direct entry transactions (that is, bulk ***direct credit*** and direct debit transactions);
- payment cards (that is, debit, credit and ***charge cards***); and
- stored value or smart cards (other than those cards which are not linked to ***accounts*** provided by an

> ***Australian ADI*** in connection with an account mentioned in item 1 in the table in subregulation 40-5.09(3)).

244. For the purposes of item 6, a *payment system* includes, but is not limited to, a system or network that facilitates the transfer of funds through the following transactions:

- cheque transactions;
- direct entry transactions;
- debit/credit/charge card transactions;
- automated teller machine (ATM) transactions;
- ***electronic funds transfer at point of sale*** (EFTPOS) transactions;
- third party bill payment transactions; and
- GiroPost transactions.

### *Operator of a payment system*

245. As the expression *operator of a payment system* is not defined in the GST Act or regulations, its meaning is derived from the context in which it is used. In the context of item 6, *operator of a payment system* is taken to mean any entity engaged in a business of providing a payment system. Generally, such an entity establishes the rules and procedures of the system, markets the system and acts as guarantor for the payment obligations entered into by those entities who are granted access to participate in the system.

### *Participant in a payment system*

246. The expression *participant in a payment system* takes its meaning from the Dictionary definition of a *participant*. The definition is:

> a person who is a participant in the system in accordance with the rules governing the operations of the system.

247. A participant in this context is a financial intermediary that provides payment services to customers (such as, a bank, building society or ***credit union***). Consequently, the customers of financial intermediaries, such as account holders and merchants, are not *participants* in a payment system for the purposes of item 6.

248. Entities that are not granted access to a payment system but benefit from a relationship with a *participant* (for example, entities that enter into co-branding arrangements or provide participants with

sales or third party processing services) are also not participants for the purposes of item 6.

### *Third party*

249. In the context of a payment system, a *third party* is an entity charged a fee by a *participant* in relation to access to the system. *Third party* refers to merchants that require access to payment systems from financial intermediaries to offer customers payment options for the purchase of goods and services. The fees are commonly known as *merchant fees*.

### *Item 6(a) — fees charged by the operator of a payment system to a participant in the system*

250. Acquisitions of supplies to which item 6(a) relate include, but are not restricted to, those to which the following fees apply:

- membership/participation fees;
- authorisation fees;
- services fees;
- marketing fees;
- ***risk management*** fees; and
- multi-currency fees.

These acquisitions by a participant in a payment system from the operator of the payment system are reduced credit acquisitions under item 6(a).

### *Item 6(b) - fees charged by a participant in a payment system to a third party in relation to access to the system*

251. Acquisitions of supplies to which item 6(b) relate include but are not restricted to, those to which the following fees apply:

- fees[39] from merchants for sales processed by credit and ***debit cards***;
- services fees;
- merchant annual fees;
- merchant transaction fees;
- merchant monthly processing fees;

[39] Including those fees that are expressed as a discount.

- imprinter and card terminal rental;
- fees for installation and management of terminals; and
- charges to merchants for telecommunications line rental.

These acquisitions by a third party from a participant in a payment system are reduced credit acquisitions under item 6(b).

### *Item 6(c) - fees charged between participants in a payment system*

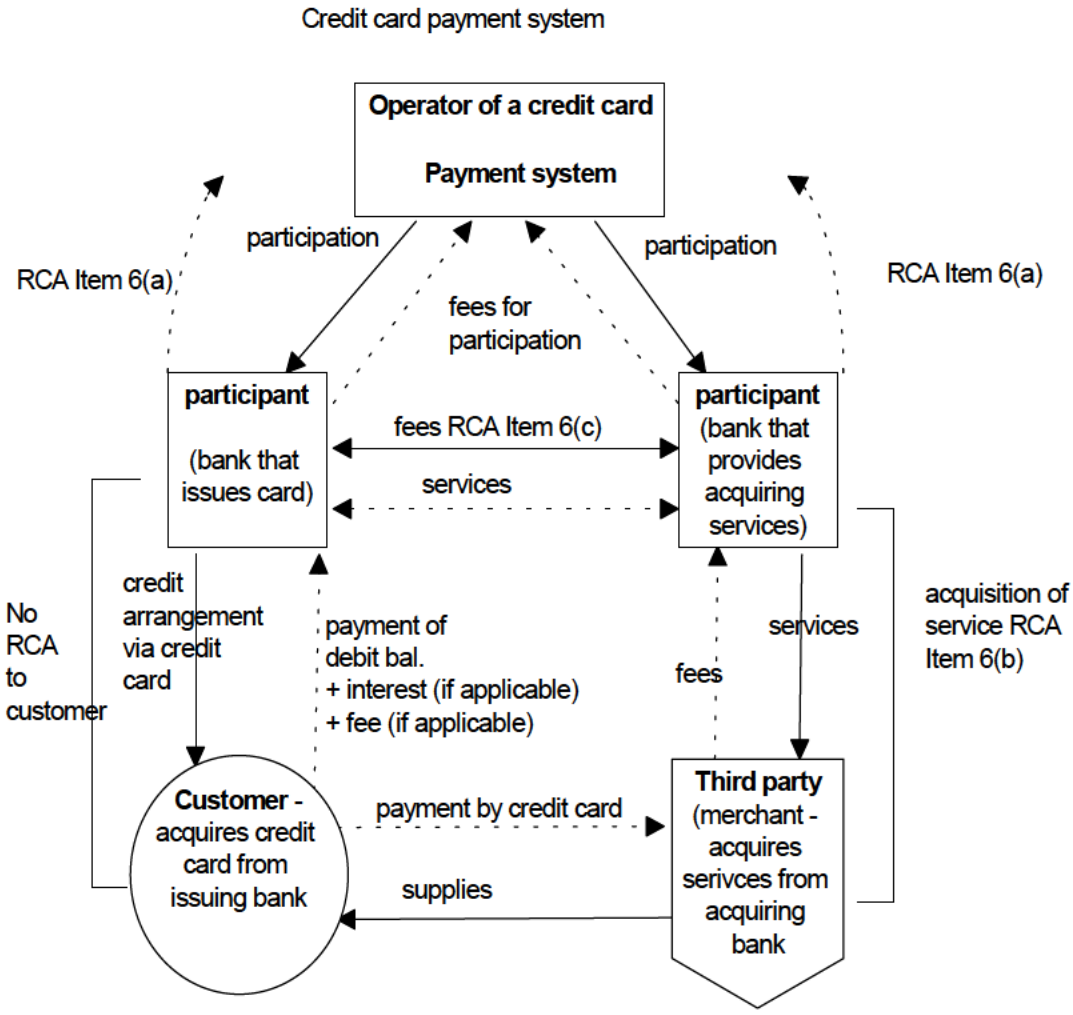
252. Acquisitions to which item 6(c) relate include but are not restricted to, those to which the following fees apply:

- ***interchange fees*** on issuer (financial intermediaries) and acquirer (financial intermediaries) transactions;
- fees for services between participants;
- direct entry fees for bulk corporate payment services; and

These acquisitions between participants in a payment system are reduced credit acquisitions under item 6(c).

*Diagram – how a payment system operates*

253. The following diagram explains how a payment system operates:




**Item 7**

*Processing, settling, clearing and switching transactions of the following kinds:*

*(a)* ***direct credit*** *and* ***debit****;*

*(b) other credit and debit transactions;*

*(c)* ***charge****,* ***credit*** *and* ***debit card*** *transactions;*

*(d)* ***cheque****;*

*(e) electronic funds transfer;*

*(f)* ***ATM****;*

*(g)* ***B-pay****;*

*(h)* **Internet banking***;*

*(i)* ***GiroPost****;*

*(j) the* ***SWIFT (Society for Worldwide Interbank Financial Telecommunications) Payment Delivery System***

254. An acquisition under item 7 is a reduced credit acquisition where it is the acquisition of a service of processing, settling, clearing and/or switching one or more of the transactions in items 7(a) to 7(j). In this context, a relevant acquisition need not include all of the mentioned activities for it to be a reduced credit acquisition under item 7.

255. The scope of item 7 depends on the meaning attributed to the expressions *processing*, *settling, clearing, switching* and the transactions described in items 7(a) to 7(j). The glossaries to this ruling and to GSTR 2002/2 explain the meanings of the transactions described in items 7(a) to 7(j).

256. Item 7 deals with the acquisition of specialised services that facilitate the transfer of funds within a particular payment system. The acquirer of such services is usually an entity that offers payment services to its customers.[40] The means by which a relevant service is performed has no effect on whether the acquisition is a reduced credit acquisition under item 7.

257. However, the acquisition of the means by which processing, settling, clearing or switching occurs is not a reduced credit acquisition under item 7. For example, the purchase of a software licence (and related support services) that provides a credit union with the means to process direct entry transactions is beyond the scope of item 7.

### *Processing*

258. In this context, the expression *processing* means a systematic series of actions directed to some end. Item 7 contemplates acquisitions that involve a systematic series of actions that assist the efficient movement of transactions listed in items 7(a) to 7(j) within a payment system.

*Example 34 – processing services*

259. *FareCharge pays Dixieland Cabs a fee for sorting, collating and batching Farecharge charge-card vouchers that are collected from taxi-companies that participate in the Dixieland network. The*

[40] That is, the entity that is a participant in a payment system, as defined in the Dictionary section of the GST regulations (regulation 3).

*taxi companies receive the vouchers as payment for taxi services. Farecharge requires Dixieland to provide these services so that its clearing and settlement functions can operate efficiently.*

260. *In this instance, Farecharge has made an acquisition of a service of processing of charge card transactions, which is a reduced credit acquisition under item 7.*

### *Settling*

261. For the purposes of item 7, the expression *settling* takes its meaning from the context of payment systems. *Settling* refers to specific arrangements directed towards discharging obligations owed by a participant in a payment system. In particular, the arrangements relate to the actual exchange of value instructions through accessing accounts and liquid funds maintained for this purpose by the participants in a payment system.

262. Where a participant in a payment system acquires the services of an entity to carry out its settling obligations in respect of one or more of the transactions listed in items 7(a) to 7(j), the acquisition of the services is a reduced credit acquisition under item 7.

### *Clearing*

263. In item 7, the expression *clearing* takes its meaning from the context of payment systems. *Clearing* refers to arrangements that facilitate the presentment and exchange of payment instructions and the calculation of claims for ***settlement*** between participants in a payment system.

264. Clearing may occur within a participant's enterprise where the accounts to be debited or credited are held within the same financial institution. It may occur directly between participants in a payment system through a bi-lateral clearing arrangement or through a clearing house. Clearing houses are established to manage and administer clearing systems for particular types of payment transactions (multi-lateral clearing arrangement).

265. Where a participant in a payment system acquires the services of an entity to carry out its clearing obligations in respect of one or more of the transactions listed in item 7(a) to 7(j), the acquisition of such services is a reduced credit acquisition under item 7.

266. Services for which fees are paid to an entity that manages and administers a clearing system, are not reduced credit acquisitions under item 7.

*Example 35 - clearing and settlement services*

267. *Middleman Credit Card Services (Middleman) markets its services to participants in a credit card payment system (that is, financial intermediaries that issue credit cards (issuers) and/or enter into arrangements with merchants (acquirers)). Middleman undertakes all of the client's clearing and settlement obligations in respect of the credit card transactions initiated/accepted by a card-holder/merchant that is a customer of the financial intermediary.*

268. *Middleman also supplies associated processing services in respect of both the credit card transactions and the related credit card account information. Practically, Middleman acts as a clearing house for credit card transactions involving its clients and effects the settlement of its client's net positions. Middleman uses information technology infrastructure to automate the performance of these services.*

269. *Where a financial intermediary contracts with Middleman, their acquisition of processing, clearing and settlement services in respect of credit card transactions is a reduced credit acquisition under item 7. The acquisition of processing services in relation to credit card transaction information is a reduced credit acquisition under item 2.*

### *Switching*

270. For the purposes of item 7, the expression *switching* takes its meaning from the context of a payment system and refers to the routing of payment transactions to a participant in a payment system via a facility. While a *facility* in this context includes the manual routing of transactions, it is more likely to involve the performance of this task through automated means. Switching, in this context, also includes incidences where authorisations are sought before a transaction is approved and the authorisation request is switched to the relevant participant in a payment system.

271. Where a participant in a payment system acquires the services of an entity to switch one or more of the transactions listed in item 7(a) to 7(j), it is a reduced credit acquisition under item 7.

**Item 8**

*Services to a third party mentioned in paragraph 6(b), including:*

*(a) processing of **account** data; and*

*(b) electronic payment services*

272. Under item 8 the acquisition of a service related to a payment system by a third party mentioned in item 6(b) is a reduced credit acquisition. The scope of item 8 is illustrated by the examples listed in items 8(a) and 8(b). However, these are not the only services to which item 8 relates. The range of the item depends on meanings of *services* and *third party*.

### *Services*

273. The context of item 8, and the nature of the examples listed at items 8(a) and 8(b), establish that the expression *services* is not a reference to any service acquired by a third party mentioned in item 6(b). Rather, the expression *service,* for the purposes of item 8, refers to a particular class of services that are ordinarily acquired by a third party mentioned in item 6(b) as a consequence of their involvement in a payment system. *Services* in this context refers to services that relate to payment and funds transfer services within a payment system.

### *Third party*

274. In the context of item 8, the expression *third party* takes its meaning from item 6(b). *Third party* refers to a merchant with access to a payment system (for example, a life company that accepts credit card payments for life insurance premiums).

275. Item 8 is therefore concerned with services that a merchant obtains to facilitate their participation in a payment or funds transfer system.

### *Item 8(a) - processing of account data*

276. Under item 8(a), a merchant's acquisition of the service of processing account data is a reduced credit acquisition. In this context, account data relates to information a merchant draws from the acceptance of direct debit authorisations or debit/credit/charge card instruments. Where a merchant acquires the services of an entity to perform a systematic series of actions on account data that achieve some end, such as the preparation of a direct debit account file, the acquisition is a reduced credit acquisition under item 8.

### *Item 8(b) - electronic payment services*

277. Under item 8(b) a merchant's acquisition of electronic payment services is a reduced credit acquisition. In this context, electronic payment services include arrangements where a merchant

engages an entity to operate its debit, credit or charge card facilities. It also includes arrangements where an entity manages electronic payment services through an Internet facility.

*Example 36 - electronic payment services*

278. *Beneficial Mutual Life Ltd (BML) supplies interests in life products that are input taxed. Customers of BML can pay their life insurance premiums on a monthly basis, by direct debit or credit card (either by post, or the Internet).*

279. *To provide this payment flexibility to its customers, BML engages the services of Infodat Corp. Under its agreement with BML, Infodat Corp is responsible for managing the delivery of the electronic payment options offered to BML customers, including BML's Internet site. Infodat Corp's services include carrying out all of BML's (merchant) payment system obligations, managing BML's collection of payments from its acquirer financial institution, the preparation of direct debit account files and the processing/switching/clearing and settlement of BML's direct entry and credit card transactions.*

280. *BML's acquisition of Infodat's services falls within the scope of item 8 (electronic payment and account data processing services) and item 7 (processing, switching, clearing and settlement of direct debit and credit card transactions), BML's acquisitions of these services are reduced credit acquisitions.*

***Securities transactions services***

281. Items 9 and 10 are grouped under *securities transactions* services, and deal respectively with services by entities facilitating a range of **securities** transactions, and services provided by securities and unit registries.

**Item 9**

*Arrangement, by a **financial supply facilitator**, of the provision, acquisition or disposal of an interest in a **security**, including the following:*

*(a) order placement and trade execution;*

*(b) clearance and **settlement** of trades;*

*(c) management of the issue of securities, including rights and* **bonus issues***;*

*(d) arranging flotations and* **privatisation***s;*

*(e) arranging mergers and acquisitions;*

*(f) arranging takeover bids;*

*(g) performing a settlement, including issue of drafts and* ***encashment****;*

*(h) other securities transactions, including lodgment, withdrawal and exchange control;*

*(i)* ***underwriting****, except a matter that is described in the table in regulation 40-5.09*

282. An acquisition is a reduced credit acquisition under item 9 where it is an acquisition of the arrangement by a financial supply facilitator of the provision, acquisition or disposal of an interest in a security.

283. The acquisitions listed in items 9(a) to 9(i) are arrangement services by a financial supply facilitator. They are reduced credit acquisitions where an entity acquires the services of a financial supply facilitator to facilitate the provision, acquisition or disposal of an interest in a security. Acquisitions of services other than those listed in items 9(a) to 9(i) must also be the *arrangement* of the provision, acquisition or disposal of an interest in a security by a financial supply facilitator.

284. The term *arrangement* is not defined in the GST Act or regulations, nor does it have a specific industry meaning. Its ordinary meaning is a 'preparatory measure, previous plan, preparation or a final settlement, adjustment by agreement'.[41] *Arrangement* under this item includes activities relating to the preparation for the transaction, the planning of the transaction and the settlement of the details of the transaction.

285. Typically, arrangement activities take place before the transaction is completed. However, in some instances they may take place after the transaction is completed. Provided the activities relate to the arrangement of the transaction, and not to ongoing services once it is completed, these will be *arrangement* for the purposes of the item. Items 9(d), (e) and (f) also require that the service listed in each has the character of arranging.

286. Although many activities may be undertaken as part of the preparations for, for example, the public float of a company, not all of these are the arrangement of the provision of an interest in securities. Planning by the financial supply facilitator may require that a company group restructures. However, it is the acquisition of the planning which is the arrangement service, not the activities involved in the restructure that is the reduced credit acquisition.

[41] The *Macquarie Dictionary* (3rd Edition).

Equally, due diligence activities, though part of the preparation for the float, are not *arranging* for the purposes of item 9(d). This is because due diligence by itself, does not have sufficient connection to the 'arrangement' of preparing or planning a float. However, where an entity provides due diligence activities, as part of its services in planning or preparing a float, then it may come within item 9(d).

287. Where an entity conducts preparatory activities as part of the planning of and preparation for a listed transaction, these may be part of the arrangement of the transaction. Where the entity engages other entities to undertake parts of preparatory activities, the services of those other entities are inputs to the supply of arrangement services by the entity and are not, in themselves, arrangement services.

288. Whether or not a service is the arrangement of a transaction depends upon the nature of the services undertaken, not the name applied to them. For example, a merchant bank may invoice its clients for *advisory services*[42] for a securities transaction. If, however, the merchant bank is a financial supply facilitator in relation to that supply of securities, and is, in reality, supplying arrangement services under the agreement, the acquisition of those services is a reduced credit acquisition under item 9.

*Example 37 - due diligence: reduced credit acquisition*

289. *The directors of Spacey Pty Ltd (Spacey) engage Hunter Corporation (Hunter) to arrange for a public float of Spacey's shares. Hunter, in the course of planning and preparing for the float, undertakes a number of activities, including conducting due diligence and preparing a prospectus.*

290. *Hunter is supplying the service of arranging the float and is a financial supply facilitator of the supplies of the interests in the shares. Spacey's acquisition of Hunter's services is a reduced credit acquisition under item 9.*

*Example 38 - due diligence: not a reduced credit acquisition*

291. *The directors of Spacey Pty Ltd (Spacey) engage Hunter Corporation (Hunter) to arrange for a public float of Spacey's shares. Hunter, in the course of planning and preparing for the float, engages Stickler and Associates (Stickler) to undertake due diligence for Spacey. Stickler provides its services to, and is paid by, Spacey.*

[42] Normally, an acquisition of advisory services is not a reduced credit acquisition.

292. *Hunter is providing the services of arranging the float of Spacey's shares, and is a financial supply facilitator of the supplies of the interests in securities. The acquisition of Hunter's services by Spacey is a reduced credit acquisition under item 9.*

293. *The services provided by Stickler are not of arranging the provision of the interest in Spacey's shares, but are due diligence services. Although these services contribute towards the float, they are not in themselves arrangement services. The arrangement involves due diligence. Due diligence alone is not arrangement. Therefore, Hunter's acquisition of Stickler's services is not a reduced credit acquisition.*

294. The term *securities* is defined in the Dictionary as having the meaning given by subsection 92(1) of the *Corporations Act 2001* (the Corporations Act) (including, for example, shares or ***debentures*** in a body, interests in a ***managed investment scheme***). Securities, for the purposes of regulation 70, does not have the expanded definition found in item 10 subregulation 40-5.09(3) and does not, therefore, include such things as an interest in the capital of a trust (unless it is an interest in a managed investment scheme) or partnership. The arrangement by a financial supply facilitator of the provision, acquisition or disposal of an interest in the capital of a trust or a partnership, other than an interest that is a security, is not a reduced credit acquisition under item 9. However, the acquisition of these services may be a reduced credit acquisition under another item.

295. Apart from item 9(i), the acquisitions mentioned in the paragraphs do not need further explanation.

296. The term *securities* when used in item 9(h) also has the meaning given by the Dictionary.

297. Item 9(i) includes *underwriting, except a matter that is described in the table in regulation 40-5.09* as an arrangement by a financial supply facilitator of the provision, acquisition or disposal of an interest in a security. The paragraph refers to the part of the underwriting service that does not relate to the acquisition of unplaced securities. This part is sometimes referred to as *best endeavours* underwriting. The supply of best endeavours underwriting is a taxable supply by the underwriter.

298. Where an underwriter agrees to make its best endeavours to place securities, but also undertakes to take up unplaced securities, only the part of the service not relating to the agreement to take up the securities is a reduced credit acquisition. This is because the agreement to take up the securities is the supply of an interest in securities (or a derivative) as described in the table in regulation 40-5.09. The underwriter is a ***financial supply facilitator*** in relation to the supply of the securities by the financial supply provider, and

the placement activities of the underwriter are the arrangement of the provision of the securities in question.

*Example 39 - underwriting*

299. *Grabber and Co (Grabber) agrees to underwrite a share issue by Grandslam Limited (Grandslam). Under the agreement Grabber will attempt to place 50 million shares, and agrees to take up unplaced shares at $3.50 per share. The supply under the underwriting agreement is a mixed supply.*

300. *Grabber supplies a placement service and an interest in securities (or a derivative), being a put option over the unplaced shares. The acquisition of the placement service part of the supply is a reduced credit acquisition to Grandslam under item 9, as it is the acquisition of the service of arranging the provision of the shares by a financial supply facilitator of the supply.*

**Item 10**

**Securities** *and* ***unit registry*** *services to securities and unit issuers, including:*

*(a) managing portfolios of assets; and*

*(b) allotting of share issues; and*

*(c) making* ***dividend*** *payments; and*

*(d) receiving application for issue of shares; and*

*(e) performing a redemption or capital repayment; and*

*(f) placing* ***scrip*** *orders; and*

*(g)* **bonus issue***; and*

*(h) scrip settlement; and*

*(i) client* ***account*** *processing; and*

*(j) transaction processing and recording; and*

*(k) handling investor inquiries*

301. An acquisition is a reduced credit acquisition under item 10 if it is the acquisition of securities registry or ***unit registry*** services by an issuer of securities or units. The word *and* in the phrase 'securities and unit registry services' in this item serves only to differentiate the two types of registry services that may be reduced credit acquisitions.

302. Item 10 does not require that the service provider be a ***financial supply facilitator*** in relation to the securities or units.

Items 10(a) to 10(k) provide non-exhaustive examples of the type of services that are reduced credit acquisitions, provided they are also security or unit registry services.

303. The term *securities* is defined in the Dictionary and has the restricted meaning given by subsection 92(1) of the Corporations Act. Item 10, however, specifically includes unit registry services.

304. The services that are reduced credit acquisitions under this item are those performed by a security or unit registry for the issuer of securities or units in relation to the units they have issued. Because of the nature of securities registries and unit registries, it is unlikely that the services listed in item 10 would be performed by an entity that is not a securities or unit registry.

305. Under Chapter 2C of the Corporations Act, a company or **registered scheme** is required to set up and maintain a register of members, option holders and debenture holders. The Corporations Act also sets out requirements for information to be kept in these registers. Companies are permitted to have these registers maintained by another entity.

306. Securities registry services will be provided by the entity at which the register is located for Corporations Act purposes. These entities are securities registries. Similarly, issuers of units may acquire the services of a unit registry to maintain and manage their unit registers. Unit registry services are services provided by these registries.

307. The services provided by these registries include those contained in items 10(a) to 10(k). These paragraphs are for the most part self-explanatory. Item 10(a), *managing portfolios of assets,* is not as readily identifiable as a type of service normally provided by a securities or unit registry. The acquisition of this service (in common with the others listed) is only a reduced credit acquisition under item 10 when the management service is part of the supply of unit registry services, and is acquired by the issuer of securities or units held with the registry.

*Example 40 - share registry services*

308. *Globalreg is an entity that provides registry services. It offers, as part of its range of services, records maintenance, transaction processing, reporting, dividend and distribution services, shareholder and unit holder communications services (including via a call centre) as well as specialised activities such as takeovers, buy-backs, bonus issues and initial placement offers. Paperwise Limited (Paperwise) is a paper recycler which has its shareholder register maintained by Globalreg. Globalreg also maintains Paperwise's employee share register and administers the scheme.*

309. *The acquisition of the services of Globalreg, including administration services for the employee share scheme, is a reduced credit acquisition under item 10, as it is the acquisition of securities registry services by the issuer of the securities.*

*Example 41 - dividend payment services*

310. *Paymaster Limited (Paymaster) provides a service of processing and making bulk payments for corporate entities. Paperblock Limited (Paperblock) is a paper manufacturer. It maintains its own share register, but outsources the payment of its dividends to Paymaster. Paperblock provides Paymaster with computer based shareholder details from which Paymaster processes the dividends and makes the payments to shareholders in the form they have selected (by **cheque**, **direct credit**, etc).*

311. *Paperblock is not making a reduced credit acquisition of the service of Paymaster under item 10. The service is not provided by a securities registry at which the issuer of the securities has its share register located. It is not a securities registry service.*

### *Loans services*

312. Items 11, 12, 13, 14 and 15 are grouped under *loans services*. These items deal with services acquired in the course of providing loans, including the arranging and broking of loans, the processing of applications, the ongoing management of the loans, dealing with the security for the loan and loan discharge. Related insurance and administrative activities are also included under this grouping as loan services.

### *Loan*

313. The expression *loan* in this context does not extend to other forms of financing such as the discounting of bills, as there is judicial authority for the view that these forms of financing do not constitute loans.

314. The issue of whether a discounted bill was a loan of money was considered by the Privy Council in *Chow Yoong Hong v Choong Fah Rubber Manufactory*.[43] Lord Devlin commented that:

> The business of buying bills at a discount, that is, for their value at the date of purchase, is well known and is quite distinct from money lending….There is here no loan of money and no promise of repayment.

[43] *Chow Yoong Hong v Choong Fah Rubber Manufactory* [1962] AC 209.

315. Further, in *Australian Law of Financial Institutions*[44], it is stated at page 496:

> There is some similarity between facility agreements and loans, however bill facility agreements are not contracts for the lending of money. The discount on the face value of the bill is not interest.

**Item 11**

*The following supplies by a **financial supply facilitator**[45]:*

*(a) **loan** agency services;*

*(b) provision of a loan facility;*

*(c) **mortgage broking**;*

*(d) arranging syndicated loans; and*

*(e) introducing and broking*

316. Item 11 provides an exhaustive listing of services which can be characterised broadly as *loans services.* The opening words of the item impose a condition that the services listed must be provided by a financial supply facilitator.

317. The acquisition of services not mentioned in items 11(a) to 11(e) are not reduced credit acquisitions under item 11. However, they may be covered by another item in subregulation 70-5.02(2).

### *Item 11(a) – loan agency services*

318. There is no technical, legal or industry meaning for *loan agency services* and therefore takes its ordinary meaning.

319. The word *loan* is not defined in the GST Act or regulations. However, the glossary in GSTR 2002/2 describes a loan as:

> a ***credit arrangement*** under which the lender provides the use of its funds on specified terms under a business contract. Loans may be made in Australian or foreign currency.

320. As item 11(a) refers to loan *agency* services, item 11 applies only to those services provided by entities that are financial supply facilitators authorised to act as agents on behalf of a principal.

321. The acquisition of loan agency services must have a sufficiently close nexus with the relevant supply, that is, *one which*

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[44] Blay, Sam and Clarke, Eugene, *Australian Law of Financial Institutions*, 2nd Ed., Harcourt Brace & Co, NSW, 1996, page 496.

[45] The term *financial supply facilitator* is discussed at paragraphs 31 to 36.

*goes beyond a mere general association*[46] and must assist the *supply*, rather than the ***financial supply provider***.

322. A loan agency service under item 11 is a service supplied by a financial supply facilitator acting with the authority of the financial supply provider of a loan. These services include representing a loan product to customers, but not, for example, merely advertising a loan product on behalf of a lender.

323. For the purposes of item 11(a), a loan agency service is provided in relation to the supply of a particular loan or loans. The supply of a service which may advance the interests of a lender generally in making loans available to borrowers, is not a loan agency service for the purposes of item 11. Such a service does not have a sufficient connection with the supply of a particular interest or interests.

*Loans made through a third party*

324. Confusion about an entity's role in a loan transaction may result where a loan is provided to a borrower in a tripartite arrangement. Where the loan funds move from the lender to the entity's own accounts and then to the borrower, the entity may not be a financial supply facilitator, but may be a financial supply provider in its own right of an interest in a ***credit arrangement***. The entity in this circumstance is not providing loan agency services when it on-lends the money.

325. Rather than there being a single financial supply of an interest in the credit arrangement from the lender to the borrower, there are two separate financial supplies of an interest in a credit arrangement from the lender to the entity and from the entity to the borrower. That is, one supply from the lender to the entity and another supply from the entity to the borrower.[47]

326. Whether the entity is an agent or a principal in relation to the supply and consequently whether it is the financial supply provider or financial supply facilitator, depends upon the circumstances of the transaction.

327. Some indicators of the existence of a loan agency (whereby the third party is a financial supply facilitator) arrangement are where:

- a clear agency agreement is in place;
- the third party does not lend its own funds;

[46] Paragraph 259 of GSTR 2002/2.
[47] For the purposes of this discussion, we ignore the possible acquisition supplies.

- if the borrower defaults on the loan, the original lender, rather than the third party will take action against the borrower;
- the third party receives ***commission*** income from the original lender in respect of the loan; and
- the security for the loan is held by the original lender.

*Example 42 - loan made through a financial supply facilitator*

328. *MoneyCo enters into an agency agreement with WhamBam Loans to offer WhamBam loan products to borrowers. MoneyCo sources a borrower, Jane Smith, who wishes to borrow $150,000 to acquire a property. MoneyCo assists Jane in completing loan application, and the property is mortgaged to WhamBam.*

329. *On settlement, WhamBam places the $150,000 into MoneyCo's account so that the funds can be made available to Jane. Thereafter, Jane makes monthly repayments to WhamBam. MoneyCo receives a 2% commission up-front on the loan from WhamBam, and a 1% trailing commission on the monthly repayments.*

330. *The acquisition of MoneyCo's services by WhamBam is a reduced credit acquisition under item 11(a).*

*Example 43 - loan made as principal rather than agent*

331. *Sloane Loans acquires wholesale loans from WhamBam into its own account and on-lends the funds to borrowers. Sloane Loans is approached by Jane Brown for a $200,000 loan to fund the acquisition of a property. Sloane Loans acquires an interest in a mortgage over Jane's property as security for the loan, and borrows $200,000 from WhamBam at wholesale interest rates in order to on-lend to Jane.*

332. *Sloane Loans is the financial supply provider of an interest in a credit arrangement in respect of the loan made to Jane, and WhamBam is a financial supply provider in respect of the wholesale loan to Sloane Loans.*

*Example 44 – loan agency services*

333. *Reetaler Ltd operates a chain of department stores and provides customers with the option of borrowing money to make purchases. The loans are supplied to Reetaler's customers by, Eazicredit Ltd, under an agreement between the two entities. Reetaler Ltd's staff suggest the loan product to customers, assist them to fill out the application form, and lodge it with Eazicredit Ltd.*

*Eazicredit Ltd pays Reetaler Ltd a commission on each loan agreement Reetaler enters with a customer.*

334. *Eazicredit Ltd is acquiring a loan agency service from Reetaler Ltd. This is a reduced credit acquisition under item 11(a).*

### *Item 11(b) - provision of a loan facility*

335. The expression *loan facility* is not a defined term in the GST Act or regulations. According to the *Australian Dictionary of Banking and Finance*:

> facility is a generic term in financial circles for any type of financial accommodation e.g. ***overdraft***, fixed term loan, leasing, provided to customers.[48]

336. This paragraph refers to *provision* in the sense of *making available* a loan facility on behalf of the lender, rather than the actual supply of a funded loan. Funds may be made available to be drawn down without the borrower ever exercising the right to draw those funds down.

### *Item 11(c) - mortgage broking*

337. The *Macquarie Dictionary* defines a broker to be a 'middleman or agent'.[49] Brokers may also be referred to as *intermediaries* (see paragraphs 372 and 615). Mortgage brokers may introduce borrowers to a range of different lenders or, alternatively, may introduce a range of different borrowers to lenders. For the purposes of this item, either the borrower or the lender may make a reduced credit acquisition when they acquire the service of mortgage broking. There is no requirement that the broker is in an agency relationship with the entity acquiring its services, but it must be a financial supply facilitator in relation to the loan.

338. Entities that bring together information about loans from a range of different lenders, and assist borrowers to choose and apply for a loan are known, variously as *mortgage brokers*, *introducers* or *originators*. These entities do not themselves lend money and the borrower generally pays the entity no fee for its services.

339. There are a number of different arrangements under which a lender may acquire the services of a mortgage broker in supplying loans. The following paragraphs outline the most common of these arrangements.

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[48] Shanahan, Kevin, *Australian Dictionary of Banking and Finance*, LBC Information Services, 1997.
[49] *Macquarie Dictionary* (3rd Edition).

340. An entity may source loans, that is, they may generate loan applications from borrowers seeking to fund the acquisition of property, and submit them to either a mortgage manager or a lender. The entity may have no further involvement in the loan. This entity is a mortgage broker. The acquisition of their services by a financial supply provider is a reduced credit acquisition under item 11(c).

341. An entity may source loans, submit them to a lender for approval and then manage the loan on behalf of the lender. This entity is a mortgage broker and manager. The acquisition of their services by a financial supply provider is a reduced credit acquisition under item 11(c) as well as under item 15.

342. An entity may source loans on behalf of a lender, but have a delegated lending authority which allows them to approve loans themselves on behalf of the lender, then manage them for the lender. This entity is also described as a mortgage broker and manager. The acquisition of their services by a financial supply provider is a reduced credit acquisition under item 11(c) and item 15.

343. Item 11(c) covers the services of mortgage brokers only. ***Brokerage*** in relation to non-mortgage loans is covered by item 11(e).

*Example 45 – mortgage broking*

344. *Albatross Loans is a non-bank financial services company which represents a range of lenders with competitive loan products. The range of lenders includes banks, credit unions, mortgage managers and building societies. Albatross provides loans to home buyers. Big Bank Ltd, one of the panel of lenders whose loan products are introduced and brokered by Albatross, writes numerous mortgage loans through Albatross Loans and pays a* ***trailing commission*** *to Albatross.*

345. *The acquisition of services for which the trailing commission is paid to Albatross is a reduced credit acquisition under item 11(c).*

### *Item 11(d) – arranging syndicated loans*

346. Essentially, a syndicated loan is *a large loan made by a group of banks to a single borrower.*[50]

347. A syndicated loan originates where a borrower issues a ***mandate*** letter in favour of a bank, authorising the bank to arrange the loan on its behalf. This bank is generally called the lead bank and it is the lead bank's role to seek the necessary finance from other

[50] *Dictionary of International Banking and Finance Terms*, Financial World Publishing, United Kingdom, 2001.

lenders. This involves the lead bank entering into a negotiation process with other lenders.[51] Where the lead bank participates in the syndicate as a lender, it is a financial supply provider in its own right.

348. Where the lead bank undertakes the supply of *arranging* the syndicated loan for the borrower, the acquisition of this service is a reduced credit acquisition under item 11(d).

349. *Arranging* in the context of this item must be by a financial supply facilitator. The lead bank normally has a role in managing and negotiating terms with the borrower and may assist the borrower in procuring relevant information for the other potential syndicate members. As such, the lead bank is a financial supply facilitator in relation to the supply of loans by the other participants.[52]

350. The service of *arranging* a syndicated loan typically ends when the loan contract has been entered into with all of the relevant parties. This is normally when the loan documentation is signed and executed. However, certain activities that take place after this time may still be part of the arranging of syndicated loans. An example of this is a post completion evaluation of the lead bank's performance in arranging the syndicated loan.

351. Once the loan documentation is executed the lead bank may be appointed as the agent of the other syndicate members to provide them with further services. Where these services include providing information and reports, channelling funds advanced by the lenders to the borrower and distributing repayments among the members, the lead bank is providing loan agency services covered by item 11(a).

### *Item 11(e) – introducing and broking*

352. The expression *introducing* is not defined in the GST Act or the Dictionary and therefore takes its ordinary meaning. The expression *broking* is explained at paragraph 337.

353. For the purposes of item 11, a supply of *introducing* must be by a financial supply facilitator, which requires that the service is directed towards a specific supply. It follows that *introducing* borrowers to lenders in a general sense is not sufficient to satisfy this requirement.

354. Item 11(e) does not include the word *loan* or *loans*. As such, the paragraph could be read as any supply of introducing and broking by a financial supply facilitator, regardless of whether it is a supply in relation to a loan or some other financial product. However, given the context of item 11(e), which is an item headed

[51] O'Donovan, James, *Lender Liability*, LBC Information Services, NSW, 2000.
[52] The lead bank may also be a financial supply provider in its own right.

'loans services', we consider that the introducing and broking services referred to are services provided in relation to loans.

355. Introducing services are typically (though not exclusively) supplied as an incidental element within a supply of another service.

*Example 46 – introducing by a financial supply facilitator*

356. *SouthBank is a large non-bank financial institution offering mortgage home loans. SouthBank enters into an arrangement with a real estate franchise, Metro Real Estate Ltd, under which Metro introduces home buyers to SouthBank's loan products exclusively, and refers their details directly to SouthBank. SouthBank has agreed to pay Metro $400 for each loan written through an application received via Metro. In relation to each of these applications, Metro is a financial supply facilitator.*

357. *The acquisition of introduction services by SouthBank from Metro Real Estate Ltd is a reduced credit acquisition under item 11(e).*

*Example 47 – not an introduction service by a financial supply facilitator*

358. *Western Loan Bank Ltd (Western) has an agreement with House Mart Ltd (House Mart), a national real estate franchise to advertise its home loan products in their weekly auction booklets. Western pays House Mart $30,000 for 12 months of advertising. This advertising may introduce Western to prospective borrowers.*

359. *House Mart is not a financial supply facilitator as there is no close connection between the services supplied by House Mart and particular supplies of interests in loans made by Western. The acquisition is not a reduced credit acquisition under item 11(e).*

**Item 12**

Lenders **mortgage** and title insurance

360. Lenders mortgage insurance insures the lender against loss if the borrower is unable to repay the ***loan***. If the property is sold on default, and the sale proceeds do not pay out the loan in full, the insurer may be required to pay the balance of the loan (and then may seek ***recovery*** from the borrower).

361. Lenders title insurance indemnifies a lender against loss in respect of the lender's interest in the mortgage and the security property in the event of a dispute regarding title to the property.

362. Where a registered mortgage lender acquires either of these supplies, it makes a reduced credit acquisition under item 12.

**Item 13**

***Loan** protection insurance*

363. Loan protection insurance may be acquired either by a borrower or a lender. Such insurance is taken out to ensure the repayment of a loan in the event of the borrower being unable to repay it.

364. In some cases, loan protection insurance provides cover in the event of the borrower's death or permanent disablement. In such cases, the acquisition of loan protection insurance may be an acquisition of life insurance. An acquisition of ***life insurance business*** to which subsection 9(1) of the *Life Insurance Act 1995* applies is an acquisition of an input taxed financial supply under item 6 in subregulation 40-5.09(3) of the regulations, and is not a reduced credit acquisition under item 13.

365. Loan protection insurance may also take the form of insurance against the borrower's inability to repay the loan due to events such as involuntary unemployment. An acquisition of such loan protection insurance by a lender or borrower is a reduced credit acquisition under item 13.

366. Under section 11-15, an entity does not acquire a thing for a creditable purpose where the acquisition relates to making supplies that would be input taxed. However, where the thing is acquired to make a financial supply consisting of a borrowing it may still have a creditable purpose to the extent that the borrowing relates to making supplies that are not input taxed.[53]

367. Where a loan for which an entity acquires loan protection insurance relates to the making of financial supplies, the acquisition of the insurance is not for a creditable purpose under section 11-15. However, the entity may be making a reduced credit acquisition under item 13 when it acquires such insurance (provided it is not life insurance).

**Item 14**

*The following **loan** application, management and processing services:*

*(a) loan origination and **brokerage**;*

[53] Subsection 11-15(5).

*(b) settlement and discharge of loans, including document preparation;*

*(c) registration of loan documents;*

*(d) credit reference assessment and credit scoring analysis;*

*(e) valuations;*

*(f) property title searches;*

*(g) registration and certification of titles;*

*(h)* ***mortgage*** *variations, including name changes; and*

*(i) adding and deleting caveats to titles*

368. Item 14 contains an exhaustive list of *loan application, management and processing services*, and is primarily concerned with the establishment and discharge of loans. There is no requirement in item 14 that the services, referred to in items 14(a) to 14(i), must be provided by a financial supply facilitator. Nor is the item limited to acquisitions by lenders: it may equally apply to relevant services acquired by borrowers.

### *Item 14(a) – loan origination and brokerage*

369. The phrase *loan origination and brokerage* is to be read as if the word *loan* appears before both *origination* and *brokerage.*

370. The expression *origination* in the context of item 14(a) means the initiating of loans by an entity on behalf of a lender.

371. *Loan origination* can also refer to the activities of an entity in sourcing borrowers and initiating loans in its own right, with the funds often being sourced through a securitisation entity, bank or other wholesale lender. However, a loan originator who lends funds in its own right, (often referred to as a non-bank lender) will be a financial supply provider. As regulation 70-5.02 relates to acquisitions made by financial supply providers, *loan origination* in the context of item 14(a) refers to a service of initiating loans on behalf of the lender.

372. The word *brokerage* is described in the glossary to GSTR 2002/2 as:

> Payment made to a broker[54] (an intermediary between buyers and sellers), usually calculated as a percentage of the amount of the transaction.

In the context of loans and particularly housing loans, a *mortgage broker* is an entity which markets to borrowers a variety of loans

[54] The term *broker* is discussed at paragraph 337 of this Ruling.

from a panel of lenders. The mortgage broker also acts as an intermediary (or middleman) in establishing the loan contract between the borrower and lender.

373. It follows that *loan origination,* in the sense referred to in paragraphs 371 and 372, being the initiating of a loan, may be seen as having a meaning similar to brokerage. As such, the expression loan *origination and brokerage* can refer to the service of initiating a loan with a borrower on behalf of a lender, being a loan application or processing service.

374. The expression 'origination' is often used interchangeably with *brokerage*, though it can also apply to other services acquired by a lender in initiating a loan (see example 48).

375. It is important to note that item 14 refers to *services*. As discussed at paragraph 90, the word *services* when interpreted in conjunction with the word *processing* is more than an alternative to supply. It connotes the active involvement of the entity in the processing of loan applications. As such, the acquisition of a loan origination software package is not a reduced credit acquisition under item 14(a).

376. The services of a loan originator or broker are often provided to the lender on a commission basis. As such, the acquisition of these services may also be a reduced credit acquisition under items 27 or 28.

*Example 48 – loan origination*

377. *Original Pty Ltd (Original) is a mortgage origination agent for a wholesale finance provider, Profunder Ltd (Profunder). Under the terms of its agency agreement with Profunder, Original has a great deal of flexibility and control over the retail loan products it can offer its clients.*

378. *Under an arrangement, a mortgage securitisation company, Mosec Ltd (Mosec) formulates base loan products and provides them at set interest rates to their mortgage loan originator clients who are called Favoured Lenders – Profunder is one such client. The Favoured Lenders have their own retail clients to whom they market the loan products, as well as external agents like Original, to assist in marketing the loans.*

379. *Under the contract between Original and Profunder, Original has the ability to determine its own retail loan product interest rates, and may charge application and settlement fees on its own account. The risk on the loans is borne by Mosec and not by Original or Profunder.*

380. *Mosec is a financial supply provider of the loan and is acquiring loan origination services from Profunder. This is a reduced credit acquisition under item 14(a). Original is supplying taxable agency services to Profunder. As Original is not a financial supply provider in relation to the supply of the interest in the loan, the application and settlement fees charged to clients by Original are consideration for taxable supplies and thus GST is payable on the supply.*

### *Item 14(b) – settlement and discharge of loans, including document preparation*

381. The settlement and discharge of loans involves a number of administrative activities, including handing over the certificate of title of a mortgaged property to the borrower, and preparing and issuing a document to the borrower certifying that the loan has been discharged.

382. The acquisition of document preparation services, otherwise than as a service of managing or processing loans, is not a reduced credit acquisition to which this item applies. Document preparation, in this context, refers to preparation of documents as part of the settlement and discharge of loans, and does not extend to preparation of letters of advice or legal opinions.

### *Item 14(c) – registration of loan documents*

383. Where a loan is to be secured by a mortgage and the land is held under Torrens title, the mortgage is registered on the certificate of title.[55]

384. In the context of item 14(c), the registration of loan documents includes the registration of any mortgages or encumbrances on the title of property which is held at the relevant state Registry or Land Titles Office or equivalent.

385. In the context of general law land dealings, registration of loan documents may involve the registration of deeds transferring title and deeds of mortgage[56] with the relevant state Registry or Land Titles Office.

386. Item 14(c) also covers the registration of loan documents in relation to loans secured by mortgages over personal property, such as motor vehicles. These mortgages are required to be registered

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[55] Latimer, Paul, *Australian Business Law 2000*, CCH 19th ed, Sydney NSW, 2001, 13-040.

[56] Latimer, Paul, *Australian Business Law 2000*, CCH 19th ed, Sydney NSW, 2001, 3-410.

under either bills of sale or chattel securities legislation of a State or Territory.

### *Item 14(d) – credit reference assessment*[57] *and credit scoring analysis*[58]

387. The acquisition of credit reference assessment services in the course of processing loans is a reduced credit acquisition under item 14(d).

388. The expression *credit reference assessment* refers to a written or electronic report, which details the credit history of a particular entity, for ***risk management*** purposes. A service of providing a credit reference assessment generally involves the supplier accessing, including through a credit bureau, public and/or private databases, which store credit reference data.

389. *Credit scoring analysis* refers to an analysis of the loan applicant's credit score. In the context of processing services in relation to account applications, *credit scoring assessment* is the provision of a numerical score that predicts the risk associated with a particular entity's loan application.

390. Item 5 refers to credit scoring *assessment* while, item 14(d) refers to credit scoring *analysis*. The *Macquarie Dictionary* defines these words as follows:

> 'assessment' – is the noun for the verb 'assess' – which means to….. estimate officially the value of (property, income, etc) as a basis for taxation; to determine the amount of.
>
> 'analysis' means separation of a whole, whether a material substance or any matter of thought into its constituent elements.

391. The process of deriving credit scores can be described as the *analysis* of data from various sources. It is arguable that credit score 'analysis' is a step taken *prior to* the making of a credit score 'assessment'. If this is so, item 14(d) may not extend to the actual making of a credit score assessment, as described in relation to item 5. That is, the production of a written or electronic report detailing the credit score attributable to the loan applicant.

392. As a loan is generally provided in connection with an account, the acquisition of credit reference assessment services is a reduced credit acquisition under item 5.

393. A credit reference or a credit scoring analysis service is a processing service where the entity supplying the service is actively involved in the steps or actions that contribute to the production of

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[57] C*redit reference assessment* is discussed at paragraph 232.
[58] *Credit scoring* is discussed at paragraphs 233 to 235.

the report. The fact that the account (or in this case, loan) provider acquires a fully automated service, or deals with the supplier purely through an electronic interface, does not alter the conclusion that a processing service has been acquired.

394. The acquisition by a lender of the capacity to obtain credit reference assessments or credit scoring analysis (such as an acquisition of software, or a licence to use software) is not the acquisition of a loan application, management or processing service for the purposes of item 14(d).

### *Item 14(e) – valuations*

395. Valuation services are often required to establish the value of property used as security for a loan. Where valuation services are provided in connection with the application, management or processing of a loan, the acquisition of the services is a reduced credit acquisition under item 14(e).

### *Item 14(f) – property title searches*

396. Property title searches are normally provided as part of the legal or conveyancing services acquired in relation to transfers of property connected with mortgage loans or in the preparation of mortgage or loan documents.

397. A property title search normally involves an examination of the relevant folios, dealings, instruments and other records, to confirm title, and to determine whether there are any encumbrances or other qualifications attaching to it. Such records are held by the relevant state Registry or Land Titles Office.

398. An acquisition of the services of a solicitor or other service provider to conduct property title searches is a reduced credit acquisition under item 14(f) where the services are acquired in respect of property used as security for a loan.

### *Item 14(g) – registration and certification of titles*

399. The acquisition of the service of having titles of mortgaged properties that are used as security for loans registered and certified by the relevant State Registry or Land Titles Office is a reduced credit acquisition under item 14(g).

400. This service is normally acquired within a broader acquisition of loan processing services, but where acquired in isolation it is still a reduced credit acquisition under item 14(g).

### *Item 14(h) – mortgage variations, including name changes*

401. Services covered by item 14(h) include legal services for documenting variations to mortgages, including consents to leases, second and third mortgages and name changes. However, to be within item 14, these services must be supplied in the context of loan management or processing services.

### *Item 14(i) - adding and deleting caveats to titles*

402. A caveat is described in *Australian Business Law 2000*[59] as follows:

> A caveat is a written warning, or entry made in a register, to prevent action without notice being given to the person who lodged it (the caveator). A caveat operates like an injunction and may be lodged by a person holding a legal or equitable interest in land, by the Registrar-General, Registrar of Titles for equivalent, and by creditors in some jurisdictions.

403. The adding or deleting of caveats to titles is a service which is normally carried out by a legal practitioner. Where this is done to the titles of properties used as security for loans, the acquisition of the services is a reduced credit acquisition under item 14(i). Where acquired as a loan application, management or processing service, the acquisition is a reduced credit acquisition under item 14(i).

| **Item 15** |
| --- |
| *The following **loan** management services:* |
| *(a) processing of repayments;* |
| *(b) statement preparation;* |
| *(c) filing and requisitioning of loan file records* |

404. Item 15 provides an exhaustive listing of the services involved in the ongoing management of existing loans. The acquisition of loan management services not mentioned in items 15(a) to 15(c) is not a reduced credit acquisition unless it is covered by another item in subregulation 70-5.02(2).

405. As with item 14, there is no requirement in item 15 that the specified services must be provided by a ***financial supply facilitator***.

406. Item 15 covers those activities undertaken on behalf of the lender once the loan has been established and is active. These services are commonly provided by a loan originator or broker, who

[59] Latimer, Paul, *Australian Business Law 2000*, 19th ed, CCH Australia Ltd, Sydney, NSW, 2001, 3-280.

introduces a borrower to a lender, then manages the loan on the lender's behalf.

### *Item 15(a) – processing of repayments*

407. Item 15(a) covers the receiving of repayments from borrowers and the updating of the relevant loan records. Such processing could involve a range of related activities including banking of ***cheques*** or cash, electronic receipt and recording, issuing of receipts, or providing safe ***custody*** of money.

### *Item 15(b) – statement preparation*

408. *Statement preparation,* in this context, refers to the preparation of summaries of the details of loan accounts to be provided to borrowers on behalf of lenders.

### *Item 15(c) – filing and requisition of loan file records*

409. The expression *requisition* in item 15(c) has its ordinary meaning, which is *the state of being required for use or called into service*.[60] The *filing and requisition of loan file records* refers to the record keeping function of the service provider in maintaining the relevant loan file records in a filing system and making them available on the lender's (or borrower's) request.

*Example 49 – loan management services*

410. *Wilco Ltd is a broker that introduces borrowers to the mortgage products of Bilko Ltd, a non-bank lender. Under an agreement, Wilco manages the loans it introduces to Bilko on their behalf. Wilco receives loan repayments and prepares monthly statements which borrowers may access through Wilco's internet website. Wilco also maintains the loan records in a filing system, and provides regular reports to Bilko on the performance of all loans under Wilco's management.*

411. *Wilco also passes information on to the borrowers about Bilko's other financial products, such as investment loans, or insurance, and receives a commission for any business arising from this service.*

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[60] The *Macquarie Dictionary* (3rd Edition). The expression *requisition* in this sense does not refer to requisitions on title.

412. *The acquisition of the processing of loan repayments, preparation of monthly statements and the maintenance of a filing system are all reduced credit acquisitions under item 15.*

413. *The acquisition of regular reports on the performance of Wilco's loan portfolio is not a reduced credit acquisition as it is not a loan management service specifically mentioned in item 15. Similarly, the passing-on of information concerning Bilko's financial products is not a loan management service under item 15. (However, it could be a reduced credit acquisition under item 27 if Wilco is a financial supply facilitator in relation to the particular supply).*

### Credit union services

414. Item 16 deals with supplies of credit union services by entities collectively owned by credit unions.

| **Item 16** |
| --- |
| *Supply to a **credit union** by:* |
| *(a) an entity that is wholly owned by 2 or more credit unions; or* |
| *(b) an entity that is wholly owned by an entity mentioned in paragraph (a)* |

415. Credit unions make reduced credit acquisitions under item 16 when they acquire services from an entity that is either wholly owned by two or more credit unions, or one that is wholly owned by an entity that is wholly owned by two or more credit unions.

416. While item 16 does not specifically refer to the acquisition of services by a credit union, we consider that under item 16, the supply to a credit union must by a supply of services. The item does not apply to make the acquisitions of things other than services reduced credit acquisitions of the credit union. This interpretation is consistent with the other items mentioned in subregulation 70-5.02(2). Each other item either uses the word *services* in the opening words, or refers to an acquisition that is a service. Items are grouped in terms of the type of services that may be acquired under that item as a reduced credit acquisition. Item 16 is listed under *Credit union services.*

417. Credit unions may acquire other things as reduced credit acquisitions under other items in the table.

418. An alternative view is that a strict reading of the words of the item does not limit its application to services provided by the relevant entities. While this position is arguable, we consider that the intention underlying subregulation 70-5.02(2) is to provide reduced

input tax credits for acquisitions of services unless otherwise specified (for example, transaction cards under item 3).

*Example 50 - credit union services*

419. *Bountiful Credit Union (Bountiful) is an industry-based credit union. It acquires a new computer system and IT administration services from Cataclysm Limited (Cataclysm), an entity wholly owned by Bountiful and five other industry-based credit unions.*

420. *The acquisition of the computer system is not a reduced credit acquisition under item 16, as it is not an acquisition of services.*

421. *The acquisition of IT administration services is a reduced credit acquisition, as it is a supply of services by Cataclysm (an entity wholly owned by two or more credit unions).*

*Example 51 – credit union services*

422. *Woolly Credit Union (Woolly), together with two other credit unions owns Demi-union Pty Ltd (Demi-union) a company that provides services to its parent credit unions. Demi-union acquires a computer system and related software and, for a fee, provides access to this facility to Woolly.*

423. *The provision of access to the computer facility is a service, the acquisition of which by Woolly is a reduced credit acquisition under item 16.*

**Debt collection services**

424. Item 17 deals with certain specified ***debt*** collection services. Debt collection services are those directed specifically towards collection of a debt or debts.

**Item 17**

*The following **debt** collection services:*

*(a) debt **recovery**;*

*(b) litigation;*

*(c) lodgment of documents;*

*(d) by **financial supply facilitator**, managing the recovery of sums due by borrowers*

425. Item 17 provides an exhaustive list of *debt collection services*, the acquisition of which may be reduced credit acquisitions under that item. Debt collection in this context, refers to taking action to recover overdue debts. The acquisition of services not mentioned in items 17(a) to 17(d) is not a reduced credit acquisition unless it is covered by another item in subregulation 70-5.02(2).

426. Before the acquisition of a particular service can be a reduced credit acquisition mentioned in item 17, the service must do more than merely relate, or contribute, to the service mentioned.

427. Although the relevant service need not be performed by an entity that specialises in debt collection, the service must be performed for the purpose of collecting a debt before it can be a reduced credit acquisition under item 17. It is not enough for the service to be *litigation* or *lodgment of documents*. The litigation or lodgment must be directly connected to the collection of a debt. This is because each of the things mentioned is considered within the context of a debt collection service.

428. Any one debt collection service might fall within more than one of items 17(a) to 17(d).

### *Item 17(a) - debt recovery services*

429. The acquisition of services that are intrinsic or integral to recovering a debt is a reduced credit acquisition. The services must more than merely *relate* to debt recovery in some way. Where a service directed towards recovery of a debt is acquired, the service is a reduced credit acquisition under item 17(a). Where only some of the activities that lead to the recovery of debt are acquired, the entity does not acquire debt recovery services for the purposes of this item. However, these activities may be reduced credit acquisitions under another item.

430. Examples of activities performed in recovering debt include, field calls to debtors and the preparation and mail-out of letters demanding payment.

*Example 52 – debt recovery services*

431. *Chameleon Limited, a wholesaler, engages Dumfries and Spline, a firm of solicitors, to write a letter of demand to one of the retailers it supplies requesting immediate payment of an overdue account. The services of the solicitors are directed towards the recovery of a debt. The acquisition of services is a reduced credit acquisition under item 17(a).*

*Example 53 – not a debt recovery service*

432. *Moodcool Pty Ltd, a motor vehicle finance company repossesses motor vehicles as part of its recovery activities for overdue debts. Moodcool Pty Ltd engages Tony's Towing to tow the vehicles being repossessed to Moodcool's holding yard.*

433. *The service acquired from Tony's Towing is a towing service to recover the vehicles, and is not a debt recovery service under item 17(a).*

434. *If the service acquired from Tony's Towing was part of a complete debt recovery service supplied by Tony, it would be a component of a service, the acquisition of which is a reduced credit acquisition.*

### *Item 17(b) - litigation*

435. Acquisitions of litigation services that make up the litigation process for the purposes of debt collection, are reduced credit acquisitions.

436. It is not enough that an acquisition *relates* to litigation in some way, or that the activity is preliminary to, or follows from, litigation. Specifically, the litigation must be a debt collection service, that is, it must be directed towards collection of a debt. Litigation, in this context, is 'the conduct of legal proceedings by parties before a court'.[61]

437. Examples of activities that make up the litigation process include, the preparation and filing of claims for a debt in a court[62], serving of summonses (for example, by a **bailiff** or **mercantile agent**), and the litigation services of solicitors and barristers in conducting legal proceedings (for example, court appearances).

438. Activities carried out to enforce a judgment are not part of the litigation process, but are debt recovery services. Enforcement warrants (for redirection of earnings or seizure and sale of ***chattel***s) may be reduced credit acquisitions under item 17(c) (*lodgment of documents*). Litigation that goes to establishing the existence of a debt is not directed towards the collection of a debt.

### *Item 17(c) - lodgment of documents*

439. There are two broad classes of document lodgments commonly undertaken as debt collection services. One is the

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[61] *Butterworths Australian Legal Dictionary*.

[62] Alternatively, the filing or lodgment of documents will fall under item 17(c) of subregulation 70-5.02(2). See paragraph 439.

lodgment of documents at court to originate legal action. This class also includes all subsequent documents, such as enforcement warrants. The second class includes documents lodged at titles offices. These documents are to register writs on land. Where these services are carried out as part of a debt collection service, the acquisition of those services is a reduced credit acquisition. For example, where a creditor engages a solicitor to lodge documents at the relevant titles office, the acquisition of the solicitor's service is a reduced credit acquisition if the lodgment of documents is directly connected to the collection of a debt.

### *Item 17(d) - by a financial supply facilitator, managing the recovery of sums due by borrowers*

440. For a service to fall within item 17(d), the sums due must be in respect of monies borrowed, the financial supply facilitator must have facilitated the borrowing and the facilitator must be managing the recovery of sums due. A lender may acquire services that fall under this item when, for example, a mortgage broker (or originator) performs a client management service for the lender. The acquisition of the service of either recovering, or managing the recovery of, overdue repayments from borrowers in respect of funding facilitated by the broker, is a reduced credit acquisition.

*Example 54 – not a debt collection service under item 17(d)*

441. *A life insurance commission agent facilitates the supply of life insurance products for Ever-Young Life Corporation (Ever-Young). Under the agreement, the agent follows up clients who are not keeping up with their payments and encourages them to make catch-up payments.*

442. *The agent is a financial supply facilitator in respect of the life insurance policies and provides the service of managing sums due for Ever-Young. The acquisition of the service is not a reduced credit acquisition for the purposes of item 17(d), as the sums are not due from borrowers.*

### Asset based finance services

443. Item 18 deals with *asset based finance services*, which in this context, refers to the provision of finance by way of hire purchase for the acquisition of assets.

**Item 18**

*Arrangement*[63] *by a* ***financial supply facilitator*** *of* ***hire purchase*** *to which item 8 in the table in regulation 40-5.09 applies*

444. Under item 18, an entity makes a reduced credit acquisition of the arrangement of hire purchase by a financial supply facilitator, where item 8 of regulation 40-5.09 applies to that hire purchase. Item 8 of subregulation 40-5.09(3) applies to an interest in or under a hire purchase agreement that is in relation to goods where the credit component is provided for a separate charge that is disclosed to the recipient of the goods.

445. In the context of hire purchase agreements, *arrangement* refers to the preparation, and the settlement of the details prior to the completion of the hire purchase transaction.

*Example 55 - arrangement of hire purchase*

446. *Happy Harry's Dealership sells new cars and arranges for hire purchase with Mogul Finance for those of its customers who wish to finance in this way. The dealership prepares the hire purchase documents, and settles the details with the customer. The customer signs the documentation with the dealership, who forwards it to Mogul Finance. The terms of the agreement disclose a separate charge for the credit component of the hire purchase.*

447. *The acquisition by Mogul Finance of the arrangement services from Happy Harry's Dealership, is a reduced credit acquisition under item 18.*

448. The acquisition of the services of a financial supply facilitator, by the provider of hire purchase to which item 8 in subregulation 40-5.09(3) applies, may also be a reduced credit acquisition under item 27, where the facilitator is paid by ***commission***. In that case, the reduced credit acquisition is not restricted to the arrangement of the hire purchase by the facilitator.

### Trade finance services

449. Items 19 and 20, which are grouped under *trade finance services*, deal with various services related to the provision of finance to industry, particularly for importers or exporters.

[63] The term *arrangement* is discussed in paragraph 284.

**Item 19**

*Trade finance transaction processing and recording*

**Item 20**

*Trade finance remittance services*

450. *Trade finance* has a particular technical meaning which is the relevant meaning for items 19 and 20. Trade finance may be either domestic or overseas, and different forms of finance are employed in each of these.

451. Domestic trade finance includes supplier's credit (for example trade terms), ***factoring***, trade bills, and financial institution finance such as ***overdraft***, ***commercial bills*** or overseas currency ***loans***.

452. Overseas trade finance includes the use of ***documentary credits***, overseas debtor collections, documentary credit ***guarantees***, medium to long term loans, and import or export ***letter***s ***of credit***.

453. Trade finance is concerned with arrangements for payment for goods and the provision of credit in a trade transaction.

454. Item 19 covers the specific transaction processing and recording services that a supplier of trade finance may acquire in the course of providing that finance.

455. Item 20 deals exclusively with remittance services undertaken in the course of the provision of trade finance.

456. Making a reduced credit acquisition under items 19 or 20 is not restricted to the finance provider. If an importer, exporter or another entity involved in the provision of trade finance, acquires the relevant services they may make a reduced credit acquisition.

457. Trade finance transaction processing and recording services include all activities directed towards the processing and recording of payments and the provision of credit in international or domestic trade finance transactions. Processing services include collection activities.

458. An entity makes a reduced credit acquisition under item 20 when it acquires trade finance remittance services. We consider that both remittance services and collections services are part of collection processing. Remittance services may also be processing services under item 19, and the acquisition of these services may be a reduced credit acquisition under that item.

*Example 56 - trade finance processing services*

459. *Doggerel Bank (Doggerel) is a provider of trade finance to exporters and importers. It offers this finance through import or export letters of credit, undertaking the complete range of activities to ensure collection and payments in respect of goods imported or shipped.*

460. *Doggerel outsources the document processing, monitoring and recording of the letters of credit it issues, as well as its collection and payment activities to Protrade Limited (Protrade). Protrade supplies these services to Doggerel for a fee.*

461. *The acquisition by Doggerel of trade finance processing services from Protrade is a reduced credit acquisition under item 19.*

*Example 57 – trade finance processing services*

462. *Protrade also provides an offshore collection service for exporters in accordance with their instructions, transferring documents, monitoring the transaction, and releasing the documents to the buyer when either a payment is made, or a bill of exchange is accepted. Protrade charges the exporter a fee for this service.*

463. *The acquisition by the exporter of the service from Protrade is a reduced credit acquisition under item 19.*

### Capital markets and financial instruments services

464. Items 21 and 22 are grouped under *capital markets and financial instruments services*, and deal with services acquired in the course of conducting derivatives transactions or transactions involving the currency of a foreign country.

**Item 21**

*Arrangement*[64] *by a* ***financial supply facilitator*** *of:*

*(a) the supply of a* ***derivative*** *or the currency of a foreign country, or an agreement to buy or sell the currency; or*

*(b) the sale of a* ***forward contract***

465. Item 21 applies to the acquisition of the service of *arrangement by a financial supply facilitator*, of those transactions mentioned in items 21(a) and 21(b). In the context of this item, *arrangement* refers to the preparation, and the settlement of the

[64] The term *arrangement* is discussed in paragraph 284.

details of the transactions referred to in items 21(a) and 21(b) by the financial supply facilitator.

466. The terms *derivative* and *forward contract* are set out in the glossary in GSTR 2002/2.

467. Arrangement services, for the purposes of item 21, include:

- order placement and trade execution; and
- clearance and settlement of trades.

468. To be a reduced credit acquisition under item 21, the acquisition must be of an arrangement by a financial supply facilitator.

*Example 58 - arrangement by a financial supply facilitator*

469. *B4Y Ltd uses the services of Bingo Associates to act as its broker in relation to its futures trading activities. Bingo Associates is a member of a Futures Exchange and, acting on directions from B4Y Ltd, undertakes trading activities on its behalf.*

470. *B4Y Ltd has made a reduced credit acquisition under item 21 as it has acquired the service of arranging the supply of derivatives from Bingo Associates which is the financial supply facilitator of those transactions.*

*Example 59 – not an arrangement by a financial supply facilitator*

471. *A2X Ltd has accumulated a large amount of United States currency which it wants to dispose of. It seeks advice from TwoUp and Associates, a law firm, on the legal and tax implications of the sale of foreign currency. Acting on TwoUp and Associates' advice, A2X Ltd supplies the currency to a currency exchange for consideration in Australian dollars.*

472. *A2X Ltd has not made a reduced credit acquisition of arrangement services by a financial supply facilitator for the purposes of item 21, as TwoUp and Associates is not arranging the supply of the foreign currency, and is not a financial supply facilitator of the supply.*

**Item 22**

*Transaction processing, **account** maintenance and report generation services provided to suppliers of derivatives or the currency of a foreign country, or an agreement to buy or sell the currency*

473. Item 22 applies to specific services acquired by suppliers of derivatives, or the currency of a foreign country, or agreements to buy or sell the currency, that is, entities making the supplies referred to in item 21(a).

474. The word *services*, applies to each of the phrases preceding it. That is, the item is directed at transaction processing services, account maintenance services and report generation services acquired by entities that are suppliers of derivatives, or the currency of a foreign country or an agreement to buy or sell the currency.

475. Item 22 does not specifically mention suppliers of forward contracts. However, as forward contracts are derivatives, the acquisition of services of the kind mentioned in item 22 by the suppliers of forward contracts is a reduced credit acquisition.

476. The services mentioned in item 22 are only reduced credit acquisitions where they relate to the entity's supply of derivatives, or currency or the entity's entering into an agreement to buy or sell currency. For example, where an entity that primarily supplies derivatives acquires transaction processing services in relation to another supply it makes, such as ***brokerage*** services, that acquisition is not a reduced credit acquisition under item 22.

477. In the context of item 22, *a transaction processing service* is a service of processing transactions for suppliers of derivatives, or foreign currency, or agreements to buy or sell currency. The supplier of the service should have an active involvement in processing the transactions.

478. The supply of information technology services is not, in itself, a supply of transaction processing services for purposes of item 22.[65]

479. *Account maintenance services* are activities directed towards the maintenance of accounts relating to supplies of derivatives, or foreign currency, or agreements to buy or sell currency. As noted above, the item deals specifically with the acquisition of services in relation to supplies of interests in derivatives or foreign currency, or agreements to buy or sell currency. It does not apply to acquisitions of general accounting services.

480. The term *report generation services* in item 22 does not extend to the distribution of the reports generated.

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[65] See the discussion about information technology (IT) services at paragraphs 93 to 99 in relation to item 2.

### Funds management services

481. Items 23 and 24 are grouped under *funds management services*. Each item provides an exhaustive list of acquisitions that share the common characteristic of being services ordinarily acquired to facilitate the management of funds (funds under management).

**Item 23**

*The following investment portfolio management functions, including those functions for superannuation schemes:*

*(a) management of a client's asset portfolio;*

*(b) management of an investment portfolio for a trust or superannuation fund;*

*(c) acting as a trustee of a **trust** or **superannuation fund**;*

*(d) acting as a single **responsible entity**; and*

*(e) **asset allocation services***

482. In the context of *funds management services*, item 23 provides an exhaustive list of the functions involved in *investment portfolio management*. An acquisition that falls within items 23(a) to 23(e) is an investment portfolio management function for the purposes of item 23 and, consequently, a reduced credit acquisition.

#### *Item 23(a) – management of a client's asset portfolio*

483. The scope of item 23(a) is determined by the meaning given to the expressions *management* and *asset portfolio* and the overall context of the item.

*Management*

484. The expression *management* refers both to the act or manner of managing and to the person or persons managing an institution, business, etc.[66] In the context of item 23(a), the term refers to the professional administration of business concerns, public and similar undertakings. The word *managing* implies the existence of control or authority[67] over the thing being managed.

[66] *Macquarie Dictionary* (3rd Edition).
[67] *Macquarie Dictionary* (3rd Edition).

*Asset portfolio*

485. The expression *asset portfolio* relates to the composition (into particular classes or sectors within a particular class) of physical and intangible resources owned by a particular entity (for example, art, real estate, cash, ***securities***, or ***derivatives***). The expression *asset portfolio* in this context is synonymous with the term *investment portfolio*.

486. An acquisition of management of a client's asset portfolio involves the ongoing services of professional management of an entity's investment portfolio to maximise return. A fundamental characteristic of this service is that the entity supplying the investment management services exercises control or authority over the asset portfolio in carrying out its obligations. This service involves more than the mere provision of advice to be acted upon by the client. An acquisition of advice, by itself, is not a reduced credit acquisition under item 23(a).

*Example 60 – advice in the course of portfolio management*

487. *Templar Ltd is the trustee of the Knight Trust (Knight) which manages the assets of the Benedict Superannuation Fund (Benedict). In the course of managing the asset portfolio, Templar Ltd advises Benedict on its investment strategy.*

488. *As the investment advice is provided in the context of the control and management of the portfolio, the acquisition of the advice is a reduced credit acquisition under item 23(a).*

*Example 61 – advice not in the course of portfolio management*

489. *Francis Superannuation Fund (Francis) manages its own asset portfolio and acquires investment advice on a regular basis from Dominica Associates (Dominica). The trustee of Francis has no expertise in portfolio management, and depends entirely on Dominica's guidance.*

490. *The acquisition of the investment advice is not a reduced credit acquisition by the trustee under item 23(a), as Dominica has no control over and does not manage the asset portfolio for Francis.*

491. The means by which the investment management service is performed does not determine whether the acquisition of the service is a reduced credit acquisition. However, acquiring the means to personally manage an investment portfolio (for example, a software application) is not a reduced credit acquisition under item 23(a).

492. For the purposes of paragraph 23(a), investment management services include, but are not limited to, the following services:

- the establishment of a financial plan or investment strategy together with the ongoing implementation, execution, or refinement of that plan or strategy; and
- the ongoing implementation or execution of a given investment ***mandate***; and
- the provision of ancillary reports or statements to clients.

493. While implementing, executing, or refining a particular plan or strategy, the manager may undertake such activities as collating information, monitoring investment performance, reviewing external consultant reports, and issuing instructions to brokers and ***custodian***s.

*Example 62 – investment management services*

494. *Montag Investments Ltd (Montag) is an investment company listed on the stock exchange with assets that are limited to interests (shares) in other companies. Montag's constitution limits the company to investments in Australian-based companies operating in 'defensive' sectors (for example, food, gambling, essential services). The constitution also requires the annual return on these investments to exceed a particular benchmark index. These requirements constitute the mandates under which the company operates.*

495. *To comply with these requirements, Montag employs Fahrenheit 451 Investment Managers (Fahrenheit 451). Working within the constraints of Montag's mandates, Fahrenheit 451 takes effective control of Montag's asset portfolio and implements a range of decisions designed to achieve Montag's goals. These decisions relate to the selection of suitable companies, buying/selling of interests in companies, risk management activities, and the implementation of particular strategies (for example, short selling). Fahrenheit 451 also provides Montag with a monthly report on the status of Montag's asset portfolio.*

496. *The service acquired from Fahrenheit 451 falls within the scope of management of a client asset portfolio under item 23(a), and is therefore a reduced credit acquisition.*

*Example 63 – not an investment management service*

497. *For a set fee, Black Jag Financial Planners (Black Jag) devises financial plans for clients. The plan, amongst other things, details the appropriate composition of a client's investment portfolio*

*relative to their risk tolerances. This service does not involve Black Jag's taking control of the client's investment portfolio to carry out the strategy contained in the plan.*

498. *Clients who acquire Black Jag's service are not making a reduced credit acquisition under item 23(a). This is because Black Jag's services have the character of advice rather than provision of investment management services. The acquisition of advice in isolation is not a reduced credit acquisition under any item in subregulation 70-5.02(2).*

### *Item 23(b) – management of an investment portfolio for a trust or superannuation fund*

499. The scope of item 23(b) is dependent on the meanings of the expressions *management, investment portfolio, trust,* and *superannuation fund,* and the overall context of the item.

*Management of an investment portfolio*

500. The discussions at paragraphs 484 to 498 relating to item 23(a), apply equally to the expressions *management* of an *investment portfolio* in item 23(b). Essentially, item 23(b) differs only in recognising that a trust or superannuation fund may not be capable of managing its investment portfolio.

*Trust*

501. In the context of item 23(b) the expression *trust* has the same meaning as in the glossary to GSTR 2002/2, which states that a *trust* is:

> An equitable obligation, binding a person (a trustee) to deal with property over which he or she has control (the trust property) for the benefit of persons (beneficiaries or *cestius que trust*) of which he or she may himself or herself be one, and any one of whom may enforce the obligation. A trust may be express (i.e., arising by an expressed intention to create a trust) or implied (i.e., where the law creates a trust).

502. Consequently, a trust, for the purposes of item 23(b), includes, but is not limited to, discretionary trusts, unit trusts, charitable trusts, master trusts (including investor directed portfolio services) and the trusts created there-under, and ***common fund***s where the governing legislation intends to create a trust.

*Superannuation fund*

503. The expression *superannuation fund* has the meaning set out in the glossary to GSTR 2002/2, which states that:

> Superannuation fund has the meaning given by section 10 of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) to mean:
>
> (a) a fund that:
>
> (i) is an indefinitely continuing fund;
> (ii) is a provident, benefit, superannuation or retirement fund; or
>
> (b) a public sector superannuation scheme.

504. Consequently, a superannuation fund, for the purposes of item 23(b), includes, but is not limited to, self managed, retail, corporate, industry and public sector superannuation schemes, ***rollover funds***, ***approved deposit funds***, retirement savings accounts, and ***pooled superannuation trusts*.**

*Example 64 – investment management services for a superannuation fund*

505. *Under the trust deed of the Peachfuzz Employees Superannuation Fund (Peachfuzz) the board of trustees has the authority to engage a third party to manage (according to the mandate set out in the trust deed) the investment portfolio for Peachfuzz.*

506. *The board of trustees selects Improbable Fund Managers (Improbable) whose fee is determined by applying a set percentage to the value of the funds under management. Subject to the constraints of the trust deed mandate, Improbable is responsible for devising and implementing the investment decisions concerning Peachfuzz's investment portfolio to maximise the return on those assets.*

507. *The service acquired from Improbable constitutes management of an investment portfolio for a superannuation fund. It is therefore a reduced credit acquisition under item 23(b).*

***Item 23(c) – acting as a trustee of a trust or superannuation fund***

508. The scope of item 23(c) is dependent on the meanings of the expressions *trustee, trust* and *superannuation fund* within the context of item 22.

*Trustee*

509. The expression ***trustee*** as set out in the glossary to GSTR 2002/2 is 'a person who holds the legal title to property for the benefit of another or others'.

510. The acquisition of the service of *acting as a trustee of a trust or superannuation fund* could be interpreted to refer only to the service of agreeing to perform the service of holding trust or superannuation property. However, because item 23(c) is set in the context of funds management services, the paragraph has a broader scope extending it to the acquisition of ongoing funds management and trustee services.

511. The investment portfolio management function of *acting as a trustee of a trust or superannuation fund* equates, in part, to the role of an investment manager as discussed in items 23(a) and 23(b). The funds management role in item 23(c) includes duties associated with the administration of the trust or superannuation fund. These services typically include those outlined in item 24, with the exception of item 24(g).

512. The duties of the trustee of a trust or superannuation fund are the fiduciary obligations[68] owed by an entity as trustee to beneficiaries or members as a consequence of having trust property vested in them.

513. A trustee may act in a number of capacities (such as, fund manager, administrator, trustee). The services of the trustee acting in each of these capacities may be acquired as a separate and distinct service. In reality, in providing a single supply of services, a trustee may act in all of these capacities.

514. Consequently, a fee charged for acting as a trustee need not be broken down into the parts relating to funds management, administration, and trustee services for the purpose of determining an entitlement to reduced input tax credits under item 23. However, where the services rendered by the trustee are beyond the scope of funds management, administration and trustee services, the acquirer must determine objectively whether the services are ancillary, incidental or integral to those of acting as a trustee.

515. Reimbursements made to the trustee are discussed in item 29, which deals with acquisition of trustee services.

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[68] Obligations established by courts of equity and incorporated into common law. These obligations also include those imposed by way of section 601FC of the Corporations Act.

*Example 65 – acting as a trustee of a superannuation fund*

516. *Zanzibar Ltd (Zanzibar) is appointed to act as trustee of the Periwinkle Employees Superannuation Fund (Periwinkle). Zanzibar's duties and obligations to the employer and employee members, and remuneration entitlements are set out in the Periwinkle Superannuation Trust Deed. Under the trust deed, Zanzibar is responsible for managing all aspects of the fund and has fiduciary obligations as trustee.*

517. *For managing Periwinkle, Zanzibar receives a fee based on 1.5% of the assets under management. As part of its remuneration, Zanzibar on-charges its expenses. It is entitled to reimbursement of those expenses of Periwinkle it has paid on Periwinkle's behalf.*

518. *Zanzibar manages Periwinkle's investment portfolio with the assistance of external consultants, the fees for which are on-charged to Periwinkle. Zanzibar also carries out a range of administration activities, including ensuring that Periwinkle complies with SIS Act requirements. Zanzibar engages an auditor to sign off on Periwinkle's accounts and Zanzibar receives a reimbursement of this expense.*

519. *The acquisition of the services remunerated by the 1.5% fee and the amount on-charged for the external consultant fees, is a reduced credit acquisition by Periwinkle under item 23. The reimbursement of auditor fees is not consideration for a reduced credit acquisition by Periwinkle under item 23, as it is not for an acquisition mentioned in this item.*

### *Item 23(d) - acting as a single responsible entity*

520. The scope of item 23(d) depends on the meaning of the expression *single responsible entity,* and the context of the item.

*Single responsible entity*

521. The explanation for *single responsible entity* in the glossary to GSTR 2002/2 directs readers to the explanation of *responsible entity* which is:

> Relates to managed investment schemes. The RE role, established in the *Managed Investments Act 1998*, combines the functions of both the trustee and fund manager, with the RE directly responsible for the fiduciary duties and responsibilities previously held by the trustee.

522. The expressions *single responsible entity* and *responsible entity* are interchangeable: the former highlighting the historical

merging of the manager and trustee entities into one entity. Both terms relate to ***managed investment schemes***.[69]

523. While the operator of an **investor-directed portfolio service** (**IDPS**) is exempted from certain obligations under chapter 5C of the Corporations Act, their role equates to that of a single responsible entity. Consequently, for the purposes of item 23(d), the operator of an IDPS is a single responsible entity.

524. Narrowly viewed, the phrase *acting as a single responsible entity* may refer only to the service of agreeing to perform portfolio management services for a managed investment scheme. However, because item 23(d) refers to funds management services, the paragraph has a broader scope that extends to the acquisition of ongoing funds management and trustee services.

525. The funds management aspect of *acting as a single responsible entity* equates, in part, to the role of an investment manager as discussed in items 23(a) and 23(b). The funds management role in item 23(d) includes duties associated with the administration of the managed investment scheme. These services typically include the services outlined in item 24 with the exception of paragraph 24(g).

526. The trustee duties that relate to *acting as a single responsible entity* are the fiduciary obligations[70] owed by an entity as a consequence of having scheme property vested in them, on behalf of the scheme members.

527. A single responsible entity can act in a number of capacities (such as, funds manager, administrator or trustee). The services of the single responsible entity acting in each capacity may be acquired as a separate and distinct service. In reality, the entity may act in all of these capacities within a single supply of services.

528. Consequently, a fee charged for acting as a single responsible entity need not be broken down into the parts relating to funds management, administration or trustee services for the purpose of determining an entitlement to reduced input tax credits under item 23. However, where the services rendered by the single responsible entity are beyond the scope of funds management, administration and trustee services, the acquirer must objectively determine whether the services are ancillary, incidental or integral to those of acting as a single responsible entity.

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[69] As defined by section 9 of the Corporations Act.

[70] Obligations established by courts of equity and incorporated into common law. These obligations also include those imposed by way of section 601FC of the Corporations Act.

### *Item 23(e) – asset allocation services*

529. For the purposes of item 23(e), the expression ***asset allocation services*** has the meaning given in the glossary to GSTR 2002/2 which is:

> The apportionment of an investment portfolio among different asset classes (shares, bonds, property, cash and overseas investments) from time to time in accordance with the investment outlook of the investor or investment manager.

530. *Asset allocation services* are a class of specialised services directed towards the provision of strategic advice in respect of the weighting of assets among different asset classes within an investment portfolio. The services are necessary because of the enduring nature of an investment structure, the existence of a plan, strategy or ***mandate*** associated with the portfolio, and the volatile nature of asset markets. Asset allocation services are specialised services that take these factors into account when effecting the correct asset mix for a given investment portfolio.

531. Asset allocation services may be performed as an integral part of a service to which items 23(a) to (d) apply. Alternatively, an owner of an investment portfolio may acquire discrete asset allocation services from an entity specialising in these services. In either of these circumstances, the acquisition of the asset allocation services is a reduced credit acquisition under item 23(e).

532. Where an entity acquires advice that falls beyond the scope of the asset allocation services described above, the acquisition of this service is not a reduced credit acquisition under item 23(e).

*Example 66 – asset allocation service*

533. *The Titanian Miners Industry Superannuation Fund's (Titanian) investment portfolio is managed by a range of fund managers and overseen by an in-house management team. Among other things, the team reviews the performance of its managers and refines the investment policy (subject to the constraints mentioned in Titanian's trust deed).*

534. *The management team has a standing arrangement with IntellyGents to provide it with periodic strategic advice on the correct mix for Titanian's assets. In providing this advice, IntellyGents monitors and reviews the performance of the Titanian's investment managers on an ongoing basis.*

535. *From this information IntellyGents constructs a quarterly report that provides opinions and recommendations on a number of things. These may include:*

- *the performance of the investment managers;*

- *the renewal of appointments;*
- *incumbent or potential new managers;*
- *risk management strategies;*
- *market trends;*
- *transfer of assets between managers;*
- *performance of the investment portfolio as a whole; and*
- *where improvements can be made.*

536. *An IntellyGents representative sits in on management team meetings when investment management issues are on the agenda.*

537. *The service acquired from IntellyGents falls within the scope of asset allocation services for the purposes of item 23(e). The acquisition of the service is therefore a reduced credit acquisition.*

*Example 67 – not an asset allocation service*

538. *The Pat & Bob Partnership (Pat & Bob) engages the services of Interdependent Financial Planners (Interdependent) to provide the partnership with a financial plan in respect of its investment portfolio. Interdependent makes recommendations primarily in relation to the acquisition and disposal of particular investments in line with Pat & Bob's investment strategy.*

539. *The character of the service provided to Pat & Bob falls outside the scope of asset allocation services. This is because Interdependent is supplying advice relating to particular investments, rather than advice that focuses on the relative weightings of asset classes within the investment portfolio. Consequently, the acquisition made by Pat & Bob is not a reduced credit acquisition under item 23(e).*

**Item 24**

*The following administrative functions in relation to investment funds, including those functions for superannuation schemes:*

*(a) maintaining member and employer and trustee records and associated accounting;*

*(b) processing of applications, contributions, benefits and distributions;*

*(c) processing transfer between funds and trusts;*

*(d) production and distribution of reports, statements and forms to members, employers and trustees;*

*(e) handling of inquiries and complaints made by members;*

*(f) archives storage, retrieval and destruction services;*

*(g) statement processing and bulk mailing; and*

*(h) compliance with industry regulatory requirements, excluding taxation and auditing services*

540. In the context of funds management services, item 24 gives an exhaustive list of acquisitions of administrative functions in relation to investment funds (including superannuation schemes). In this context, *investment funds* means funds under investment, and is not a reference to a particular type of entity. An acquisition of a service that falls within items 24(a) to 24(h) is a reduced credit acquisition.

### *Global administrative services*

541. The construction of item 24 permits discrete acquisitions of the services mentioned in items 24(a) to 24(h) to be reduced credit acquisitions. However, an entity usually acquires a number of the listed functions as part of a global administrative service.

542. When an entity makes acquisitions of some or all of the services listed at items 24(a) to 24(h) as part of a global administrative service, it is not necessary to apportion the consideration according to its component functions, as they are reduced credit acquisitions under item 24.

543. However, if the administrative service includes elements not listed in item 24, these elements should be examined to determine whether they are ancillary, incidental or integral to one of the listed functions. Where the acquisition is of a separate and distinct function listed at item 24(h), however, taxation and auditing services are excluded, whatever the comparative degree of these services.

544. Where a functional element that is not listed in items 24(a) to (h) is objectively viewed as ancillary, incidental or integral to a listed function or a group of listed functions, the acquisition is a composite acquisition of administrative functions. That acquisition is a reduced credit acquisition under item 24 (being a combination of the functions listed at items 24(a) to 24(h)).

545. Where a functional element not listed in items 24(a) to (h) has a distinct and separate identity from that of one of the listed functions or group of listed functions, the acquisition is a mixed acquisition. Only that part of the acquisition that is listed in items

24(a) to 24(h) is a reduced credit acquisition under item 24. However, the acquisition of the other elements may be a reduced credit acquisition under another item.

*Example 68 – global administrative service: listed functions only*

546. *The responsible entity of the Heather Global Securities Fund (Heather) outsources its entire administrative function to Dienamic Administrators. Under the terms of the outsourcing agreement, Dienamic is responsible for performing all of the functions listed at items 24(a) to 24(h) (excluding items 24(f) and 24(g) which Heather acquires separately).*

547. *Heather's acquisition from Dienamic includes a number of functions listed under item 24, and is an acquisition of global administrative functions. Heather, in this circumstance, is not required to apportion the costs of the service provided by Dienamic to each of the listed functions under item 24. The whole service, in this instance, is an administrative function the acquisition of which is a reduced credit acquisition under item 24.*

*Example 69 – global administrative service including an excluded function*

548. *The responsible entity of the Emerging Small Companies Fund (Emerging) employs Accurate Accountants (Accurate) to perform the following functions:*

- *maintenance of member and trustee accounts including accounting services in relation to the underlying account transactions;*
- *processing of applications from prospective unit-holders;*
- *processing of distributions and redemptions to unit-holders; and*
- *the preparation and lodgment of Emerging's tax return.*

549. *Emerging's acquisition from Accurate includes functions listed in items 24(a) and 24(b) as well as an excluded element of taxation services. Viewing the acquisition objectively, Emerging determines that the service of preparation and lodgment of its tax return is incidental to the acquisitions under items 24(a) and 24(b).*

550. *The dominant functions are those mentioned at items 24(a) and 24(b) and the taxation service is part of a composite acquisition by Emerging. Emerging has made a reduced credit acquisition under*

*item 24 (being a combination of the listed functions at items 24(a) and 24(b)).*

*Example 70 – global administrative service including a separate non-listed function*

551. *The responsible entity of the DowTeen Capital Guaranteed Fund (DowTeen) engages the services of Tact & Yee Taxation & Accounting Services (Tact & Yee) to perform the following functions in relation to DowTeen:*

- *maintenance of DowTeen's member and trustee accounts including accounting services in relation to the underlying account transactions;*
- *processing of applications from prospective unit-holders;*
- *processing of distributions and redemptions to DowTeen;*
- *taxation advice relating to all aspects of DowTeen's taxation obligations;*
- *preparation and lodgment of DowTeen's BASs and tax returns; and*
- *auditing of all of DowTeen's accounts.*

552. *DowTeen's acquisition from Tact & Yee includes functions listed at items 24(a) and 24(b) and an excluded element of taxation and auditing services. On an objective assessment, DowTeen determines that the taxation and auditing services are a separate and distinct service from that of the listed functions. DowTeen has made a mixed acquisition from Tact & Yee. The acquisition has an element that is a reduced credit acquisition under item 24 (being a combination of functions listed at items 24(a) and 24(b)) and an element that is not a reduced credit acquisition under item 24.*

### *Item 24(a) – maintaining member and employer and trustee records and associated accounting*

553. The acquisition of the service of maintaining member and employer and trustee records and associated accounting, where acquired in relation to investment funds (including superannuation schemes), is a reduced credit acquisition under item 24(a).

554. *Member* refers to any entity with an interest in an investment fund for the purposes of this item. The expression *member* in item 24(e) may include, but is not limited to, a unit-holder in a ***unit trust***, a member of a ***superannuation fund*** and a client of an **IDPS** that has

an interest in that IDPS. *Member*, in this context, excludes shareholders of companies and beneficiaries of discretionary or fixed trusts.

555. *Employer*, in this context, is an employer that has provided contributions to an employer sponsored superannuation scheme.

556. In item 24(a), *trustee* refers to a person who holds the legal title to property for the benefit of *members* of an investment fund (including a superannuation fund). Consequently, in this context, the expression *trustee* extends to single responsible entities[71] and the operators of IDPS.

557. For a superannuation scheme, the records relevant to a member or an employer include the records of the fund or superannuation scheme pertaining to the members' entitlements and contributions, such as the accounts detailing the employer's contributions, records relating to the portability of members' benefits, and correspondence received from members or employers.

558. For members of investment funds other than superannuation schemes, the relevant records to be maintained also include accounts recording investment contributions and balances, correspondence from unit holders, applications for variations to holdings, and records of instructions to dispose of assets.

559. Trustee records include minutes of trustee meetings, records of all decisions made affecting the trust, and other similar documents.

560. *Associated accounting* in item 24(a) refers only to those accounting functions that are associated with maintaining the member, employer or trustee records. It includes functions such as the posting of entries to accounts to record individual member or employer contributions, the debiting of charges to individual member accounts, and the recording of payments to members and investors of a managed investment scheme.

561. *Accounting* in this context has its ordinary meaning, which is 'the theory and system of setting up, maintaining, and auditing the books of a firm'.[72] In other words, it involves the process of keeping and verifying accounts.

562. The acquisition of accounting functions that are carried out in relation to the fund generally and which are not associated with the member, employer, or trustee records, will not be a reduced credit acquisition under item 24(a).

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[71] As explained at paragraph 523 of this Ruling in relation to item 23(d).
[72] The *Macquarie Dictionary* (3rd Edition).

563. Acquiring the means to perform these functions 'in-house' (for example, acquiring application software) is not a reduced credit acquisition under item 24(a).

### *Item 24(b) – processing of applications, contributions, benefits and distributions*

564. Item 24(b) covers the acquisition of an administrative function of processing applications, contributions, benefits and distributions. As previously discussed, *processing* is a systematic series of actions that are directed to some end.

565. *Applications* includes all applications relating to the investment fund, including applications from prospective members seeking interests in a fund or superannuation scheme and applications for withdrawal from a superannuation scheme or fund.

566. Processing of *contributions, benefits and distributions* refers to the receiving and recording of member or client contributions to the fund or superannuation scheme. It also includes recording and disbursement by the manager, trustee, responsible entity, or the administrative service provider (on behalf of one of those entities) of benefits or distributions to the members, beneficiaries or investors.

567. As discussed in relation to item 24(a), acquiring the means to perform these functions 'in-house' (for example, acquiring application software) is not a reduced credit acquisition under item 24(b).

### *Item 24(c) – processing transfer between funds and trusts*

568. The *processing of transfer(s) between funds and trusts* is the carrying out of actions necessary to effect a transfer of assets between funds or between trusts.

569. A particular investment fund or superannuation scheme may have members' contributions invested with a number of different fund managers. Where assets are transferred between different funds, the acquisition of processing the transfer is a reduced credit acquisition under item 24(c).

570. Item 24(c) also includes the processing of transfers between trusts of members' entitlements.

571. As discussed in relation to items 24(a) and 24(b), acquiring the means to perform these functions 'in-house' (for example, acquiring application software) is not a reduced credit acquisition under item 24(c).

### *Item 24(d) – production and distribution of reports, statements and forms to members, employers and trustees*[73]

572. Item 24(d) covers the *production and distribution* of reports, statements and forms directed at *members, employers or trustees* as a consequence of their status in relation to an investment fund (including a superannuation fund). The production or distribution of any document that has the function of a report, statement or form is included for the purposes of item 24(d).

573. However advertising material, or material directed to entities other than members, employers or trustees, are not included. Item 24(d) also does not apply to the production or distribution of a ***prospectus*** for an investment fund.

574. In this context, *production* refers to the 'act of producing'[74] the report, statement or form and *distribution* refers to a range of activities leading to its receipt by an investment fund member, employer or trustee. The production of member statements accessible by members through an investment fund's website, is production and distribution of the statement for the purposes of item 24(d).

575. As discussed in relation to items 24(a), 24(b) and 24(c), acquiring the means to perform these functions 'in-house' (for example, acquiring application software) is not a reduced credit acquisition under item 24(d).

### *Item 24(e) – handling of inquiries and complaints made by members*

576. The scope of item 24(e) depends on the meanings of the expressions *handling* and *members* and the overall context of the item.

#### *Handling*

577. In item 24(e), the expression *handling* is given a wide meaning, and refers to the management of, or dealing with, member inquiries or complaints. Accordingly, a messaging service that relays member inquiries or complaints to contacts within an investment fund is an example of *handling* for the purposes of item 24(e). It is not necessary that a particular member inquiry or complaint be fully dealt with by one entity in order for an acquisition to be a reduced credit acquisition under this item.

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[73] The expressions *member*s, *employers* and *trustees* are discussed in relation to item 24(a) at paragraphs 554 to 556 of this Ruling.
[74] The *Macquarie Dictionary* (3rd Edition).

*Members*

578. In item 24(e), *members* refers to any entity with an interest in an investment fund. *Members*, in this context, may include, but is not limited to:

- unit-holders of a unit trust;
- members of a superannuation fund; and
- clients of an IDPS.

579. It does not include shareholders of companies, and beneficiaries of discretionary or fixed trusts.

580. The acquisition of services to manage or deal with member inquiries or complaints is a reduced credit acquisition under item 24(e). Where the acquisition involves the handling of inquiries from potential new members, or other non-member inquiries, this part need not be apportioned where it is a sufficiently minor part of total enquiries or complaints handled.

### *Item 24(f) – archives storage, retrieval and destruction services*

581. The acquisition of an administrative service consisting of archives storage, archives retrieval, archives destruction, or any combination of those services, is a reduced credit acquisition under item 24(f) provided it is in relation to investment funds. The discussion of the type of services that are archives storage services, archives retrieval services and archives destruction services in item 2 also applies to these terms for the purposes of item 24(f)[75].

### *Item 24(g) – statement processing and bulk mailing*

582. Item 24(g) is to be read as if the word *statement* appears before both processing and bulk mailing. *Bulk mailing,* in this context refers, only to the bulk mailing of statements. The acquisition of a service of statement processing or statement bulk mailing or both, is a reduced credit acquisition where it is in relation to investment funds.

583. Statement processing and statement bulk mailing, in the context of account information for account providers, is discussed in item 2(b). Those comments apply equally to the words, *statement processing and bulk mailing* in item 24(g). Both items 24(d) and 24(g) deal with aspects of the preparation and distribution of

[75] See paragraph 119 to 152.

statements, and certain acquisitions may fall within either item. We attach no particular significance to this.

### *Item 24(h) – compliance with industry regulatory requirements, excluding taxation and auditing services*

584. The scope of item 24(h) depends upon the meanings of the expressions, *compliance*, *industry regulatory requirements*, *taxation services*, and *auditing services* and the overall context of the item.

585. The following extract from the explanatory statement[76] accompanying the amendments to item 24(h) and 26(h) assists in interpreting the meaning of these paragraphs:

> New paragraphs 24(h) and 26(h) correct a drafting error and also clarify the scope of the item. An acquisition is a reduced credit acquisition under that paragraph if it is acquired for compliance with industry regulatory requirements, excluding taxation and auditing services. This means that costs incurred for preparation of tax returns or Business Activity Statements are not reduced credit acquisitions. These services are excluded as they are not principally or specifically acquired to comply with a regulatory requirement related to providing funds management services (item 24) or life insurance services (item 26).

*Compliance*

586. In item 24(h), the expression *compliance* is taken to mean 'the act of complying' and complying means to 'do as required or requested'.[77] Accordingly, *compliance* refers to the performance of some activity as a direct consequence of a formal order or instruction.

587. The acquisition of a thing or service which assists the acquirer to comply with an industry regulatory requirement will not, of itself, be an acquisition of an administrative function of *compliance* with industry regulatory requirements under item 24(h). Rather, an acquisition of an administrative function of compliance with industry regulatory requirements is an acquisition of a function which will, in itself, result in compliance being achieved.

*Example 71 - compliance with industry regulatory requirements*

588. *The Axiomatic Group (Axiomatic) is a financial services entity seeking to issue units in a new managed investment scheme called the Phalanx Fund No. 1. Axiomatic engages the services of*

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[76] A New Tax System (Goods and Services Tax) Amendment Regulations 2000 (No. 2) Explanatory Statement – Statutory Rules 2000 No. 77 p.11.
[77] The *Macquarie Dictionary* (3rd Edition).

*Maxima Fund Management Services (Maxima) to manage the offer and provide on-going management services.*

589. *Maxima carries out all the preparatory work necessary to issue the units, including, drafting of a prospectus in consultation with legal advisers, arranging the printing and distribution of prospectuses, and handling all applications for units in the fund. Maxima invoices Axiomatic for a range of services including 'preparation and distribution of prospectuses'.*

590. *The function carried out by Maxima in ensuring compliance with the regulatory requirement to issue a product disclosure statement (such as a prospectus) under the Corporations Act, is a reduced credit acquisition by Axiomatic under item 24(h).*

*Example 72 - not compliance with regulatory requirements – legal costs and printing of prospectus*

591. *Speilberg Income Fund (Speilberg) proposes to offer a new investment fund to investors and is required by the Corporations Act to issue a product disclosure statement in relation to the offer. In the course of issuing the product disclosure statement to interested investors, Speilberg acquires legal services from Hartley & Co Solicitors relating to the statement's content, as well as printing services from Pressburger Printers Ltd.*

592. *Neither of these acquisitions is a reduced credit acquisition under item 24(h), as neither is an acquisition of an administrative function of compliance with industry regulatory requirements which, in itself, results in compliance with the requirement.*

*Industry regulatory requirements*

593. Within the expression *industry regulatory requirements*, the term *industry* is given meaning by its context. As item 24(h) deals with funds management services, the *industry* to which the item refers is the funds management industry, and includes segments or branches of that industry. This approach is supported by the extract from the explanatory statement quoted in paragraph 585. For example, the superannuation industry is a segment of the broader funds management industry.

594. Financial products created, acquired or disposed of within an *industry* are not in themselves industries or segments of the broader funds management industry.

595. For the purposes of item 24(h), the expression industry *regulatory requirements* refers to a command or instruction in an

Act[78] or Regulation[79] of the Commonwealth, States or Territories of Australia, that applies to a branch or segment of the funds management industry. For example, any requirement in the SIS Act is an industry regulatory requirement for the purposes of item 24(h).

*Example 73 - compliance with industry regulatory requirements*

596. *Mercurial Superannuation Fund (Mercurial) is required under the provisions of SIS Act to have an actuary's certification that they are able to meet promised payments when they fall due. Mercurial engages the services of Aardvaark Actuarial Services (Aardvaark) to provide the necessary certificate.*

597. *The acquisition of actuarial services from Aardvaark is a reduced credit acquisition under item 24(h) as an acquisition of an investment portfolio management function of compliance with industry regulatory requirements.*

*Taxation services*

598. The expression *taxation services* in item 24(h), refers to any service in respect of the imposition or payment of a tax administered by the Commissioner of Taxation or any State taxation or revenue authority. Taxation services includes, but is not limited to:

- the provision of taxation advice;
- the preparation and lodgment of any form of tax return /statement or specific requests for information made by the Commissioner of Taxation; and
- representing clients in connection with any audit activities instigated by the Commissioner of Taxation.

*Superannuation surcharge*

599. The *Superannuation Contributions Tax (Assessment and Collection) Act 1997* (the SCT Act), imposes a requirement on the trustee of a superannuation fund to lodge a member's contribution statement annually.[80] The administrative function of preparing the

[78] The *Macquarie Dictionary* (3rd Edition) defines 'Act' to include 'a decree, edict, law, statute, judgment, resolve, or award: an Act of Parliament.'
[79] The *Macquarie Dictionary* (3rd Edition) defines 'Regulation' to include 'a rule or order, as for conduct, prescribed by authority; a governing direction or law.'
[80] Note also that the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997* imposes similar requirements upon a trustee in regard to the notification of member's surchargeable contributions to the Commissioner of

statement, or outsourcing the preparation of the statement, is carried out in order to comply with the regulatory requirements in that Act.

600. Item 24(h) covers *compliance with industry regulatory requirements, excluding taxation and auditing services* and as such, it is arguable that the function of preparing the member's contribution statement in compliance with the SCT Act is compliance with an industry regulatory requirement, as the SCT Act applies specifically to superannuation funds.

601. However, as the superannuation surcharge is defined as a tax in section 43 of the SCT Act, services relating to the preparation of member's contributions statements in connection with the assessment of the members' liability for the surcharge are taxation services.

602. It is arguable that the taxation services to which the exclusion in item 24(h) is intended to apply are those services that apply to the entity responsible for managing the investment of funds, that is, the trustee of a superannuation fund (in its capacity as trustee of the fund).

603. On this view, an acquisition of accountant's services to assist in the preparation and lodgment of member's contribution statements in respect of superannuation surcharge requirements are not a taxation service caught by the exclusion in item 24(h), as it relates to the members and not the superannuation scheme.

604. It is our view, however, that item 24(h) excludes taxation services and there is no reason to make a distinction between taxation services acquired by a superannuation fund in relation to the fund itself and those in relation to its members.

605. Item 24 applies to *administrative functions in relation to…superannuation schemes*. Therefore, the acquisition of administrative functions which satisfy the trustee's obligations under the SCT Act, in respect of the members' or the trustee's liability for the superannuation surcharge, are administrative functions *in relation to* the superannuation scheme.

606. These administrative functions are taxation services, whether they relate to the members' or the trustee's liability for tax, and taxation services acquired by an entity to comply with industry regulatory requirements are excluded from item 24(h). The acquisition of these services is not a reduced credit acquisition.

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Taxation, notwithstanding the fact that the liability for the surcharge is assessed to the member rather than the fund.

*Example 74 – services relating to superannuation surcharge*

607. *Draconian Superannuation Fund (Draconian) engages the services of Cleveras Accountants (Cleveras) to prepare members contributions statements in compliance with section 13 of the SCT Act.*

608. *Cleveras determines the total surchargeable contributions in relation to all members for the financial year and the totals of transferred amounts in accordance with subsection 13(7) of the SCT Act. Cleveras then prepares the statements and lodges them with the Commissioner of Taxation on Draconian's behalf.*

609. *The services acquired by Draconian from Cleveras are taxation services. The acquisition of these services is specifically excluded from being a reduced credit acquisition under item 24(h).*

*Auditing services*

610. For the purposes of item 24(h), auditing services are any services that provide for:

> …the systematic examination of accounting records and financial statements for the purpose of assessing whether these records and statements give a true and fair view of the business carried on.[81]

611. An acquisition of compliance with an industry regulatory requirement is a reduced credit acquisition under item 24(h) to the extent that it is not a taxation or audit service.

612. Notwithstanding that an acquisition may include the provision of a taxation or auditing service that is ancillary, incidental or integral to the service of complying with industry regulatory requirements, that part of the service comprising the taxation or audit service must be excluded for the purposes of determining the entitlement to a reduced input tax credit arising in respect of an acquisition under of item 24(h).

613. However, a taxation or audit service may be an ancillary, incidental or integral element of another function (or group of functions) listed under item 24. In that case, the taxation or audit service forms part of that function or group of functions and need not be excluded for the purposes of determining the entitlement to a reduced input tax credit in respect of acquisitions under other paragraphs of item 24.

[81] Taken from the definition of the term 'audit' contained in the *Australian Dictionary of Banking and Finance*.

### Insurance services

614. Items 25 and 26 are grouped under *insurance services* and deal respectively with the brokerage of both general and life insurance, and administration services acquired by a life insurer. Administration services acquired in relation to general insurance are not dealt with as general insurers in providing general insurance make taxable supplies rather than financial supplies.

**Item 25**

***Brokerage** of **general** or life **insurance***

615. Insurance brokers can also be referred to as agents or intermediaries. However, there is an industry distinction between true brokers, and agents or intermediaries. Insurance brokers are generally independent consultants who, while receiving ***commission*** from the insurer, are engaged by the assured to advise on, locate, and arrange the best cover to suit their needs.[82] When an entity that makes financial supplies acquires the services of an insurance broker for general or life insurance, they may make a reduced credit acquisition under item 25.

616. This item applies to brokerage of general insurance (supplies of which are taxable) or life insurance (supplies and acquisitions of which are input taxed as financial supplies).

617. Brokerage services can be provided by insurance brokers engaged by the assured, or insurance agents engaged by either the assured or the insurer. Brokerage is payment for activities done as an intermediary between supplier and acquirer.

*Example 75 - insurance brokerage*

618. *Twinkle-toes Home Loans (Twinkle-toes) acquires a fleet of vehicles for its consultants to use when visiting clients. It engages Bloodhound Insurance Brokers to advise on the best arrangements for insuring the fleet, and to find and arrange insurance for the fleet. Bloodhound charges a fee for the advice, but receives commission from an insurer, when the policy is arranged.*

619. *The acquisition of the general insurance brokerage service by Twinkle-toes is a reduced credit acquisition under item 25.*

[82] Sutton, Kenneth, *Insurance Law in Australia,* LBC Information Services, Sydney, 1999, p397.

**Item 26**

*The following life insurance administration services provided for a life insurer:*

*(a) maintaining policyholder records and associated accounting;*

*(b) processing of **premiums** and benefits;*

*(c) processing and assessing claims under policies;*

*(d) production and distribution of reports, statements and forms to policyholders, including statement processing and bulk handling;*

*(e) handling of inquiries and complaints made by policyholders;*

*(f) archives storage, retrieval and destruction services;*

*(g) processing and assessing applications;*

*(h) compliance with industry regulatory requirements, excluding taxation and auditing services; and*

*(i) managing **reinsurance** requirements*

620. Item 26 consists of an exhaustive list of acquisitions of *life insurance administration services* provided for a life insurer that are reduced credit acquisitions.

### *Life insurer*

621. *A life insurer* is an entity that conducts ***life insurance business*** as set out in the glossary to GSTR 2002/2.

### *Item 26(a) – maintaining policyholder records and associated accounting*

622. When a life insurer acquires administrative services of policyholder record and account keeping, it makes a reduced credit acquisition under this item. Maintenance of records implies an ongoing service of updating policyholder records.

623. *Associated accounting* refers to accounting associated with policyholder account or premium balances. It includes activities such as posting entries to accounts for contributions or premium payments, or charges and payments to policyholders. The acquisition of accounting services that are not related to policyholder records are not reduced credit acquisitions under item 26(a).

624. Acquiring the means to perform the administrative services 'in house' (such as, a computer record system) is not a reduced credit acquisition under this item.

### *Item 26(b) – processing[83] of premiums and benefits*

625. In the case of an acquisition by a life insurer the acquisition of services of scrutinising, verifying, and inputting and balancing premium or benefit amounts are reduced credit acquisitions under this paragraph.

626. Acquiring the means to perform these processing functions 'in house' (such as, application software) is not a reduced credit acquisition under item 26(b).

### *Item 26(c) – processing and assessing claims under policies*

627. The term *processing* is discussed in paragraphs 87 to 92. Claims processing does not include advice acquired from professional persons or bodies in relation to claims.

628. However, if a life insurer acquires a service of processing and assessing claims which may include, but does not differentiate, any professional services relating to the assessment of claims, this acquisition is a reduced credit acquisition under this item.

### *Item 26(d) – production and distribution of reports, statements and forms to policyholders, including statement processing and bulk handling*

629. An acquisition of services for the production, printing and distribution of various kinds of documents to policyholders is a reduced credit acquisition under this item. As discussed in item 24, the production and distribution of any document that has the function of a report, statement or form is included for the purposes of item 26(d), however, advertising material or material directed to non-policyholders is not included.

630. The term *statement processing and bulk handling* is read as *statement processing* and/or *statement bulk handling. Statement processing* is discussed in item 2 in the context of account information for account providers. That discussion applies equally in the context of processing policyholder statements for a life insurer.

631. Statement bulk handling has a different connotation to statement bulk mailing, suggesting that there is not the requirement in this item that the activities be directed towards mailing the statements. *Statement bulk handling* is given a wide meaning of dealing with large volumes of statements, and suggests a through-put of the statements. Activities directed towards the delivery of

[83] The expression *processing* is explained at paragraphs 87 to 115 of this Ruling in the discussion of item 2.

statements to policyholders whether by mail or electronically, are within the term *distribution of statements*.

### *Item 26(e) – handling of inquiries and complaints made by policyholders*

632. A life insurer may receive inquiries or complaints from policyholders in person, by mail, by phone, or electronically. Different handling procedures may be involved depending on the form and manner of the enquiries and complaints.

633. As in item 24(e), the expression *handling* is given a wide meaning and refers to managing, or dealing with policyholder inquiries or complaints. A messaging service that relays policyholder inquiries or complaints to contacts within a life insurer is an example of *handling* for the purposes of item 26(e).

634. It is not necessary that a particular policyholder inquiry or complaint be fully dealt with by one entity for an acquisition to be a reduced credit acquisition under this item.

635. Where the acquisition involves the handling of inquiries from potential clients or other non-policyholder inquiries, this part may be treated as incidental or ancillary where it is a sufficiently minor part of total inquiries or complaints handled.

636. The acquisition of communications equipment such as automatic call registries, or soft-phone computer systems, is not a reduced credit acquisition under item 24(e).

*Example 76 – call handling services*

637. *Rocksteady Life Insurance (Rocksteady) engages Medi-call, a company specialising in providing staff and administrative support services to the health, health insurance and related industries, to provide call-centre services. Under the arrangement, all policyholder phone inquiries to Rocksteady are streamed through Medi-call's call centre staff.*

638. *The staff are given sufficient information to deal only with the simplest of inquiries. They do not have access to Rocksteady's databases and cannot, therefore, answer specific enquiries. Instead, the staff are trained to question callers and determine which department or staff member of Rocksteady is best suited to handle the call. Once they have done this, they transfer the call.*

639. *By answering basic inquiries or redirecting calls, Medi-call's staff are handling inquiries and complaints within the meaning of item 26(e). Rocksteady's acquisition of call-centre services is therefore a reduced credit acquisition.*

### *Item 26(f) – archives storage, retrieval and destruction services*

640. The acquisition of an administrative service consisting of archives storage, archives retrieval, archives destruction, or any combination of those services is a reduced credit acquisition under item 26(f), provided that it is for a life insurer. The discussion of the type of services that are archive storage services, archives retrieval services and archives destruction services in item 2 also applies to these terms for the purposes of item 26(f).

### *Item 26(g) – processing and assessing applications*

641. Acquisitions of professional services (particularly medical assessment services) in relation to the processing or assessing of applications are neither *processing* nor *assessing* for the purposes of item 26(g).

642. However, if a life insurer acquires an application processing and assessing service which may include, but does not differentiate medical or other professional services, the acquisition of the administrative service as a whole is a reduced credit acquisition.

*Example 77 – application processing services*

643. *Medi-call offers Rocksteady an application assessment and processing package. The service includes:*

- *receipt of applications;*
- *scrutinising applications and making recommendations for health-checks;*
- *organising health checks with clients;*
- *engaging medical staff to carry out the checks;*
- *assessing and recording results;*
- *processing the applications; and*
- *passing the new client details to Rocksteady to issue policy documents.*

644. *These services are carried out for a negotiated monthly fee, which is the same regardless of the volume or type of applications received.*

645. *As Medi-call offers a single service of assessing and processing applications to Rocksteady, and does not differentiate professional medical services from administration, nor provides*

*professional services directly to Rocksteady, the acquisition is a reduced credit acquisition.*

### *Item 26(h) – compliance with industry regulatory requirements, excluding taxation and auditing services*

646. The term *compliance with industry regulatory requirements* is explained in the discussion of item 24(h). When a life insurer acquires administrative services in relation to their reporting requirements, they make a reduced credit acquisition. In this context, the term *industry* refers to the life insurance industry only. The term *regulatory requirements* refers to any statutory reporting or record-keeping requirements established for the life insurance industry particularly.

647. An insurer does not make a reduced credit acquisition under item 26(h) to the extent that their acquisition includes services relating to taxation or auditing services. This is the case even if these services are included with and not differentiated from other services under item 26(h). An apportionment must be made in these circumstances.

*Example 78 – services relating to compliance with regulatory requirements*

648. *Rocksteady also acquires the services of Grimm and Codger, Accountants to look after their reporting requirements to industry regulators and their taxation affairs. This includes collecting data, keeping records and accounts, preparing reports, as well as preparing the insurer's Business Activity Statement and tax returns.*

649. *Under item 26(h), Rocksteady does not make a reduced credit acquisition to the extent that Grimm and Codger perform taxation services. Their taxation services include clerical duties related to taxation, as well as the professional services involved in preparing returns. The acquisition of Grimm and Codger's services in relation to compliance with industry reporting requirements are reduced credit acquisitions by Rocksteady.*

### *Item 26(i) – managing reinsurance requirements*

650. The service of managing ***reinsurance*** requirements entails assessment of the reinsurance requirements for the life insurer and locating and arranging the most appropriate provider of reinsurance for the life insurer. The acquisition of these services is a reduced credit acquisition under item 26(i).

### Services remunerated by commission and franchise fees

651. Items 27 and 28 are grouped under services remunerated by ***commission*** and franchise fees, and deal with the acquisition of these services from ***financial supply facilitator***s.

**Item 27**

*Supplies for which financial supply facilitators are paid commission by **financial supply providers***

652. This item applies to supplies by financial supply facilitators for which they are paid commission by a financial supply provider. An entity is a financial supply facilitator in relation to a particular supply. This confines the application of the item to acquisitions by a financial supply provider that relate to a particular transaction for which they pay commission to a financial supply facilitator.

653. *Commission*, as set out in GSTR 2002/2 is:

> payment to an agent or employee for particular services rendered. The payment may be made on a fixed sum basis or on a sliding scale based on the value of the transaction.

For the purposes of item 27, the services are not those provided by an employee.

654. While the term *commission* may include ***corpus commission***, income commission, ***trailing commission*** and ***brokerage***, not all of these will be payments to a financial supply facilitator. Other fees, including those calculated on the value of work done, rather than a per-transaction or percentage of value based calculation, and retainers, are not commission.

*Example 79 - trailing commission*

655. *Marvin is an independent, commission-based agent for Trillion Life Insurance (Trillion Life). He contacts potential clients, provides them with advice and sells them life policies on behalf of Trillion Life. He is paid initial commission calculated as a percentage of the value of the policy sold, and an annual commission calculated as a smaller percentage of the value of the policy for as long as the policy is maintained.*

656. *Marvin is a financial supply facilitator in relation to the supply of the interest in each life insurance contract. He is paid commission. The acquisition of Marvin's services by Trillion Life is a reduced credit acquisition both in respect of the original transaction and the ongoing commission payments. It is an acquisition from a financial supply facilitator by the financial supply provider for payment of commission.*

**Item 28**

*Supplies provided by **financial supply facilitators** to franchisors, for which the facilitators are paid a* **franchise** *fee*

657. This item applies to acquisitions by franchisors from financial supply facilitators for which the facilitators are paid a franchise fee. The context in which the acquisition is made is a franchise arrangement.

658. *Franchise fee* has a specific meaning within the franchise industry as the up-front payment by the *franchisee* to the *franchisor* for the granting of franchise rights. This is not the fee to which the item refers.

659. For the purposes of item 28, the term *franchise fee* is used to confine the application of the item to transactions between the franchisor and participant in the franchise arrangement, where the participant is also a financial supply facilitator.

660. The entity making the supply, besides being in a franchise arrangement with the franchisor, must also be a financial supply facilitator. As discussed in item 27, an entity is a financial supply facilitator in respect of a particular financial supply. The item therefore applies to an acquisition of services by a franchisor, from a financial supply facilitator that is also a party to the franchise arrangement, for a fee. The franchisor does not have to be the financial supply provider to acquire the service as a reduced credit acquisition.

*Example 80 - investment franchise*

661. *Whizzkid Corporation (Whizzkid) is the trustee of a number of unit trusts each holding investments in property and/or shares. Whizzkid is also the franchisor of an investment advice franchise arrangement called Powerhouse Advice. Whizzkid recruits franchisees, trains them to provide investment advice, ensures they are correctly registered, and provides them with 'appropriate'" premises, signage and advertising. The franchisees pay a range of fees for these supplies by Whizzkid. None of these fees are the franchise fee referred to in item 28 as they are not paid by the franchisor.*

662. *Stacey is one of the Powerhouse Advice franchisees. She provides her clients with advice on a range of investments including the Whizzkid unit trusts. When a client decides to invest in a particular way, Stacey assists them to complete the application forms and so forth, and forwards them to the relevant entity. Stacey charges the client a fee for the advice. Under the franchise*

*agreement she also receives a fee from Whizzkid each time she assists a client to purchase units in the Whizzkid unit trusts. Stacey calculates the fee on the time she spent with the client and bills Whizzkid for this amount.*

663. *The acquisition of Stacey's services by Whizzkid is a reduced credit acquisition under item 28, as it is an acquisition by a franchisor for a fee from a financial supply facilitator that is a party to the franchise arrangement. Because the fee is paid to the financial supply facilitator in the context of the franchise agreement, it is a franchise fee for the purposes of item 28.*

### Trustee and custodial services

664. Items 29, 30 and 31 are grouped under ***trustee*** *and custodial services*, and deal with the services provided by trustees, ***custodian***s and ***single responsible entities***. The services dealt with under these items are provided by entities that have obligations and responsibilities in relation to property either equitably or legally owned by another entity.

**Item 29**

***Trustee*** *and custodial services (except safe* ***custody*** *of money, documents and other things), including:*

*(a) transfer of cash without purchase, sale or transfer of assets, excluding cash delivery and collection from branches of* ***Australian ADIs****; and*

*(b) undertaking and settling of* ***securities*** *transactions by a* ***financial supply facilitator****; and*

*(c) collecting income and other payments; and*

*(d) registration of interests and rights; and*

*(e) proxy voting; and*

*(f) exercise of* ***options*** *and* ***warrants****; and*

*(g) opening and maintaining* ***accounts*** *with Australian ADIs; and*

*(h)* ***nominee*** *services in relation to financial supplies*

665. The examples listed in items 29(a) to 29(h) indicate that item 29 is directed specifically at custodial and related functions in connection with the holding of a member's (in the case of a superannuation scheme) or an investor's (in the case of a ***managed investment scheme***) assets. These functions may be carried out by either a trustee, as part of the trustee's responsibilities, or by a custodian appointed by a trustee of a fund, or a responsible entity of

a managed investment scheme. The custodian may also be appointed by specific agreement with either the trustee, responsible entity or by an investment manager contracted by either.

666. The use of the term *including* before items 29(a) to 29(h) means that although the listed acquisitions are trustee and custodial services for the purposes of the item, they are not the only trustee and custodial services to which the item may apply.

### *Trustee services*

667. Notwithstanding the focus on custodial functions, the reference to *trustee services* in item 29 is capable of applying widely to services acquired from a trustee. Where a trust has been established by a deed, the deed will normally set out the rights, duties and obligations of the relevant parties to the trust, including the trustee. As such, the duties carried out by the trustee in compliance with the terms of the deed will be *trustee services*, the acquisition of which is a reduced credit acquisition under item 29.

668. Where the trust acquires services from the trustee which are not provided for in the deed, the acquisition is not a reduced credit acquisition unless it is of custodial services, or it is a reduced credit acquisition under another item within subregulation 70-5.02(2). For example, where an entity acquires trustee services specific to investment portfolio management, that acquisition may be a reduced credit acquisition under item 23(c).

669. *Custodial services* are recognized as services provided by an entity that holds and safeguards financial assets, such as cash or securities, on behalf of other parties.[84] These services are normally provided by a custodian, and usually include the provision of administrative and accounting functions in relation to the holding of the relevant financial assets.

### *Trustee indemnification (recovery)*

670. Under subsection 184-1(3) of the GST Act, a legal person may act in a number of different capacities, and in each of those capacities the person is taken to be a different entity. The trustee of a trust may therefore be registered in its capacity as trustee of a trust, and also in its own right. Acquisitions made by a trustee in the course of administering a trust are normally made in the trustee's capacity as trustee of the trust, and are therefore acquisitions of the trust.

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[84] CCH Other Commentaries: Australian Corporations & Securities Law Reporter, Chapter 7 [270-800].

671. The trust deed normally contains a clause which provides for indemnification of the trustee in respect of liabilities incurred in the administration of the trust. Where the trustee acquires things on behalf of the trust and in its capacity as trustee for the trust, it may be entitled to reimbursement from the trust funds for those acquisitions.

672. As these are acquisitions of the trust, they are not acquisitions from the trustee, and are therefore not acquisitions of trustee services. Each acquisition may be a reduced credit acquisition if it is mentioned in an item in subregulation 70-5.02(2).

673. We acknowledge that, in practice, some entities may have difficulty in characterising the dealings that occur between an entity acting in its corporate capacity and acting on behalf of the trust. Where the entity adds a mark-up for the on-supply of the thing to the trust, this may indicate that the entity is supplying something to the trust in its own corporate capacity, rather than acquiring it on behalf of the trust and seeking recovery through the indemnification clause.

*Example 81 - trustee makes acquisition in its capacity as trustee for the trust*

674. *George Pty Ltd acts as trustee for the G & M Superannuation Fund (the Fund). Both entities are registered and the Fund is engaged solely in making financial supplies. George Pty Ltd charges a monthly fee of $4400 to the Fund for trustee services. Acting on behalf of the Fund, George Pty Ltd pays $1100 to Lemon Ltd out of its own bank account for computer services to assist in administering the Fund. The Fund reimburses the $1100 to George Pty Ltd from the Fund's assets as provided for under the trust deed.*

675. *The acquisition of trustee services is a reduced credit acquisition under item 29 in subregulation 70-5.02(2). The acquisition of computer services is not an acquisition of trustee services and is not a reduced credit acquisition under item 29.*

***Trustee on-charging***

676. A trustee, acting in its own right, may acquire things in the course of administering the trust and may seek to recoup the cost by on-charging as a component of the fee charged to the trust for 'trustee services'.

677. A trust deed, in addition to containing a clause relating to trustee indemnification, normally also contains a clause relating to trustee remuneration which is set at a particular figure, or at a percentage of funds under administration. This amount normally represents the consideration for the trustee services supplied to the trust by the trustee. The acquisition of the trustee services is a

reduced credit acquisition under item 29. We consider that remuneration of a trustee on a full cost recovery basis is not common.

678. However, if the remuneration of a trustee is on a full cost recovery basis, provided the acquisition made by the trust is an acquisition of trustee services within the terms of the relevant trust deed, it is a reduced credit acquisition under item 29. The trustee's remuneration, whether it is on a full cost recovery basis or not, is a matter of commercial negotiation between the parties to the arrangement.

*Example 82 – trustee on-charging*

679. *Tiger Pty Ltd (Tiger) is the trustee for the Owl Superannuation Fund (the Fund). In the course of administering the Fund, Tiger incurs rental, telephone, stationery and information technology costs. Under the terms of the trust deed, Tiger is entitled to charge a fee based on full recovery of all costs reasonably incurred in administering the trust. Tiger invoices the Trust for 'trustee services' and the fee charged includes full cost recovery of all of the mentioned items.*

680. *The fee charged is for trustee services and the acquisition of these services by the Fund is a reduced credit acquisition under item 29.*

***Trustee making supplies to the trust***

681. An entity that is also acting as the trustee of a trust may make an acquisition of a thing in its own right. Rather than seeking to recoup the cost of the thing through the fee for services that it provides as trustee, it may supply the thing to the trust. This situation may arise where an entity is acting as a trustee for a number of trusts and acquires a particular service or thing in its own right which is then on-supplied to two or more of the trusts. Alternatively, an entity may acquire a particular thing before it becomes a trustee and, after becoming a trustee, supply that thing to the trust.

682. A trustee may also make supplies (other than things it has acquired) to the trust that are not supplies of trustee services. Where a trustee is a service provider in its own right, and supplies its services to the trust otherwise than in its capacity as trustee, the trust is not acquiring trustee services.

683. In these cases, the supply to the trust by the trustee acting in its own capacity is treated, for GST purposes, in the same way as any acquisition the trust makes from another supplier. Where the acquisition is covered by an item in the table in subregulation

70-5.02, it is a reduced credit acquisition. However, it is not an acquisition of trustee services under item 29. The acquisitions do not become part of an acquisition of trustee services even if the trustee does not separately identify or charge for them in their invoice to the trust.

*Example 83 - trustee makes a supply to the trust*

684. *Duff Pty Ltd is the Trustee for the M$^{c}$Beth Family Superannuation Fund. Duff Pty Ltd, in its own right, provides investment advice to the trust. Both entities are registered.*

685. *Duff Pty Ltd acquires specialist investment advice from Prudence Investment Advisers in its own right, paid for from its own bank account and acquired as part of its provision of investment advice as an entity separate from the fund. Duff Pty Ltd includes the cost of this advice in its fee for investment advice to the fund.*

686. *Duff Pty Ltd is entitled to claim an input tax credit on its acquisition of advice from Prudence. Duff Pty Ltd is making a taxable supply to the fund. The fund is not entitled to an input tax credit or a reduced input tax credit in respect of the acquisition of the advice from Duff Pty Ltd.*

687. In many instances, the services listed in items 29(a) to 29(h) are acquired by a financial supply provider from a single entity, being a trustee or custodian. However, the words in item 29 permit an interpretation that an acquisition of one or more of those services individually may also be a reduced credit acquisition where it is the acquisition of trustee or custodial services.

### *Item 29(a) – transfer of cash without purchase, sale or transfer of assets, excluding cash delivery and collection from branches of Australian ADIs*

688. *Cash* means money in a tangible form, banknotes and coin, but excludes cash equivalents such as cheques, orders, etc.[85] The transfer of cash referred to in item 29(a) is the transfer of cash in the physical sense. Where there is an element of safe custody in an acquisition of the transfer of cash by a trustee or custodial services provider, the acquisition of that element will not be a reduced credit acquisition. This is because safe custody is specifically excluded from being a reduced credit acquisition under item 29.

689. An acquisition of a secure cash transport service is an acquisition of a custodial service under item 29 even though such an

[85] Based on definitions of cash in the *Macquarie Dictionary* (3rd Edition) and the *Australian Dictionary of Banking and Finance*.

acquisition would not normally be provided by a trustee or a custodian. The words *without purchase, sale or transfer of assets* are included to restrict the acquisition of such secure transport services to those cases where the service is provided for a fee, rather than where the cash is actually purchased by the secure cash transport service.

### *Item 29(b) – undertaking and settling of securities transactions by a financial supply facilitator*

690. The disposal or acquisition of securities on a stock exchange, where initiated by a trustee or custodian, is carried out by brokers who are members of the relevant securities exchanges. These brokers are financial supply facilitators in respect of each transaction. Where an entity that is supplying trustee or custodial services, undertakes and settles securities transactions *through* a broker or other financial supply facilitator the acquisition of the trustee or custodian's services is a reduced credit acquisition under item 29(b).

### *Item 29(c) – collecting income and other payments*

691. This item relates to the collection by the trustee or custodian of income arising from the investments of the trust and payments of members' contributions and other payments. Acquisitions of services within this item are reduced credit acquisitions.

### *Item 29(d) – registration of interests and rights*

692. Registration simply refers to the formal requirement to register an interest on a securities register. Such a service would usually only be supplied by a trustee or custodian as part of the supply of a trustee or custodial service. It is unlikely to be supplied as a discrete service.

### *Item 29(e) – proxy voting*

693. The acquisition of the services of a trustee or custodian in casting a ***proxy vote*** on behalf of a member of a fund or scheme is a reduced credit acquisition.

### *Item 29(f) – exercise of options and warrants*

694. The acquisition of the services of a trustee or custodian in exercising options or warrants is a reduced credit acquisition.

### *Item 29(g) – opening and maintaining accounts with Australian ADIs*

695. This item relates to the activities of a trustee or custodian in opening, operating and maintaining accounts for members or investors. However, it does not refer to the closing of accounts. As item 29 is an inclusive item and the paragraphs are intended to be illustrative of the activities covered by the item, the fact that item 29(g) does not refer to the closing of accounts does not mean that the acquisition of the service of closing accounts is precluded from being a reduced credit acquisition under item 29. The service of closing an account with an Australian ADI will be a reduced credit acquisition within this item where supplied by a trustee or custodian.

### *Item 29(h) – nominee services in relation to financial supplies*

696. A trustee or custodian may act as the nominal holder of securities on behalf of an investor. The acquisition of this service is a reduced credit acquisition under item 29(h).

697. The expression *nominee* is not defined in the GST Act or regulations, however, under section 103(2) of the *Income Tax Assessment Act 1936*, a nominee of another person in relation to any shares means:

(a) a person who may be required to exercise their voting power in relation to those shares at the direction of the other person; or

(b) a person who holds those shares directly or indirectly on behalf of or for the benefit of the other person

698. We consider that this definition is equally relevant for the purposes of item 29(h).

699. As such, the acquisition of nominee services by a financial supply provider in relation to financial supplies, where such nominee services are provided by a person other than a trustee or custodian, may be a reduced credit acquisition under item 29.

| **Item 30** |
| --- |
| *The following **master custody** services:* |
| *(a) maintenance of accounting records;* |
| *(b) taxation reporting;* |
| *(c) **mandate** monitoring;* |
| *(d) trade execution monitoring;* |

*(e) portfolio performance analysis; and*

*(f)* ***risk management*** *reporting*

700. Items 30(a) to 30(f) provide an exhaustive list of *master custody services* the acquisition of which is a reduced credit acquisition. The services listed in items 30(a) to 30(f) are not master custody services *because* they are listed in item 30. They are the particular services provided by a master custody service provider the acquisition of which is a reduced credit acquisition.

701. Suppliers of master custody services may provide a wide range of services. However, any services provided that are not mentioned in item 30 are not reduced credit acquisitions, unless they are covered by another item in subregulation 70-5.02(2).

702. *Master custody* as set out in the glossary to GSTR 2002/2 is:

> Custody of all assets of clients domiciled in a particular market with which the master custodian has a direct contractual arrangement so that the master custodian has primary control of the client's assets. In addition to providing **core custody** services, master custody delivers consolidated tax reporting of multiple investment manager portfolios in domestic and foreign currency, as well as performance analysis, and reporting that complies with Australian accounting standards.

703. To come within item 30, the services listed in items 30(a) to 30(f) must be provided in the context of a master custody service.

704. This precludes the supply of the services described in items 30(a) to 30(f) by an entity which does not have custody (either directly or through a sub-custodian) of the assets of the financial supply provider. That is: an entity cannot provide master custody services unless it has custody of the relevant financial assets, either directly or through a sub-custodian.

*Example 84 – master custody services that are a reduced credit acquisition*

705. *Vault Custodial Services (Vault) is engaged by the Drones Superannuation Fund (the Fund) to provide master custody services in relation to the Fund's securities. Vault sub-contracts services to a sub-custodian, Oceanic Custody Services (Oceanic). Oceanic provides Vault with custody services including, safekeeping of documents, undertaking and settling securities transactions and registering interests and rights.*

706. *In addition to the services provided by the sub-custodian, Vault also provides services including, the maintenance of books of account in respect of the investment transactions, maintenance of taxation records, calculations of tax payable, monitoring of*

*compliance with the specified investment mandate, valuations, and foreign exchange.*

707. *The Fund is entitled to claim a reduced input tax credit for its acquisition of all of the services provided by Vault, except for the valuations and foreign exchange services, which are not services listed in item 30, and the safe custody services which are specifically excluded from item 29.*

*Example 85 – services not covered by item 30*

708. *Black Jack Pty Ltd as the trustee for The Workers Superannuation Fund (the Fund), engages the services of an accounting firm Sense, Common and Associates (Sense) to provide a number of services to the Fund including taxation reporting and portfolio performance analysis. Sense does not have custody of the Fund's assets and is supplying the services in the course of the normal provision of professional services.*

709. *The services acquired by the Fund are not a reduced credit acquisition under item 30 as Sense is not supplying the services within the context of a master custody service.*

*Example 86 – services not covered by item 30*

710. *Blue Pty Ltd (Blue) is the trustee for Farrago Investment Fund (the Fund). Blue engages the services of a custodian, Knox Services (Knox) to take custody of the Fund's financial assets, which include various securities. Blue also arranges for Knox to supply the information they gathered from the Fund's investments to Consolid8 Ltd, a firm which specialises in consolidating financial information relating to shares trades and so forth and conveying it to investors and their representatives. Consolid8 supplies the Fund with services such as mandate monitoring and trade execution monitoring.*

711. *The services supplied by Consolid8 are not master custody services as Consolid8 does not supply them in the course of providing a master custody service, as Consolid8 does not have custody of the Fund's assets.*

**Item 31**

*Single **responsible entity** services*

712. Single responsible entity[86] services are services provided by an entity operating a ***managed investment scheme***. Under section 601FA of the Corporations Act, the responsible entity is a public company that holds a dealers licence authorising it to operate a managed investment scheme.

713. The previous framework for prescribed interests and other such collective investment schemes, was two-tiered. The assets of a scheme were vested in a trustee, but the scheme was managed on a day-to-day basis by a management company. This led to confusion over who was responsible for the conduct of the scheme's operation and led to the conclusion that each scheme should have a single responsible entity.

714. Under Chapter 5C of the Corporations Act, the responsible entity must hold the assets of the managed investment scheme in trust for the members. A further obligation exists in relation to responsible entities wishing to operate managed investment schemes, but which do not meet certain standards, that the scheme assets must be held by a third party custodian.

715. Under item 31, the acquisition of single responsible entity services is a reduced credit acquisition. The kinds of services which might be provided by a single responsible entity are not listed in item 31. However, subsection 601FB(1) of the Corporations Act provides that:

> the responsible entity of a registered scheme is to operate the scheme and perform the functions conferred on it by the scheme's constitution and this Act.

716. Part 5C.3 of the Corporations Act requires the scheme's constitution to provide (*inter alia*) for the investment powers of the responsible entity in relation to scheme property, any rights the responsible entity may have to be paid fees or to be indemnified out of scheme property and the responsible entity's powers to borrow or raise money for the purposes of the scheme.

717. Subsection 601FC(1) of the Corporations Act sets out the duties and powers of the responsible entity and includes such things as the requirement to act honestly, to exercise care and diligence, and to act in the best interests of the members.

718. In addition, the responsible entity is to ensure that scheme property is clearly identified as scheme property and held separately

[86] Under the *Managed Investments Act 1998* the single responsible entity is required to undertake the duties and responsibilities previously undertaken by the trustee of a managed investment scheme.

from the property of the responsible entity, and the property of any other scheme. The responsible entity must also ensure that the scheme property is valued at regular intervals and that all payments out of the scheme property are made in accordance with the scheme's constitution and the Corporations Act.

719. The services referred to in item 31 are the services that the single responsible entity provides in carrying out their duties as a single responsible entity as required by the Corporations Act, and not other services.

# Glossary

720. The following terms are defined or explained for the purposes of this Ruling.

**Bailiff**

721. An officer of a lower court, authorised to perform the same duties as a sheriff in a Supreme court: service of process, enforcement of civil judgments, and provision of juries.[87]

**Bonus issue**

722. Company shares issued free to existing shareholders, sometimes known as a 'scrip issue'. Companies may make a bonus issue instead of increasing a dividend payout. New shares are usually issued in proportion to existing holdings.[88]

**Currency**

723. A unit of exchange that has purchasing power within a country. [89]

**Electronic funds transfer (EFT)**

724. The transfer of funds from one account to another by electronic means (such as through the use of computers). ***EFTPOS***, ***BPAY*** and telephone or Internet banking are examples of

[87] Taken from the *CCH Macquarie Dictionary of Business,* CCH Australia Ltd, North Ryde (NSW), 1993.
[88] Carew, Edna, *The Language of Money,* Allen & Unwin, Sydney, 1988.
[89] Taken from the *CCH Macquarie Dictionary of Business,* CCH Australia Ltd, North Ryde (NSW), 1993.

customer-level EFT. Banks use similar systems to transfer funds between themselves.

### Flotation (float)

725. The term flotation can be applied to any initial raising of finance by a business. However, the term is usually used for an initial public offer of shares or debentures for subscription.[90]

### Franchise

726. A licence bought by a retailer or supplier of services under a franchising arrangement. Franchising arrangements are contractual arrangements between a franchisor and franchisee under which:

- the franchisor allows the franchisee to use their trade marks, business names and branding;
- the franchisor may regulate and specify certain aspects of the franchisee's business;
- the franchisor provides assistance to the franchisee in certain aspects of the business; and
- the franchisee pays money to the franchisor.

The particular form these conditions take varies with the kind of business franchised. A very wide variety of retail, service and manufacturing businesses are operated under these arrangements.[91]

### General insurance

727. A contract of general insurance indemnifies the insured (or assured) against loss resulting from certain events, as set out in the contract of insurance (known as a policy). Common examples of general insurance include fire, theft or burglary, hail, professional indemnity, and marine. Contracts of health or life insurance are not general insurance.[92]

### Investor-directed portfolio service (IDPS)

728. In general terms, an IDPS can be summarised as a managed investment scheme that:

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[90] Ford, H.A.J., Hinde, G.W., Hinde, M.S., *Australian Business Dictionary,* Butterworths, Sydney, 1985.
[91] Ford, H.A.J., Hinde, G.W., Hinde, M.S., *Australian Business Dictionary,* Butterworths, Sydney, 1985.
[92] Based on *Oxford Dictionary of Business,* OUP, Oxon., 2002.

- embodies services for acquiring and holding investments that involve arrangements for the custody of assets and consolidated reporting;
- generally includes a menu of investment opportunities from which an investor can make selections; and
- provides for the investor to make all the investment decisions (whether directly or through authorising the operator or another person to make the decisions according to some standing directions).[93]

### Internet banking

729. The name given to the way in which banks allow their customers to access account information and perform transactions electronically using the Internet. Customers must register and obtain security identifications before they can access information. This is one method of carrying out EFT transactions.

### Mercantile agent

730. A person who, in the usual course of their business as an agent, has the authority to buy, sell, consign, or to raise money on the security of, goods.[94]

### Merger

731. A form of corporate restructuring in which two companies combine under the same control. Properly speaking, mergers are mutually negotiated, but the term is also used of **take-overs**.[95]

### Privatisation

732. The alteration of the legal, financial, and management structure of a Government trading body, such as a statutory authority, to permit private equity or ownership. The public issue of shares in government telecommunications bodies is an example of privatisation. Government bodies may also undergo corporatisation, under which ownership and control remain with the Government.

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[93] The Australian Securities & Investments Commission Policy Statement 148.
[94] Rutherford, L., & Bone, S., *Osborn's Concise Law Dictionary, 8th edition*, Sweet & Maxwell, London, 1993.
[95] Ford, H.A.J., Hinde, G.W., Hinde, M.S., *Australian Business Dictionary,* Butterworths, Sydney, 1985.

### Registered scheme

733. Under the Corporations Act, a registered scheme is a ***managed investment scheme*** registered under section 601EB of that Act.

### Securities

734. For the purposes of regulation 70 of the GST regulations, securities are defined in section 92-1 of the Corporations Act. The extended definition of securities given in item 10 of subregulation 40-5.09(3), does not apply to regulation 70.

735. Under section 92(1) of the Corporations Act 'securities' means:

(a) debentures, stocks or bonds issued or proposed to be issued by a government; or

(b) shares in, or debentures in, a body; or

(c) interests in a managed investment scheme; or

(d) units of such shares;

but does not include:

(f) a derivative (as defined in Chapter 7), other than an option to acquire by way of transfer a security covered by paragraph (a), (b), (c) or (d); or

(g) an excluded security.

'Excluded security' means:

(a) where:

(i) there is attached to a share a right to participate in a retirement village scheme; and

(ii) each of the other rights, and each interest (if any) attached to the share or debenture is a right or interest that is merely incidental to the right referred to in subparagraph (i);

the share or debenture or a unit in the share or debenture; or

(b) an interest in a managed investment scheme constituted by a right to participate in a retirement village scheme.

**Security (loans)**

736. When used in relation to borrowing and lending, security is provision of an interest in property that enables the lender to recover the loan by sale to the extent of the value of the property.[96]

**Take-over and acquisition**

737. The purchase, by a person, group of people or entity, of sufficient shares in a company to take over its control.[97]

**Take-over bid**

738. An offer made to company shareholders by an individual or other entity, to buy their shares at a stated price and gain a controlling interest in the company. This is also known as a take-over offer. Take-overs of Australian companies are regulated by the Corporations Law.[98]

**Telephone banking**

739. The means by which banks offer their customers access to account information and simple transactions electronically, using an automated telephone system. To use this service, customer must register and use ***PIN*** number/s. This is a method of carrying out EFT transactions.

# Your comments

740. We invite you to comment on this draft Goods and Services Tax Ruling. Please forward your comments to the contact officers by the due date.

[96] Taken from the *CCH Macquarie Dictionary of Business,* CCH Australia Ltd, North Ryde (NSW), 1993.
[97] Ford, H.A.J., Hinde, G.W., Hinde, M.S., *Australian Business Dictionary,* Butterworths, Sydney, 1985.
[98] Based on the definition in *The Language of Money*. (Carew, Edna, *The Language of Money,* Allen & Unwin, Sydney, 1988.)

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