


GSTR 2009/D1 - Goods and services tax: application of subsection 11-15(5) of the A New Tax System (Goods and Services Tax) Act 1999 to acquisitions relating to the provision of accounts by Australian authorised deposit taking institutions

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Draft Goods and Services Tax Ruling

Goods and services tax: application of subsection 11-15(5) of the *A New Tax System (Goods and Services Tax) Act 1999* to acquisitions relating to the provision of accounts by Australian authorised deposit taking institutions

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Preamble

This publication is a draft for public comment. It represents the Commissioner's preliminary view about the way the law applies. It is not a public ruling or advice for the purposes of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953*.

You can rely on this publication to provide you with protection from interest and penalties as follows. If a statement in this publication is later found to be incorrect or misleading and you make a mistake as a result of relying on this publication, you will not have to pay a penalty. In addition, if you have relied on this publication reasonably and in good faith you will not have to pay interest charges. However, you will still have to pay the correct amount of tax, provided the time limits under the law allow it.

What this Ruling is about

1. This draft Ruling explains how subsection 11-15(5) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) applies to acquisitions by an Australian authorised deposit taking institution (ADI)¹ that relate to the provision of accounts made available by the ADI in the course of its banking business within the meaning of the *Banking Act 1959*, or its State banking business.
2. This draft Ruling provides the Commissioner's view on the meaning of the term 'financial supply consisting of a borrowing' in the context of deposits made to an ADI account.
3. This draft Ruling explains what financial supplies consisting of a borrowing may arise with a deposit made on opening an account, or a deposit that moves an account balance from a debit to a net credit balance.

¹ Where 'ADI' is used in this Ruling, it refers to an Australian ADI, as defined in the dictionary forming part of *A New Tax System (Goods and Services Tax) Regulations 1999*.

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4. This draft Ruling explains the Commissioner's view on the application of the creditable purpose principles² and apportionment principles³ to acquisitions relating to the provision of customer accounts by ADIs.

5. All legislative references in this draft Ruling are to the GST Act or to the A New Tax System (Goods and Services Tax) Regulations 1999 (GST Regulations), unless otherwise stated.

Date of effect

6. This draft Ruling represents the preliminary, though considered view of the Commissioner. When the final Ruling is officially released, it will explain the Commissioner's view of the law as it applies both before and after its date of issue.

7. The final Ruling will be a public ruling for the purposes of section 105-60 of Schedule 1 to 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 the Commissioner's view of when you can rely on GST public and private rulings.

Background

8. An acquisition that relates to making a supply that would be input taxed is prima facie denied creditable purpose under the general rule in subsection 11-15(2). Creditable purpose in respect of such an acquisition is, however, re-instated under subsection 11-15(5) to the extent that the input taxed supply to which the acquisition relates is a 'financial supply consisting of a borrowing', and the borrowing itself relates to making supplies that are not input taxed.

9. Subsection 11-15(5) therefore allows, for example, an entity entering into a loan agreement as the borrower, or issuing debt securities, to treat acquisitions relating to the resulting financial supplies as having been made for a creditable purpose to an extent, according to the purpose for which the entity uses the funds borrowed.

² Goods and Services Tax Ruling GSTR 2008/1 Goods and services tax: when do you acquire anything or import goods solely or partly for a creditable purpose?

³ Goods and Services Tax Ruling GSTR 2006/3 Goods and services tax: determining the extent of creditable purpose for providers of financial supplies.

10. The Commissioner has not previously stated his view on the correct application of subsection 11-15(5) to acquisitions relating to the core banking activity of providing customer accounts. Subsection 11-15(5) presents particular interpretative issues in this context that it does not present in the context of normal commercial borrowing by non-ADIs.

Legislative context

Section 11-15

11. Section 11-15 relevantly provides:

- (1) You acquire a thing for a creditable purpose to the extent that you acquire it in carrying on your enterprise.
- (2) However, you do not acquire the thing for a creditable purpose to the extent that:
 - (a) the acquisition relates to making supplies that would be input taxed; ...
- ...
- (5) An acquisition is not treated, for the purposes of paragraph (2)(a), as relating to making supplies that would be *input taxed to the extent that:
 - (a) the acquisition relates to making a *financial supply consisting of a borrowing; and
 - (b) the borrowing relates to you making supplies that are not input taxed.

Section 40-5

12. Section 40-5 provides as follows:

- (1) A financial supply is input taxed.
- (2) Financial supply has the meaning given by the regulations.

'Borrowing' defined

13. Borrowing is defined in section 195-1 of the GST Act to have the meaning in section 995-1 of the *Income Tax Assessment Act 1997*. Section 995-1 defines borrowing in the following terms:

borrowing means any form of borrowing, whether secured or unsecured, and includes the raising of funds by the issue of a bond, debenture, discounted security or other document evidencing indebtedness.

Financial supply regulations

14. Subdivision 40-A of the GST Regulations is about financial supplies. Subregulation 40-5.09(1) provides:

The provision, acquisition or disposal of an interest mentioned in subregulation (3) or (4) is a financial supply if:

- (a) the provision, acquisition or disposal is:
 - (i) for consideration; and
 - (ii) in the course or furtherance of an enterprise; and
 - (iii) connected with Australia; and
- (b) the supplier is:
 - (i) registered or required to be registered; and
 - (ii) a financial supply provider in relation to supply of the interest.

15. Item 1 in the table under subregulation 40-5.09(3) mentions:

An interest in or under an account made available by an Australian ADI (authorised deposit taking institution) in the course of:

- (a) its banking business within the meaning of the *Banking Act 1959*; or
- (b) its State banking business.

16. Item 2 in the table under subregulation 40-5.09(3) mentions:

A debt, credit arrangement or right to credit, including a letter of credit.

Ruling

17. Subsection 11-15(5) applies to ADIs, according to its terms, just as it applies to any other entity; ADIs are not excluded from the operation of subsection 11-15(5) just because they are ADIs.

18. ADI accounts of the type mentioned at item 1 of the table in subregulation 40-5.09(3) that have a net credit balance (deposit accounts) represent amounts borrowed by the ADI from the account holder. The ADI makes a 'financial supply consisting of a borrowing' in relation to each such account.

19. For the purposes of paragraph 11-15(5)(a), acquisitions that relate partly to the provision of deposit accounts provided by an ADI and partly to other ADI supplies as well need to be apportioned to determine the extent to which they relate to the provision of deposit accounts. The basis of apportionment must be fair and reasonable.

20. For the purposes of paragraph 11-15(5)(b), the extent to which borrowings relate to supplies that are not input taxed needs to be determined on a basis that is fair and reasonable.

21. The borrowing represented by the provision of a deposit account relates not only to the supplies the ADI makes by using the funds borrowed as working capital (for example, to lend the borrowed funds to other customers), but also in many cases to the provision of various services supplied to the account-holder. Some of these services are set out as examples for item 1 in the table of financial supplies in regulation 40-5.09. The supplies concerned are input taxed.

22. Therefore, an apportionment method that is based merely on the use of the funds held on deposit (the borrowed funds) is not fair and reasonable for the purposes of paragraph 11-15(5)(b). Instead, the apportionment method must take into account that the ADI derives revenue in the form of fees, charges and increased interest rate margins by providing various account services, which are themselves examples of financial supplies. Accordingly, an apportionment method that takes into account the amount of such revenue as a proportion of all of the revenue the ADI derives from the borrowed funds would be fair and reasonable.

23. The Commissioner considers that a fair and reasonable reflection of the extent to which borrowings relate to supplies that are not input taxed is the proportion of the ADI's revenue from using the funds other than from making input taxed supplies to its total revenues from the borrowing. For the purposes of this calculation, part of an ADI's total interest 'spread' (that is, the difference between interest paid to depositors and interest derived from on-lending those funds) should properly be treated as relating to the provision of input taxed financial services, in addition to any fees and charges the ADI earns by providing those services. The Commissioner's preferred method of apportionment is represented by the formula at paragraph 64 of this draft Ruling.

24. The extent to which creditable purpose is re-instated under subsection 11-15(5) in respect of an acquisition for which creditable purpose is prima facie denied under paragraph 11-15(2)(a) is the product of the extents determined under paragraphs 19 and 20 of this draft Ruling.

Explanation

Entitlement to input tax credit

25. Subsection 7-1(2) provides that entitlements to input tax credits arise on creditable acquisitions and creditable importations. Input tax credits are intended to offset the GST included in the price an entity pays for an acquisition if it is for use in the entity's enterprise. In allowing a credit to the entity for the GST included in the price it paid, double-taxing the thing acquired is avoided.

26. However, an entity is not entitled to an input tax credit for acquiring a thing if the acquisition relates to making a supply that would be input taxed.⁴ No GST is payable on a supply that is input taxed.

27. Entitlement to an input tax credit arises on creditable acquisitions and creditable importations.⁵ One essential characteristic of a creditable acquisition is that it must be acquired solely or partly for a creditable purpose.⁶

28. Section 11-15 is about creditable purpose. The general rule in section 11-15 is that you acquire a thing for a creditable purpose to the extent you acquire it in carrying on your enterprise.

29. Notwithstanding the general rule, creditable purpose is denied in respect of an acquisition to the extent it relates to making a supply that would be input taxed.⁷ However, subsection 11-15(5) may reverse this denial of creditable purpose in respect of acquisitions that relate to making certain input taxed financial supplies.

30. Subsection 11-15(5) applies to the extent that a particular acquisition relates to making a 'financial supply consisting of a borrowing' and the borrowing relates to the entity making supplies that are not input taxed. To this extent, the acquisition is treated as not relating to making a supply that would be input taxed.

31. Where a transaction between two parties gives rise to a financial supply consisting of a borrowing, the possible operation of subsection 11-15(5) is available only to the borrower and not to the lender. In the Commissioner's view:

...acquisitions that relate to the making of financial supplies consisting of borrowings are only those acquisitions made by the borrowing entity and not those made by the entity that lends the money.⁸

Policy underpinning subsection 11-15(5)

32. Subsection 11-15(5) was inserted into the GST Act by the *Indirect Tax Legislation Amendment Act 2000*. The Regulation Impact Statement (RIS) for Chapter 5 of the Revised Explanatory Memorandum to the Indirect Tax Legislation Amendment Bill 2000 (Revised EM) provides as follows:

The objective is to provide input tax credits for expenses related to borrowing except where the borrowing is undertaken by a financial institution or where the borrowing is undertaken by the corporate treasury of a large business for the purposes of making other input taxed supplies.

⁴ Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998, paragraphs 3.24 and 3.26.

⁵ Subsection 7-1(2).

⁶ Paragraph 11-5(a).

⁷ Paragraph 11-15(2)(a).

⁸ Goods and Services Tax Ruling GSTR 2003/9 Goods and services tax: financial acquisitions threshold (at paragraph 63).

33. The Revised EM and RIS suggest that the objective is (at least in part) to relieve entities undertaking borrowings that are incidental to their mainstream business of making taxable supplies from onerous compliance obligations associated with apportioning their inputs. The Revised EM notes at paragraph 5.20 that:

[i]n addition to the cost imposed by the denial of input tax credits, non-financial institutions have expressed concern about the compliance costs associated with attributing their inputs to their borrowing activities.

34. However, while these statements of policy may suggest that subsection 11-15(5) was intended to apply more selectively, the Commissioner does not consider it follows that financial institutions were intended to be singled out for exclusion from the benefit of the provision. Paragraph 5.32 of the RIS reinforces this view. It notes that:

[one] option would have required the listing of financial institutions. The Government is not attracted to this option as it is against the basic design of the GST, which is to identify the nature of supplies made rather than the entity making them.

35. The Commissioner considers that on a plain reading of subsection 11-15(5), that subsection is applicable to any entity carrying on any enterprise, in respect of acquisitions that satisfy its terms.

Is a deposit to a deposit account a ‘borrowing’ by the ADI?

36. It is settled law that when a bank receives money from a customer, or receives money from some third party for the account of a customer, the bank does so as borrower.⁹ Atkin LJ in *N Joachimson (A Firm) v. Swiss Bank Corporation*¹⁰ in describing the implied rights and duties in a banker-customer relationship observed:

The question seems to turn upon the terms of the contract made between banker and customer in the ordinary course of business when a current account is opened by a bank... The bank has borrowed the money and is under the ordinary obligation of a borrower to repay...

I think that there is only one contract made between the bank and its customer. The terms of that contract involve obligations on both sides... The bank undertakes to receive money and to collect bills for its customer's account. The proceeds so received are not to be held in trust for the customer but the bank borrows the proceeds and undertakes to repay them.

37. The extended definition of borrowing in section 195-1 of the GST Act does not detract from this analysis; indeed if anything it gives the term a wider meaning in the GST context. It follows that balances standing to the credit of deposit accounts represent amounts borrowed by the ADI from the account holder, or borrowings.

⁹ Tyree, Alan, 1998, *Banking Law in Australia (Fifth edition)*, Butterworths, page 39.

¹⁰ [1921] 3 KB 110 at 126.

38. While this is the situation at general law, the operation of subsection 11-15(5) requires the identification of a supply that is a 'financial supply consisting of a borrowing', and the establishment of a relationship between an acquisition and such a supply.

Financial supply consisting of a borrowing

39. The expression 'financial supply consisting of a borrowing' is not defined in either the GST Act or the GST Regulations. It appears in the GST Act only in relation to creditable acquisitions (that is, at subsection 11-15(5)), creditable importations (where subsection 15-10(5) broadly mirrors subsection 11-15(5)), and the financial acquisitions threshold (Division 189).

40. 'Financial supply' has the meaning given by the GST Regulations.¹¹ For a supply to be a financial supply it must be the provision, acquisition or disposal of an interest mentioned in subregulations 40-5.09(3) or 40-5.09(4),¹² or be a supply to which subregulation 40-5.09(4A) applies.

41. The provision of a deposit account is a financial supply because it satisfies the requirements of item 1 in subregulation 40-5.09(3) (as well as item 2 and possibly other items in subregulation 40-5.09(3)).

Consisting of a borrowing

42. The Australian Concise Oxford Dictionary includes the following two meanings of the phrase 'consist of':

- (1) be composed; have specified ingredients or elements;
- (2) have its essential features as specified.

43. An amount deposited to a deposit account represents an amount borrowed by the ADI from the account holder, and it is the account itself that records the amount of the borrowing.

44. The account can be said to be 'composed of' the borrowing, or to have it as a 'specified ingredient or element'. Accordingly the Commissioner considers that the financial supply that is the provision of the deposit account consists of a borrowing.

¹¹ Subsection 40-5(2).

¹² To be financial supplies, the requirements of subregulation 40-5.09(1) must be satisfied.

45. If the expression 'consist of' were intended to have the second sense of the term identified by the Concise Oxford Dictionary, there might be room to argue that some accounts had essential features other than a borrowing. To some extent, the distinction is suggested by the contrast between items 1 and 2 of the table in subregulation 40-5.09(3). Arguably, an account whose 'essential' or predominant purpose was to provide banking services to the customer, rather than to make funds available to the ADI for reinvestment, would not consist of a borrowing because it would not have the essential feature of a borrowing. This might be especially arguable for an account from which the ADI generates substantially more revenue from providing those account services than from reinvesting the funds raised.

46. The Commissioner does not take that approach, however. The concept of a borrowing is not an express element of either item 1 or 2 of the table in subregulation 40-5.09(3), but could be inherent in a financial supply covered by either or both items. Indeed, the provision of many, if not all, deposit accounts would satisfy both items. There would be substantial practical difficulties in trying to distinguish those accounts which are 'essentially' borrowings from those which are 'essentially' service-delivery vehicles. This is particularly so given that circumstances of particular accounts may change from time to time. Nothing in the context or the extrinsic materials suggests that such a difficult distinction was intended here.

Apportionment under paragraph 11-15(5)(a)

47. Paragraph 11-15(5)(a) limits the re-instatement of creditable purpose in respect of an acquisition to the extent that the acquisition relates to making a financial supply consisting of a borrowing.

48. ADIs provide many and varied account products to their customers, reflecting their core banking business of borrowing and lending. While all of these accounts are financial supplies covered by item 1 of the table in subregulation 40-5.09(3), only those accounts that entail a borrowing by the ADI are financial supplies consisting of a borrowing.

49. Accounts such as loan and credit card accounts and line of credit facilities are assets of an ADI (assuming that they are in net debit balance, as they usually would be). To the extent that customers 'deposit' money to these accounts they are repaying amounts borrowed from the ADI rather than lending money to it.

50. On the other hand, accounts commonly referred to as 'deposit accounts' will generally have balances representing amounts owing by the ADI to the account holder. These would include term deposit and savings accounts, as well as transaction and current accounts where these accounts are in credit balance.

51. Acquisitions that are identified as relating solely to deposit accounts that have credit balances do not need to be apportioned under paragraph 11-15(5)(a). Acquisitions that relate to the provision of deposit accounts that have credit balances and to other ADI supplies as well need to be apportioned to determine the extent to which they relate to the provision of deposit accounts that have credit balances.

52. GSTR 2006/3 Goods and services tax: determining the extent of creditable purpose for providers of financial supplies, sets out the Commissioner's views on apportionment for the general purpose of section 11-15. GSTR 2006/3 draws on the principles set out by the High Court in *Ronpibon Tin NL v. FC of T*.¹³ It states in paragraph 33 of that Ruling that following these principles:

the method you choose to allocate or apportion acquisitions between creditable and non-creditable purposes needs to:

- be fair and reasonable;
- reflect the intended use of that acquisition (or in the case of an adjustment, the actual use); and
- be appropriately documented in your individual circumstances.

The Commissioner considers that these principles also apply for the purposes of subsection 11-15(5).

How paragraph 11-15(5)(b) applies

53. Paragraph 11-15(5)(b) requires the extent to which a borrowing relates to making input taxed supplies - as opposed to those that relate to making other supplies, namely those that are taxable or GST-free – to be identified.

54. A borrowing relates to an input taxed supply to the extent that the funds borrowed are applied in the course of making input taxed supplies. For example, they may be on-lent to other customers of the ADI. Similarly, a borrowing relates to a taxable supply to the extent to which the funds borrowed are applied in the course of making taxable supplies. The acquisition by an ADI of commercial premises for leasing is an example of such an application of funds.

55. Up to this point, the analysis for ADIs is the same as that for other entities to which subsection 11-15(5) applies. However, the provision of deposit accounts by ADIs has a further feature that must be recognised in applying subsection 11-15(5). This is that the accounts themselves often are a vehicle for providing certain services to the account-holder, as well as being a source of funds that the ADI can use for investment. The supply of such a service is itself input taxed. See item 1 of the table in subregulation 40-5.09(3) and the examples listed in Part 1 of Schedule 7 to the GST Regulations.

¹³ (1949) 78 CLR 47 at 59.

56. Deposit accounts may be thought of as sources, rather than applications, of borrowed funds. However, this does not prevent the borrowings implicit in a deposit account from relating to the provision of the accounts to a certain extent. Hill J in *HP Mercantile Pty Ltd v. Commissioner of Taxation* observed:

‘Relates to’ are wide words signifying some connection between two subject matters. The connection or association signified by the words may be direct or indirect, substantial or real. It must be relevant and usually a remote connection will not suffice. The sufficiency of the connection or association will be a matter for judgment which will depend, among other things, upon the subject matter of the enquiry, the legislative history and the facts of the case.¹⁴

57. The relationship between the borrowing and these supplies is direct and substantial. The services are only possible because of the borrowing; the borrowing creates the condition under which the services may be supplied, just as it creates the opportunity for the ADI to make other supplies using the borrowed funds at the same time as it provides account services to the depositor.

Apportionment under paragraph 11-15(5)(b)

58. As explained at paragraph 52 in relation to the apportionment step required under paragraph 11-15(5)(a), the apportionment required for paragraph 11-15(5)(b) needs to be determined in a way that is fair and reasonable.

59. Apportionment of the borrowing should be done on the basis of ADI products that are funded from the total pool of amounts standing to the credit of deposit accounts. Funds that an ADI acquires from sources other than its deposit pool should not be considered for this apportionment exercise.

60. Fees generated from supplies of products that are taxable and GST-free and funded from the deposit pool may be represented as a percentage of total fees generated by all products funded by the deposit pool. The Commissioner considers that this percentage reflects in a fair and reasonable way the extent to which borrowings relate to supplies that are not input taxed.

61. In the Commissioner’s view, for the reasons given at paragraphs 55 to 57 of this draft Ruling, an apportionment methodology that only has regard to how the borrowed funds have been applied does not give sufficient recognition to the outputs the ADI makes by virtue of the provision of the deposit accounts themselves.

¹⁴ (2005) 143 FCR 553 at 562; (2005) 2005 ATC 4571 at 4578; (2005) 60 ATR 106 at 114.

62. Through the services associated with the provision of deposit accounts, examples of which are listed in Part 1 of Schedule 7 of the GST Regulations, an ADI may generate substantial revenue in the form of fees and charges. The ADI may also offer a lower interest rate to deposit-holders than it would if it were simply borrowing funds from an investor that had no interest in receiving those services.

63. An apportionment method that properly takes into account fees, charges and margin income generated from the supply of deposit accounts as well as fees, charges and margin income generated from investments funded by the money held on deposit would be fair and reasonable.

64. The Commissioner considers that the following formula would give a fair and reasonable reflection of the extent mentioned in paragraph 11-15(5)(b):

$$CP = \frac{R(CU)}{R(total)}$$

Where:

CP = the extent to which a borrowing is taken under paragraph 11-15(5)(b) to relate to an ADI making supplies that are not input taxed.

R(CU) = the total of revenue (comprising fees, a portion of the ADI's interest rate spread and other revenue) derived from using the borrowed funds other than for making input taxed supplies.

R(total) = the total of all revenue (comprising fees, a portion of the ADI's interest rate spread and other revenue) derived from the moneys held on deposit, including both from all use of the borrowed funds and all supplies made to the deposit-holder as mentioned in item 1 of subregulation 40-5.09(3).

65. This formula represents the preliminary view of the Commissioner on fairly and reasonably relating borrowings to supplies that are not input taxed. The Commissioner particularly invites comments on the practical application of this apportionment method and on the issues of apportionment raised at paragraphs 47 to 52 of this draft Ruling.

Alternative views

A. Each account must be characterised as either a borrowing or a provision of an interest in an account

66. Arguably, any given deposit account can be more aptly described as either the provision of an account as mentioned in item 1 of the table in subregulation 40-5.09(3) or as the provision of an interest in a credit arrangement – that is, a borrowing, as mentioned in item 2 of the table in subregulation 40-5.09(3). On this approach, only those acquisitions that relate to the latter kind of account would satisfy the rule in paragraph 11-15(5)(a).

67. For the reasons given at paragraphs 42 to 46 of this draft Ruling, the Commissioner does not take this view of the operation of paragraph 11-15(5)(a). The Commissioner considers that the GST regulations do not, and were not intended to, create such a clear dichotomy.

B. Each account can be a mixture of a borrowing and the provision of an interest in an account, requiring apportionment under paragraph 11-15(5)(a)

68. A different, but related, argument would be that most, if not all, deposit accounts can be described as being at once both a borrowing and the provision of interest in an account as described in item 1 of the table in subregulation 40-05.09(3). If this were correct, apportionment to reflect these two elements might be required under paragraph 11-15(5)(a).

69. On balance, given the case law and the broad definition of borrowing in the GST Act, the Commissioner takes the view that equating the term borrowing with the supplies covered by item 2 of the table in subregulation 40-05.09(3) in alleged contradistinction to those covered by item 1 would be likely to be favoured by the Courts. Having accepted that the account 'consists of' a borrowing for the reasons given at paragraphs 42 to 46 of this draft Ruling, it would be difficult to maintain that the acquisitions that relate to the provision of the account relate to a financial supply other than one consisting of the borrowing.

70. If this approach were correct, it might in any case give a similar bottom-line outcome to the approach favoured in this draft Ruling. The relevant apportionment would occur under paragraph 11-15(5)(a) rather than paragraph 11-15(5)(b).

C. Borrowing has no relationship with provision of accounts

71. Arguably, paragraph 11-15(5)(b) is concerned only with the relationship between the funds borrowed and the use to which the funds are applied. Account services provided to the borrower may be seen as incidental to the borrowing, or as not detracting from its essential character as a raising of capital by the ADI. The borrowing cannot 'relate to' the provision of the deposit account because the borrowing *is* the provision of the account.

72. Hence, on this view, no account should be taken of any revenue earned by the ADI from the provision of account services in carrying out the apportionment required by paragraph 11-15(5)(b).

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73. For the reasons given in the Explanation section at paragraphs 55 to 64 of this draft Ruling, the Commissioner does not accept this argument. The Commissioner considers that the borrowing itself is both distinct from those account services and is relevantly related to them. The Commissioner also considers that this result better reflects the policy of the GST Act, as input tax credits on acquisitions should not be allowed to the ADI to the extent the acquisitions are referable to earning revenue on input taxed outputs consisting of account services. To allow such credits to any extent would be effectively to treat those outputs as GST-free, rather than input taxed, to that extent. Nothing suggests that this was part of the intention of enacting subsection 11-15(5).

Your comments

74. You are invited to comment on this draft Ruling. Please forward your comments to the contact officer by the due date.

75. A compendium of comments is also prepared for the consideration of the relevant Rulings Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments; and
- publish on the Tax Office website at www.ato.gov.au

Please advise if you do not want your comments included in the edited version of the compendium

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Detailed contents list

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Related Rulings/Determinations:

GSTR 1999/1; GSTR 2003/9;
GSTR 2006/3; GSTR 2008/1

Subject references:

- acquisition
- apportionment
- borrowing and loans
- creditable acquisition
- goods and services tax
- GST debt, loan and credit
- GST financial acquisitions threshold
- GST financial supplies
- GST supplies and acquisitions
- input taxed supplies

Legislative references:

- ANTS(GST)A 1999 7-1(2)
- ANTS(GST)A 1999 11-5(a)
- ANTS(GST)A 1999 11-15
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- ANTS(GST)A 1999 11-15(2)(a)
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- ANTS(GST)A 1999 11-15(5)(a)
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- ANTS(GST)A 1999 15-10(5)
- ANTS(GST)A 1999 40-5
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- ANTS(GST)R 1999 Subdiv 40-A
- ANTS(GST)R 1999 40-5.09
- ANTS(GST)R 1999 40-5.09(1)
- ANTS(GST)R 1999 40-5.09(3)
- ANTS(GST)R 1999 40-5.09(4)

- ANTS(GST)R 1999 40-5.09(4A)
- ANTS(GST)R 1999 Sch 7
- ANTS(GST)R 1999 Sch 7 Pt 1
- ITAA 1997 995-1
- Banking Act 1959
- Indirect Tax Legislation Amendment Act 2000
- TAA 1953 Sch 1 105-60

Case references:

- HP Mercantile Pty Ltd v. Commissioner of Taxation (2005) 143 FCR 553; (2005) 219 ALR 591; (2005) 2005 ATC 4571; (2005) 60 ATR 106
- N Joachimson (A Firm) v. Swiss Bank Corporation [1921] 3 KB 110
- Ronpibon Tin NL v. FC of T (1949) 78 CLR 47

Other references:

- Australian Concise Oxford Dictionary (Fourth Edition), 2004, Oxford University Press, Melbourne
- Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998
- Regulation Impact Statement for the Revised Explanatory Memorandum to the Indirect Tax Legislation Amendment Bill 2000
- Revised Explanatory Memorandum to the Indirect Tax Legislation Amendment Bill 2000
- Tyree, Alan, 1998, Banking Law in Australia (Fifth edition), Butterworths

ATO references

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