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

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Goods and Services Tax Determination

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

Relying on this Determination

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Determination applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Determination. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Determination.

Further, if we think that this Determination disadvantages you, we may apply the law in a way that is more favourable to you.

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What this Determination is about

1. This Determination sets out guidance as to the extent to which the supply of a transaction account is GST-free where the account can be used outside of Australia.[1]

2. For the purpose of this Determination, 'transaction account' refers to a supply of an interest in or under an account covered by table item 1 of subsection 40-5.09(3) of the *A New Tax System (Goods and Services Tax) Regulations 2019* (GST Regulations). This includes accounts such as everyday, savings, cheque, deposit, or transaction accounts, including accounts that also have overdraft facilities or that have become overdrawn, online savings and term deposit accounts, and accounts used as a loan or mortgage offset account. It does not include:

- accounts that are primarily also a supply of a credit arrangement or right to credit by the account provider, which are covered by table item 2 of

[1] In this Determination, the 'indirect tax zone' is referred to as 'Australia'.

subsection 40 5.09(3) of the GST Regulations, such as a credit card account or loan account

- purchased payment facilities including prepaid cards or facilities that use the scheme debit or EFTPOS payment system, including prepaid gift cards, prepaid travel cards or similar cards loaded with foreign currency, or
- accounts denominated in foreign currencies.

Ruling

3. The supply of a transaction account is GST-free under table item 3 of subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*[2] to the extent that the account holder's[3] effective use or enjoyment of the transaction account takes place outside of Australia.

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

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

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

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

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

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

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

[2] All legislative references in this Determination are to the *A New Tax System (Goods and Services Tax) Act 1999* unless otherwise indicated.
[3] 'Account holder' includes a person authorised by the account holder to use the account.
[4] See paragraphs 37 and 38 of this Determination for further discussion on account holder present transactions.

9. Neither table items 3 nor 4(a) of subsection 38-190(1) apply to the extent that the account holder uses the transaction account to undertake transactions where the account holder does not need to be physically present at the location of the merchant or other counterparty in relation to the underlying transaction. As such, these transactions do not contribute to the extent to which the supply of a transaction account is GST-free. In this Determination, we refer to these transactions as 'account holder not present transactions'.[5]

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

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

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

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

13. Where the supply of a transaction account is partially GST-free, the account provider will need to consider the apportioning of its acquisitions between creditable and non-creditable purposes. In doing so, the account provider should consider Goods and Service Tax Ruling GSTR 2020/1 *Goods and services tax: determining the creditable purpose of acquisitions in relation to transaction accounts* and may wish to consider the practical compliance guidance contained in Schedule 2 of Practical Compliance Guideline PCG 2019/8 *ATO compliance approach to GST apportionment of acquisitions that relate to certain financial supplies.*

Date of effect

14. This Determination applies from 1 October 2020. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 75 to 76 of Taxation Ruling TR 2006/10 *Public Rulings*).

Commissioner of Taxation
25 September 2020

[5] See paragraphs 45 to 47 of this Determination for further discussion on account holder not present transactions.

Appendix – Explanation

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

Legislation

15. The supply of a transaction account is an input taxed financial supply of the provision of an interest in or under an account under in table item 1 of subsection 40-5.09(3) of the GST Regulations, except to the extent it is GST-free (if any).

16. Subsection 9-30(3) states that to the extent a supply is both GST-free and input taxed, it is GST-free.[6]

GST-free supplies

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

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

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

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

Supplies used or enjoyed outside Australia

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

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

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

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

[6] Unless the provision under which it is input taxed requires the supplier to have chosen for its supplies of that kind to be input taxed.

23. Determining whether an individual's presence at a particular location is integral, as distinct from being merely coincidental, to the provision of the supply requires an examination of the facts and circumstances. The factors relevant for determining whether an individual's presence is integral to a supply are discussed in GSTR 2007/2.[7]

Supplies in relation to rights that are for use outside Australia

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

25. As discussed in paragraphs 27 to 31 of this Determination, at the centre of the supply of a transaction account is the debt owed by the account provider to the account holder. The debt gives the account holder the right to repayment, in accordance with the contractual agreement. Therefore, the supply of a transaction account is a supply in relation to rights for the purposes of table item 4(a).

26. The general application of table item 4(a) is considered in Goods and Services Tax Ruling GSTR 2003/8 *Goods and services tax: supply of rights for use outside Australia – subsection 38-190(1), item 4, paragraph (a) and subsection 38-190(2)*. This Determination sets out the Commissioner's views regarding how table item 4(a) applies to the supply of a transaction account.

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

27. The relationship between the account provider and account holder in respect of a transaction account is a debtor-creditor relationship, where the account holder loans funds to the account provider by making deposits.[8] Fundamental to any debtor-creditor relationship is the debtor's right to repayment. As the Court stated in *Andrews v Australian and New Zealand Banking Group Limited*[9]:

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

28. On opening a transaction account (generally through the initial deposit, which creates the debtor-creditor relationship) the parties will contractually agree to a range of terms and conditions, including the ways in which the account holder can access their account (that is, the access methods) and other features. There is one contract between the account provider and account holder, rather than each deposit being a new contract.[10] The balance of the funds in the bank account standing to the account holder's credit is a debt that is a single chose in action, arising out of the single continuing contract between the account provider and account holder.[11]

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[7] See paragraphs 95 and 107 of GSTR 2007/2.
[8] *Joachimson v Swiss Bank Corporation* [1921] 3 KB 110 at [126-127].
[9] [2011] FCA 1376 (*Andrews*) at [82].
[10] *Hart (Inspector of Taxes) v Sangster* [1957] 1 Ch 329 at [337].
[11] *Joachimson v Swiss Bank Corporation* [1921] 3 KB 110 at [127], *Hart (Inspector of Taxes) v Sangster* [1957] 1 Ch 329 at [337], *Alcom Ltd v Republic of Colombia* [1984] AC 580 at [602].

29. Having regard to the essential character of the ongoing debtor-creditor relationship between the account provider and the account holder under their continuing contract, there is a single ongoing financial supply made to the account holder. While the account holder uses the account on an ongoing basis to undertake transactions, each transaction does not give rise to a separate supply.[12]

30. The access methods and other features provided by an account provider are not a separate supply in themselves but are an integral part of the modern transaction account and form part of the single supply made to the account holder. That is, you would reasonably conclude that the access methods and other features are a means of better enjoying the transaction account.[13]

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

Where is the account located?

32. A transaction account is located where the account provider such as the authorised deposit-taking institution is located.[14] Similarly, as a general rule debts are deemed to be situated where the debtor resides.[15] Therefore, when the account holder demands payment[16] from an account held with an account provider at a branch in Australia, the debt is situated in Australia and the repayment is made in Australia.[17]

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

Accessing the account

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

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

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[12] In *Commissioner of Taxation v MBI Properties Pty Ltd* [2014] HCA 49 (*MBI Properties*) at [35], the High Court noted that a transaction that involves a supplier entering into and performing an executory contract will in general involve the supplier making at least two supplies. However, *MBI Properties* focused on what is sufficient to constitute a supply, rather than whether a course of action that might involve more than one thing satisfying the definition of supply should be characterised as one or more supplies. In focusing on the entire contractual arrangement considered contextually and as a whole, a single financial supply is made to the account holder. In any event, the supply of the contractual performance of the issuer's obligations (referred to in *MBI Properties* at [35]) would be a single ongoing supply.

[13] Paragraph 59 of GSTR 2001/8.

[14] *European Bank Ltd v Citibank Ltd* [2004] NSWCA 76 at [49], *Rataplan Pty Ltd v Commissioner of Taxation* [2004] FCA 920 at [64].

[15] *Haque v Haque [No 2]* [1965] HCA 38; 114 CLR 98 at p. 137.

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

[17] *European Bank Ltd v Citibank Ltd* [2004] NSWCA 76 at [56].

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

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

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

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

Account holder present transactions

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

38. Account holder present transactions include:

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

Table item 3

39. As the account holder must be physically present at a specific location (outside of Australia) in order to initiate an account holder present transaction, the account holder's location is integral to their use of the transaction account.[18] The presence of the account holder outside Australia is integral to the performance, receipt or delivery of the supply as the account holder requires immediate access to the account at that time and place in order to physically withdraw cash or enable payment at the merchant's physical location. In such cases, the effective use or enjoyment of the transaction account will be where the account holder is located when they undertake the transaction that results in a repayment from the transaction account.

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

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

Example 3 – account holder present transactions

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

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

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

44. *Big Bank identifies this transaction as an account holder present transaction while the account holder is outside of Australia, and therefore it includes this transaction in its count of transactions that reflect the extent to which the supply of its transaction accounts is GST-free.*

Account holder not present transactions

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

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

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

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

Table item 3

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

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

Table item 4(a)

50. When the account holder exercises their repayment rights they will make a demand for repayment on the account provider through one of the access methods offered by the account provider.[19] Upon receiving a repayment demand, the account provider will discharge their existing obligation through following the directions in the repayment demand.

51. It is settled law that the repayment right will be exercised where the account is located.[20] Similarly in *European Bank v Citibank*[21], the Court noted that regardless of the mechanism through which the parties contemplated repayment would be made, the debt was situated where the account is located, and that is where repayment would occur.

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

Example 4 – account holder not present transactions

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

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

Example 5 – BPAY transactions

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

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[19] The nature of the transaction account is discussed in paragraphs 27 to 31 of this Determination.
[20] *Andrews* at [82], *inter alia*.
[21] *European Bank Ltd v Citibank Ltd* [2004] NSWCA 76 at [56].

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

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

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

59. *Big Bank does not include Michelle's home loan repayment or the electricity bill payment (as they are account holder not present transactions) in its count of transactions that reflect the extent the supply of its transaction accounts are GST-free.*

References

Previous draft:

Previously released in draft form as GSTD 2020/D1

Related Rulings/Determinations:

GSTR 2001/8; GSTR 2003/8; GSTR 2007/2; GSTR 2020/1; TR 2006/10

Legislative references:

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

Cases relied on:

- Alcom Ltd v Republic of Colombia [1984] AC 580; [1984] 2 WLR 750; [1984] 2 All ER 6
- Commissioner of Taxation v MBI Properties Pty Ltd [2014] HCA 49; 254 CLR 376; 2014 ATC 20-474; (2014) 92 ATR 241
- Andrews v Australian and New Zealand Banking Group Limited [2011] FCA 1376; 288 ALR 611; 211 FCR 53; 86 ACSR 292
- European Bank Ltd v Citibank Ltd [2004] NSWCA 76; (2004) 60 NSWLR 153; (2004) 1 BFRA 178
- Rataplan Pty Ltd v Commissioner of Taxation [2004] FCA 920; 2004 ATC 4800; 56 ATR 407
- Haque v Haque [No 2] [1965] HCA 38; (1965) 114 CLR 98; [1966] ALR 553; 39 ALJR 144
- Joachimson v Swiss Bank Corporation [1921] 3 KB 110
- Hart (Inspector of Taxes) v Sangster [1957] 1 Ch 329

Other references:

- PCG 2019/8

ATO references

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