

GSTR 2002/2A7 - Addendum - Goods and services tax: GST treatment of financial supplies and related supplies and acquisitions

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Addendum

Goods and Services Tax Ruling

Goods and services tax: GST treatment of financial supplies and related supplies and acquisitions

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. The Addendum amends Goods and Services Tax Ruling GSTR 2002/2:

- to reflect amendments made to the *A New Tax System (Goods and Services Tax) Act 1999* by *Tax Laws Amendment (2011 Measures No. 9) Act 2012* and amendments made to the *A New Tax System (Goods and Services Tax) Regulations 1999* by the *A New Tax System (Goods and Services Tax) Amendment Regulation 2012 (No. 1)*;
- with respect to the amendment to the definition of the term 'consideration' made by *Tax and Superannuation Laws Amendment (2012 Measures No. 1) Act 2012*;
- with respect to the application of Division 81 which was amended by *Tax Laws Amendment (2011 Measures No. 2) Act 2011*;
- to reflect the decision of the Full Federal Court in *Federal Commissioner of Taxation v. American Express Wholesale Currency Services Pty Ltd* (2010) 187 FCR 398; [2010] FCAFC 122; and
- to reflect amendments made by the *Tax Laws Amendment (2010 GST Administration Measures No.2) Act 2010* in relation to Subdivision 29-C.

The Addendum also makes further minor amendments to GSTR 2002/2 and updates the references section and Schedules 1 and 2.

GSTR 2002/2

GSTR 2002/2 is amended as follows:

1. Paragraph 5

(a) Omit the first three dot points, substitute:

- GSTR 2000/24 *Goods and services tax: Division 129 – making adjustments for changes in extent of creditable purpose;*
- GSTR 2000/29 *Goods and services tax: attributing GST payable, input tax credits and adjustments and particular attribution rules made under section 29-25;*

(b) Omit the last two dot points, substitute:

- GSTR 2006/3 *Goods and services tax: determining the extent of creditable purpose for providers of financial supplies;*
- GSTR 2006/4 *Goods and services tax: determining the extent of creditable purpose for claiming input tax credits and for making adjustments for changes in extent of creditable purpose;*
- GSTR 2012/12 *Goods and services tax: financial assistance payments;* and
- GSTR 2013/1 *Goods and services tax: tax invoices.*

2. Paragraph 6

Omit the paragraph and notes; substitute:

6. This ruling applies both before and after its date of issue. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 20006/10).

6A. Changes made to this Ruling by Addenda that issued on 25 February 2004, 15 August 2007, 5 March 2008, 17 June 2009, 16 May 2012 and 11 December 2013 have been incorporated into this version of the Ruling.^{1A}

3. Paragraph 10

Omit the paragraph; substitute:

10. An acquisition or an importation is not treated as relating to supplies that would be input taxed to the extent that the supply you make is through an enterprise or a part of an enterprise that you carry on outside Australia.²

^{1A} Refer to each Addendum to see how that Addendum amends this Ruling.

² Subsections 11-15(3) and 15-10(3).

10A. An acquisition is not treated as relating to making supplies that would be input taxed to the extent that:

- the acquisition relates to making a financial supply consisting of a borrowing (except, in the case of an acquisition made on or after 1 July 2012, a borrowing through a deposit account you make available); and
- the borrowing relates to you making supplies that are not input taxed.³

10B. An importation is not treated as related to making supplies that would be input taxed to the extent that:

- the importation relates to making a financial supply consisting of a borrowing; and
- the borrowing relates to you making supplies that are not input taxed.⁴

4. Paragraph 11

Insert 'making' after 'relating to' in the first sentence.

5. Paragraph 13

Omit '75% of any GST paid.'; substitute 'an amount equal to either 75% or 55% of the GST payable on the supply of the acquisition.'^{6A}.

6. Paragraph 14

Omit paragraph; substitute:

14. Under section 189-5 and 189-10, an entity exceeds the financial acquisitions threshold at a time in a particular month if, assuming that all the financial acquisitions⁷ it has made, or is likely to make, during the 12 months ending at the end of that month, or during that month and the next 11 months, were made solely for a creditable purpose, either or both of the following would apply:

³ Subsection 11-15(5).

⁴ Subsection 15-10(5).

^{6A} Subsection 70-15(1) and regulation 70-5.03.

⁷ Section 189-15 defines 'financial acquisition' as 'an acquisition that relates to the making of a financial supply (other than a financial supply consisting of a borrowing)'.

- the amount of all the input tax credits to which the entity would be entitled for its financial acquisitions would exceed \$150,000⁸ or such other amount specified in the GST regulations; and
- the amount of the input tax credits to which the entity would be entitled for its financial acquisitions would be more than 10% of the total amount of the input tax credits to which the entity would be entitled for all its acquisitions and importations (including the financial acquisitions) during either of the periods referred to in this paragraph.⁹

7. Paragraph 34

Omit 'section 9-15, in connection with the supply or acquisition'.; substitute 'sections 9-15 and 9-17, in connection with the supply or acquisition'.^{29A}.

8. Paragraph 80

After the paragraph; insert;

80A. The Full Federal Court considered the meaning of the term 'interest' in regulation 40-5.02 in *Federal Commissioner of Taxation v. American Express Wholesale Currency Services Pty Ltd (American Express)*^{38B} in the context of whether the right to present a credit card or charge card was an interest. After considering a number of cases including the High Court decision of *Yanner v. Eaton*,^{38C} the majority of the Court^{38D} observed at [145] to [146]:

145. Although the subject matter in *Yanner* is very different indeed from that in these appeals, the discussion about the concept of 'property' is helpful in the present context. First, *Yanner* shows that the

⁸ Division 189 was amended to increase the first limb of the financial acquisitions threshold from \$50,000 to \$150,000. The amendment, effected by the *Tax Laws Amendment (2011 Measures No. 9) Act 2012*, applies for working out whether you exceed the financial acquisitions threshold at a time during July 2012 or a later month. The first limb of the financial acquisitions threshold remains at \$50,000 when working out whether you exceed the financial acquisitions threshold at a time during a month before July 2012.

⁹ See Goods and Services Tax Ruling GSTR 2003/9 *Goods and Services Tax: financial acquisitions threshold*. For members of a GST group, the financial acquisitions threshold is calculated in accordance with subsections 189-5(2) and 189-10(2).

^{29A} As amended by *Tax and Superannuation Laws Amendment (2012 Measures No. 1) Act 2012*.

^{38B} (2010) 187 FCR 398; [2010] FCAFC 122.

^{38C} (1999) 201 CLR 351.

^{38D} *Kenny and Middleton JJ*.

meaning of the word 'property' can be fixed by relevant context, and the rather narrow meanings given in the authorities cited by the respondents will not apply in all contexts. Secondly, the word 'property' can be applied to different kinds of relationships between a personal and a subject matter, and can be understood as referring to the degree of power that is recognised in law as power permissibly exercised over the thing.

146. Considering the text of the GST Act (especially ss 9-10 and 11-10) and the Regulations, it is apparent that the term 'interest' is referable to a very broad conception of property. The words 'anything' and 'in any form' in regulation in 40-5.02 highlight this extensive scope. Further, as the Commissioner submitted, the examples of financial supplies in the table in regulation 40-5.09(3) include a range of items that would not fit the narrower definition of property urged by the respondents. The same can be said of the 'examples of interest' attached to regulation 40-5.02. These examples are illustrative of the proposition in the joint judgment in *Yanner* mentioned above.

80B. The majority of the Court concluded at [148] that cardholders agreeing to the terms in respect to a credit card or charge card gain a bundle of rights, the most important of which is the right to present the card as payment and incur a corresponding obligation to pay the card provider at a later date. These rights constitute an 'interest' under the broad definition within the GST regulations.^{38E}

9. Paragraph 84

(a) Omit the seventh and eighth dot points; substitute:

- A guarantee. (Subregulation 40-5.09(3), item 7);
- An indemnity. (Subregulation 40-5.09(3), item 7A);
- Credit under a hire purchase agreement entered into before 1 July 2012.^{43A} (Subregulation 40-5.09(3), item 8);

10. Paragraph 90

In the first sentence, after 'agreement'; insert 'before 1 July 2012'.

^{38E} The High Court has also considered the meaning of the term 'property' in *White v. Director of Public Prosecutions for the State of Western Australia* [2011] HCA 20; (2011) 243 CLR 478 at [10] to [12].

^{43A} A supply of credit under a hire purchase agreement entered into on or after 1 July is not an input taxed supply – see item 20 in the table in regulation 40-5.12.

11. Paragraph 185

Omit the last two dot points, substitute:

- Currency with a market value that exceeds its stated value as legal tender. (Regulation 40-5.12, item 17);
- Bailment and floorplan arrangements. (Regulation 40-5.12, item 18);
- Goods supplied under a hire purchase agreement entered into on or after 1 July 2012. (Regulation 40-5.12, item 19);
- Credit under a hire purchase agreement entered into on or after 1 July 2012. (Regulation 40-5.12, item 20); and
- A warranty for goods. (Regulation 40-5.12, item 21).

12. Footnote 80

Omit the footnote; substitute:

- ⁸⁰ Payments of certain taxes, fees and charges are excluded from being the provision of consideration under Division 81 and by reference to the GST regulations.

13. Paragraph 201

Omit '75%'; substitute 'either 75% or 55%'.

14. Footnote 85

At the end of the footnote; insert 'The 75% rate applies to a reduced credit acquisition other than to the extent the reduced credit acquisition is covered by item 32. To the extent the reduced credit acquisition is covered by item 32, the percentage is 55%'.

15. Paragraph 280

Omit the paragraph.

16. Paragraph 281

Omit the first sentence; substitute 'Goods and Services Tax Ruling GSTR 2013/1 *Goods and services tax: tax invoices* discusses the information requirements for tax invoices.'

17. Related rulings/Determinations

Omit 'GSTR 1999/1; GSTR 2000/11; GSTR 2000/17'; substitute 'TR 2006/10; GSTR 2006/1; GSTR 2012/12; GSTR 2013/1'

18. Legislative references

Omit:

- ANTS(GST)R99 Subdiv 29-C
- ANTS(GST)R99 29-70.01(2)(f)
- ANTS(GST)R99 29-70.01(2)(g)

Insert

- ANTS(GST)A99 9-17
- Tax and Superannuation Laws Amendment (2012 Measures No. 1) Act 2012
- Tax Laws Amendment (2011 Measures No. 9) Act 2012

19. Case references

Insert:

- Federal Commissioner of Taxation v. American Express Wholesale Currency Services Pty Ltd (2010) 187 FCR 398; [2010] FCAFC 122
- White v. Director of Public Prosecutions for the State of Western Australia [2011] HCA 20; (2011) 243 CLR 478
- Yanner v. Eaton (1999) 201 CLR 351

20. Schedule 1, Brokerage

Omit 'broker (an intermediary between buyers and sellers)'; substitute 'broker for the services of acting as an intermediary between buyers and sellers'.

21. Schedule 1, Credit Arrangement

After the paragraph insert:

In the context of considering whether the supply of a credit card or charge card was a supply of an interest in a credit arrangement or right to credit, the majority of the Full Federal Court stated in *American Express*^{107A} at [154]:

^{107A} *Federal Commissioner of Taxation v. American Express Wholesale Currency Services Pty Ltd* (2010) 187 FCR 398; [2010] FCAFC 122.

GSTR 2002/2

...There is a common understanding of the word 'credit', which is broader than this definition and encompasses the examples provided in Part 2 of Schedule 7. As Stone J observing [*sic*] in considering the Bankruptcy Act 1966 (Cth), in which 'credit' is undefined, '[b]roadly speaking, the term ['credit'] means the provision of funds either directly to the person obtaining the credit or to a third party provider of goods and services to that person subject to the obligation of the person obtaining credit to pay at a later time': see *Fitz-gibbon v. Inspector General in Bankruptcy* (2000) 180 ALR 475 at 479 [15]. This is the interest supplied by Amex Intl to charge card customers.

22. Schedule 1, Guarantee

Omit 'deed under seal.'; substitute 'deed under seal.^{107B}'

23. Schedule 1, Indemnity

Omit 'of another.'; substitute 'of another.^{107C}'

24. Schedule 2, line C21

In the second column, after 'agreement', insert 'entered into before 1 July 2012'.

25. Schedule 2, line C23

In the second column, after 'agreement', insert 'entered into before 1 July 2012'.

26. Schedule 2, line C25

After line C25, insert:

C25A	The fees and charges for the supply of goods and finance under a hire purchase ^ϕ agreement entered into on or after 1 July 2012	Section 9-5 40-5.12 Items 19 and 20	Taxable	Sch 8, Part 7, item 1
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27. Schedule 2, line C26

(a) In the second column after 'fees'; insert: 'under a hire purchase agreement entered into before 1 July 2012'

^{107B} See Goods and Services Tax Ruling GSTR 2006/1 *Goods and services tax: guarantees and indemnities*.

^{107C} See GSTR 2006/1.

(b) After line C26, insert:

C26A	Assignment [Ⓟ] /reassessment of asset fees under a hire purchase agreement entered into on or after 1 July 2012	Section 9-5 40-5.12 Items 19 and 20	Taxable	Sch 8, Part 7, item 1
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28. Schedule 2, line E1

Omit the line, substitute:

E1	An indemnity [Ⓟ] that is not a contract of insurance	40-5.09(3) Item 7A	Input taxed	Prior to 1 July 2012, an indemnity was covered by 40-5.09(3) Item 7
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29. Schedule 2, line E3

Omit the line, substitute:

E3	A performance bond that is not a contract of insurance	40-5.09(3) Item 7 40-5.09(3) Item 7A	Input taxed	A guarantee is covered by Item 7. An indemnity is covered by item 7A. Prior to 1 July 2012, an indemnity was covered by Item 7.
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30. Schedule 2, line E4

Omit the line, substitute:

E4	Bank guarantees [Ⓟ] and bonds [Ⓟ]	40-5.09(3) Item 7 40-5.09(3) Item 7A	Input taxed	A guarantee is covered by Item 7. An indemnity is covered by item 7A. Prior to 1 July 2012, an indemnity was covered by Item 7.
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31. Schedule 2, line E6

Omit the line, substitute:

E6	Warranty for goods	40-5.12 Item 21 Section 9-5	Taxable	Prior to 1 July 2012, a warranty for goods was excluded from being a financial supply ^d by item 7 of subreg 40-5.09(3).
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This Addendum applies both before and after its date of issue, subject to the commencement and application provisions of each amending Act or Regulation to which it refers.

Commissioner of Taxation

11 December 2013

ATO references

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