

GSTR 2004/4A - Addendum - Goods and services tax: assignment of payment streams including under a securitisation arrangement

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Addendum

Goods and Services Tax Ruling

Goods and services tax: assignment of payment streams including under a securitisation arrangement

This Addendum amends Goods and Services Tax Ruling GSTR 2004/4 as it relates to the treatment of arrangements for the servicing of receivables contracts assigned to a special purpose vehicle (SPV) under a typical securitisation arrangement.

This Addendum explains the Commissioner's view of the law as it applies both before and after its date of issue. You can rely upon this Addendum on and from its date of issue for the purposes of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953*.

GSTR 2004/4 is amended as follows:

1. Ruling title

Before 'securitisation arrangement' insert 'typical'.

2. Paragraph 3

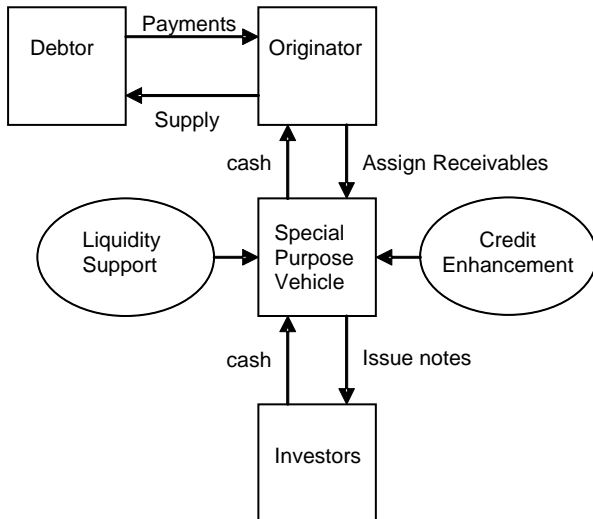
Before 'securitisation arrangements' insert 'typical'.

3. Paragraph 5

Before 'securitisation arrangement' insert 'typical'.

4. Paragraph 17

Omit the diagram; substitute:



5. Paragraph 18

Omit the paragraph; substitute:

18. The main feature of a typical securitisation arrangement is the establishment of a special purpose vehicle (SPV) under either trust or corporations law. The purpose of the SPV is to acquire receivables and any associated collateral rights from an originating institution. The SPV pays for the receivables by issuing debt securities (or notes) backed by the receivables. A more detailed explanation and discussion of a typical securitisation arrangement is provided at paragraphs 92 to 125 of this Ruling.

6. Paragraph 35

(a) Omit the first sentence; substitute:

When there is a transfer of legal ownership by the owner of the freehold, the new owner will continue to make a supply after the sale.

(b) At the end of the paragraph insert footnote 22A with the following text:

See paragraph 79 of GSTR 2006/9 Goods and services tax: supplies.

7. Footnote 26

Before the fullstop insert:

and also GSTR 2003/9 Goods and services tax: financial acquisitions threshold

8. Footnote 27

Omit the text; substitute:

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

9. Paragraph 50

Omit the first sentence; substitute:

Because the assignor is still obligated to perform some functions as the supplier it will make acquisitions that relate to performing those obligations.

10. Paragraph 92

Omit the third sentence; substitute:

They include the sale of receivables to an SPV and the issue of debt securities (or notes) by that entity to fund the acquisition of the receivables.

11. Paragraph 93

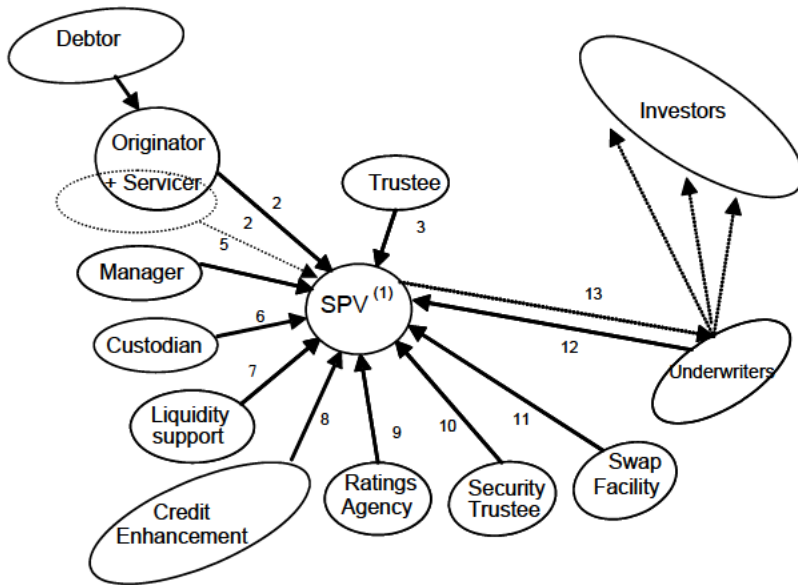
Omit the paragraph; substitute:

93. The receivables sold to the SPV will usually arise from loans, leases, rentals, trade or credit card debts and any associated collateral rights. In some cases however what is sold will be the underlying property that is the subject of the receivables agreement, for example, real property, motor vehicles or office equipment.

12. Paragraph 96

- (a) Before 'securitisation arrangements' insert 'typical'.
- (b) Omit the diagram; substitute:

GSTR 2004/4



13. Paragraph 98

Before 'securitisation arrangements' insert 'typical'.

14. Paragraph 102

Omit the paragraph (including the heading); substitute:

Step 2: Assignment of receivables to the SPV

102. The securitisation process commences with the identification of suitable receivables such as mortgages, finance lease or hire purchase contracts (collectively referred to as receivables agreements). The originator may take the receivables from its own portfolio or purchase them from a third party.

15. Paragraph 103

Omit the paragraph; substitute:

103. Once sufficient receivables have been identified, an offer is made to sell and assign the beneficial interest in the receivables to the SPV, for that series, by issue of a sale notice according to the terms of an associated purchase agreement or other relevant transaction document. Upon acceptance of the offer there is an equitable assignment of an interest in the rights to the receivables to the SPV.

16. Paragraph 107

Omit the paragraph (excluding the footnote); substitute:

107. Under the securitisation documents, servicer services are described as including activities an originator undertakes in relation to receivables it has originated after the initial settlement of the agreement. Such activities may include things done post-settlement of the receivables up to and including discharge, for example provision of payment processing and statement preparation, maintaining security interests, and collection of arrears. The supply of these activities is a taxable supply of services if the requirements of section 9-5 are satisfied.

17. Paragraph 108

Omit the second sentence; substitute:

However, an entitlement to a reduced input tax credit under regulation 70-5.02 will arise for the SPV in respect of this acquisition. The entitlement may arise, for example, under items 14, 15 and/or 17 of subregulation 70-5.02(2).⁵²

18. Paragraph 109

At the end of the paragraph insert footnote 52A with the following text:

Note paragraphs 48 to 50 of this Ruling, which are about an assignor's entitlement to input tax credits.

19. Paragraph 110

Omit the last sentence (excluding the footnote); substitute:

The manager has full and complete powers of management over the day to day operations of the SPV.

20. Paragraph 112

Omit the last sentence (excluding the footnote); substitute:

The procedures usually require the custodian to keep the documents relating to securitised receivables separate from other similar documents and to report on movements of the documents.

⁵² See paragraphs 371 to 416 and 424 to 442 of GSTR 2004/1 for a more detailed explanation of what acquisitions are covered by these items.

21. Paragraph 115

From the first sentence omit 'a pool of loans'; substitute 'the securitised receivables'.

22. Paragraph 116

From the first sentence omit '/servicer'.

23. Paragraph 117

From the first sentence, omit '**chargees**'; substitute 'chargees'.

24. Paragraph 119

Omit the first sentence (excluding the footnote); substitute:

Interest rate swap agreements are primarily entered into so that notes issued at a fixed rate or variable interest rate can be matched with income at an equivalent rate from the securitised receivables no matter what rate of interest is being paid on them.

25. Paragraph 126

Before 'securitisation arrangement' insert 'typical'.

26. Paragraph 149

Omit the paragraph; substitute:

149. The party that enters into receivables agreements with debtors as the creditor. When the originator sells/assigns an interest in the receivables to the SPV it is referred to as the 'assignor'.

27. Paragraph 150

In the first sentence omit 'underlying assets in the pool'; substitute 'securitised receivables'.

28. Paragraph 157

Omit the paragraph; substitute:

157. Action taken by the entity with a beneficial interest in the securitised receivables to obtain legal title in and to them following a title perfection event as defined.

29. Paragraph 158

After the paragraph insert:

Typical securitisation arrangement

158A. A typical securitisation arrangement has the following features:

- an originator of receivables assigns in equity, for valuable consideration, all of its right, title, benefit, and interest in the receivables, together with any related security interest, to an SPV;
- the originator continues to preserve and account for the receivables to the SPV; and
- the transaction documents identify a number of elements of consideration for the receivables which are calculated by reference to the face value of the receivables.

30. Detailed contents list

(a) Omit:

Step 2: Assignment of receivables pool to the SPV 102

substitute:

Step 2: Assignment of receivables to the SPV 102

(b) After:

Trustee 158

Insert:

Typical securitisation arrangement 158A

31. Related Rulings/Determinations

Insert:

GSTR 2006/9

32. Legislative references

Insert:

- ANTS(GST)R99 70-5.02(2)

GSTR 2004/4

33. Schedule 1

(a) In the heading, before 'securitisation arrangement' insert 'typical'.

(b) Step Number 4(a)

Omit the Step; substitute:

4	(a) Servicer (performed by originator of receivables)	All services performed as part of the taxable supply by the originator to the SPV.	Fees	Taxable supply section 9-5	Yes – under Reg 70-5.02, items 14, 15 and/or 17.
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(c) Step Number 4(b)

Omit the Step; substitute:

4	(b) Servicer (performed by third party)	All services performed as part of the taxable supply by the third party to the SPV.	Fees	Taxable supply section 9-5	Yes – under Reg 70-5.02, items 14, 15 and/or 17.
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34. Footnote 76

Omit the words 'directly or indirectly' from the text.

Commissioner of Taxation

30 May 2007

ATO references

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 Goods and Services Tax ~~ General rules and concepts ~~ other