GSTR 2014/2 - Goods and services tax: treatment of ATM service fees, credit card surcharges and debit card surcharges

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This Ruling contains references to provisions of the *A New Tax System (Goods and Services Tax) Regulations 1999,* which have been replaced by the *A New Tax System (Goods and Services Tax) Regulations 2019.* This Ruling continues to have effect in relation to the remade Regulations.

Paragraph 32 of TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed and rewritten.

A comparison table which provides the replacement provisions in the *A New Tax System (Goods and Services Tax) Regulations 2019* for regulations which are referenced in this Ruling is available.

This document has changed over time. This is a consolidated version of the ruling which was published on *17 December 2014*

Goods and Services Tax Ruling

Goods and services tax: treatment of ATM service fees, credit card surcharges and debit card surcharges

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If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling explains the goods and services tax (GST) treatment of:

- a fee payable for ATM services listed in subregulation 40-5.09(4A) of the *A New Tax System (Goods and Services Tax) Regulations 1999* (GST Regulations)

- a surcharge imposed by a merchant on a customer in respect of a credit card transaction concerning supplies of goods or services by the merchant to the customer
- a surcharge imposed on a customer in respect of a credit card transaction concerning the payment of an Australian tax or an Australian fee or charge subject to Division 81, and
- a surcharge imposed by a merchant in respect of a debit card transaction concerning a supply of goods or services, a cash withdrawal or both a supply of goods or services and a cash withdrawal.

2. In this Ruling, all legislative references are to the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) unless otherwise specified.

Ruling

ATM Services

3. Under subregulation 40-5.09(4A) of the GST Regulations, a supply by an entity for a fee of not more than $1,000 is a financial supply if it is a supply of one or more of the following ATM services:

- a withdrawal from an account
- a deposit into an account
- an electronic transfer from an account;
- advice of the balance of an account.

4. The term 'ATM services' in subregulation 40-5.09(4A) of the GST Regulations restricts the listed services to those performed through the use of an automatic teller machine (ATM).

5. The term 'ATM' refers to an automatic teller machine that is used in the payment system designated by the Reserve Bank of Australia (RBA) as the ATM system. It takes its meaning from the following definition set out in the Consumer Electronic Clearing System (CECS) Manual:

> **ATM** means an approved electronic device capable of automatically dispensing Cash in response to a *Cash withdrawal* Transaction initiated by a Cardholder. Other Transactions (initiated by a debit card) such as *funds transfers, deposits and balance enquiries* may also be supported. The device must accept either magnetic stripe Cards or smart (chip) Cards where Transactions are initiated by the Cardholder keying in a Personal Identification Number (PIN). Limited service devices (known as 'Cash dispensers') that only allow for Cash withdrawal are included.

6. A fee imposed for an ATM service listed under subregulation 40-5.09(4A) of the GST Regulations is consideration for an input taxed supply.

7. A facility, machine or device that is used to access a payment system other than the ATM system (for example the payment system designated by the RBA as the EFTPOS system) is not used to provide an ATM service under subregulation 40-5.09(4A) of the GST Regulations.

Credit card surcharge

8. A credit card surcharge imposed by a merchant on a customer for a credit card transaction forms part of the consideration for the supply of the goods or services made by the merchant. There is a sufficient nexus between the surcharge and the supply of the goods or services for the surcharge to be paid for the supply.

9. The credit card surcharge forms part of the consideration for a taxable, input taxed or GST-free supply depending on the GST treatment of the supply of the goods or services in question. Where a surcharge is imposed on payment for more than one supply,[1] the merchant can use any fair and reasonable method to apportion the surcharge to the respective supplies of goods or services.

10. An entity may act as an agent for a third party that supplies goods or services to the customer, but make a separate supply to the customer of processing the transaction including accessing the relevant payment system to authorise the transaction. Where the entity imposes a credit card surcharge for the processing service, the surcharge has a sufficient nexus with the supply of the service to be regarded as being paid for that supply. The credit card surcharge does not form part of the consideration for the supply of the goods or services made by the third party.

11. Where a customer uses a credit card to satisfy an outstanding liability for a supply of goods or services and incurs a credit card surcharge, the surcharge is additional consideration for the supply of goods or services. The change in consideration is an adjustment event under paragraph 19-10(1)(b) which may cause an increasing adjustment under section 19-50 to the merchant and a decreasing adjustment under section 19-85 to the customer in certain circumstances.[2]

12. Where an amount is required to be paid by a specified date, and an additional fee or charge becomes payable if the amount is not paid by that date, the additional fee or charge is consideration for the

[1] References in this Ruling to a surcharge being imposed on more than one supply also include a surcharge being imposed on separately identifiable components of a mixed supply.

[2] This will depend on whether the supply made by the merchant was a taxable supply under section 9-5 with GST being attributed to an earlier tax period and whether the acquisition by the customer was a creditable acquisition under section 11-5 with an input tax credit being attributed to an earlier tax period.

supply of an interest in or under a credit arrangement. It is therefore consideration for an input taxed financial supply.[3]

13. Where the customer incurs a credit card surcharge when paying for both the goods or services and the additional fee or charge under the credit arrangement, the merchant can use any fair and reasonable method to apportion the surcharge between the supplies.

Example 1: Credit card surcharge – taxable supply

14. *Anna purchases a shirt with a price of $55. A sign at the store's counter states that a surcharge of 3% of the price will be imposed if payment is made by credit card.*

15. *When Anna pays for the shirt using her credit card, the merchant imposes a surcharge of $1.65 on the sale. The price of the shirt is $56.65 as the $1.65 surcharge forms part of the consideration for the shirt. The surcharge has a sufficient nexus with the supply of the shirt to be regarded as being paid for the supply. The supply of the shirt is a taxable supply under section 9-5. The GST payable in respect of the sale is $5.15, being 1/11th of the GST inclusive price of $56.65.*

Example 2: Credit card surcharge – agent

16. *John purchases a concert ticket from a ticket agent over the internet using his credit card. John pays $110 for the ticket with an additional $11 credit card surcharge. Under the terms of the arrangement, the ticket agent acts as an agent for the concert promoter when supplying the ticket to John. The ticket agent also makes a separate supply of processing services to John which includes accessing the relevant payment system to authorise the payment. The $11 credit card surcharge is consideration for the taxable supply of processing services the ticket agent makes to John.*

Example 3: Credit card surcharge – GST-free supply

17. *Chris, a fruit and vegetable retailer, purchases $1,100 of produce for his store from a wholesaler using his credit card. The wholesaler imposes a surcharge of 2% on the price if payment is made by credit card.*

18. *When Chris pays the wholesaler using his credit card, the wholesaler imposes a surcharge of $22. The price of the fruit and vegetables is $1,122 as the $22 surcharge forms part of the consideration for the fruit and vegetables. The surcharge has a sufficient nexus with the supply of the fruit and vegetables to be*

[3] Pursuant to section 40-5 of the GST Act and subregulation 40-5.09(1) and item 2 of subregulation 40-5.09(3) of the GST Regulations.

regarded as being paid for the supply. No GST is imposed because the supply of the fruit and vegetables is GST-free under section 38-2.

Example 4: Credit card surcharge – apportionment

19. *Ben enrolls in three college subjects. One of the subjects is taxable under section 9-5 and the other two subjects are GST-free under section 38-85. The college charges $1,000 (inclusive of GST) for the taxable subject, $800 for one of the GST-free subjects and $700 for the other GST-free subject. The total amount payable by Ben is $2,500.*

20. *The college imposes a surcharge of 4% if payment is made using a credit card. Ben pays for the subjects using his credit card and the college imposes a surcharge of $100. The $100 forms part of the consideration for the mixed supply, increasing the price of the supply to $2,600. The surcharge has a sufficient nexus with the supply of the subjects to be regarded as being paid for the supply.*

21. *The college is required to allocate part of the $100 surcharge to the taxable supply. It would be fair and reasonable for the college to allocate $40 from the $100 surcharge to the taxable supply on the following basis:*

$$\frac{1{,}000}{2{,}500} \times 100 = 40$$

Example 5: Credit card surcharge – incurred after supply

22. *Stephanie acquires $220 worth of paper supplies for her business from her newsagent. Her newsagent allows Stephanie 30 days to pay her account before imposing late payment fees. The supply of the paper by the newsagent is a taxable supply under section 9-5 and the acquisition by Stephanie is a creditable acquisition under section 11-5. The newsagent imposes a surcharge of 2% of the price if payment is made using a credit card.*

23. *Ten days later, Stephanie pays her account with her newsagent using her credit card. The newsagent imposes a surcharge of $4.40 being 2% of $220. The surcharge has a sufficient nexus with the supply of the paper to be regarded as being paid for the supply.*

24. *As the total consideration for the supply of the paper is $224.40, the newsagent has a GST liability of $20.40 and Stephanie is entitled to an input tax credit of $20.40.*[4]

25. *However, if Stephanie had paid her account after the 30 day period had expired and incurred a late payment fee, the newsagent would have made an input taxed supply of an interest in or under a*

[4] The change in consideration would result in an increasing adjustment to the newsagent under section 19-50 if the newsagent had attributed the GST to an earlier tax period. It would have also resulted in a decreasing adjustment under section 19-85 to Stephanie if she had attributed the input tax credit to an earlier tax period.

credit arrangement to Stephanie.[5] *If Stephanie paid both the $220 and the additional late payment fee using her credit card and incurred the credit card surcharge, a portion of the surcharge will also have a sufficient nexus to be regarded as being paid for the input taxed supply of the interest in or under the credit arrangement. The newsagent can use any fair and reasonable method to apportion the surcharge between the supplies.*

Credit card surcharge on payment of taxes, fees or charges subject to Division 81

26. A credit card surcharge imposed on a customer in respect of a credit card transaction used for the payment, or the discharging of a liability to make a payment, of an Australian tax or an Australian fee or charge subject to Division 81 has the same treatment under Division 81 as the payment of the tax, fee or charge in question.

Example 6: Payment for an Australian fee or charge subject to Division 81

27. *Jenny obtains a drivers licence from the relevant State government agency for $100. The agency also imposes an additional 2% credit card surcharge for customers who pay using a credit card. When Jenny uses her credit card to pay for the licence, the agency charges Jenny $102.*

28. *Under subsection 81-10(1) and subsection 81-10(4), the fee for the drivers licence is an Australian fee or charge that is not the provision of consideration. As the credit card surcharge of $2 was incurred in paying, or discharging the liability to make a payment of, an Australian fee or charge, it has the same treatment under Division 81 as the payment of the fee or charge and is therefore also not consideration for a supply.*

Debit card surcharge

Debit card surcharge – purchase of goods or services

29. A debit card surcharge imposed by the merchant on a customer for a debit card transaction forms part of the consideration for the supply of goods or services made by the merchant. There is a sufficient nexus between the surcharge paid by the customer and the supply of goods or services made by the merchant for the surcharge to be regarded as being paid for the supply in question.

30. The debit card surcharge forms part of the consideration for a taxable, input taxed or GST-free supply depending on the GST treatment of the supply of the goods or services in question. Where a surcharge is imposed on payment for more than one supply, the

[5] Under section 40-5 of the GST Act, subregulation 40-5.09(1) and item 2 of subregulation 40-5.09(3) of the GST Regulations.

merchant can use any fair and reasonable method to apportion the surcharge to the respective supplies of goods or services.

31. Where a customer uses a debit card to satisfy an outstanding liability for a supply of goods or services and incurs a debit card surcharge, the surcharge is additional consideration for the supply of goods or services. The change in consideration is an adjustment event under paragraph 19-10(1)(b) which may cause an increasing adjustment under section 19-50 to the merchant and a decreasing adjustment under section 19-85 to the customer in certain circumstances.[6]

32. Where an amount is required to be paid by a specified date, and an additional fee or charge becomes payable if the amount is not paid by that date, the additional charge is consideration for the supply of an interest in or under a credit arrangement. It therefore forms consideration for an input taxed financial supply.[7]

33. Where the customer incurs a debit card surcharge when paying both the liability for the goods or services and the additional fee or charge under the credit arrangement, the merchant can use any fair and reasonable method to apportion the surcharge between the supplies.

Example 7: Debit card surcharge and purchase of goods

34. *Grace purchases a toaster using her debit card. The price tag states that the toaster is $88 (GST inclusive). A sign at the store's counter states that all debit card transactions incur a $2 surcharge.*

35. *When Grace pays for the toaster using her debit card, the merchant imposes a surcharge of $2 for the sale. The price of the toaster is $90 as the $2 surcharge forms part of the consideration for the toaster. The surcharge has a sufficient nexus with the supply of the toaster to be regarded as being paid for the supply. The supply of the toaster is a taxable supply under section 9-5. The GST payable in respect of the sale is $8.18, being 1/11th of the GST inclusive price of $90.*

Debit card surcharge – withdrawal of cash

36. A merchant who imposes a surcharge on a customer for withdrawing cash through a debit card transaction makes a taxable supply under section 9-5. The merchant is supplying the customer

[6] This will depend on whether the supply made by the merchant was a taxable supply under section 9-5 with GST being attributed to an earlier tax period and whether the acquisition by the customer was a creditable acquisition under section 11-5 with an input tax credit being attributed to an earlier tax period.

[7] Under section 40-5 of the GST Act and subregulation 40-5.09(1) and item 2 of subregulation 40-5.09(3) of the GST Regulations.

with the service of accessing the relevant payment system through the use of the terminal to authorise the transaction.[8]

Example 8: Debit card surcharge and withdrawal of cash

37. *Steve withdraws $100 from his savings account using his debit card at a bar. The merchant advises Steve that there is a $2 surcharge to use the debit card facility. The surcharge has a sufficient nexus with the service supplied to Steve of accessing the relevant payment system to be regarded as being paid for the supply. The merchant makes a taxable supply for which it is liable for GST of $0.18.*

Debit card surcharge – purchase and withdrawal of cash

38. A fixed debit card surcharge imposed by a merchant on a customer in respect of a debit card transaction that includes both a supply of goods or services and a cash withdrawal forms part of the consideration for the supply of the goods or services.

39. The surcharge has a sufficient nexus with the supply of the goods or services to be regarded as being paid for that supply. It does not have a sufficient nexus with the supply of the service to access the relevant payment system through the use of the terminal to authorise the transaction. This is because the surcharge is not increased if the customer exercises the option to make a cash withdrawal at the time of acquiring the goods or services.

40. A debit card surcharge forms part of the consideration for both the supply of goods or services and the service of accessing the relevant payment system where the surcharge is calculated as a percentage of the listed price[9] of the goods or services and the amount of cash withdrawn. This is because the surcharge has a sufficient nexus with all of the supplies made by the merchant to the customer. The merchant may allocate the debit card surcharge to the different supplies using any fair and reasonable method of apportionment.

Example 9: Debit card surcharge – fixed

41. *Joanne purchases meat from a shop with a price of $20. A sign at the store's counter states that all debit card transactions incur a $2 surcharge.*

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[8] This service of accessing the relevant payment system is not a supply covered by item 6(b) of the table in subregulation 70-5.02(2) of the GST Regulations concerning reduced credit acquisitions. See paragraphs 244 to 254 of Goods and Services Tax Ruling GSTR 2004/1 *Goods and services tax: reduced credit acquisitions*.

[9] In this context, the listed price of the goods or services excludes the debit card surcharge.

42. *While paying for the meat using her debit card, the merchant offers Joanne an option to also withdraw cash as part of the transaction. Joanne chooses to withdraw $50.*

43. *When Joanne pays for the meat and withdraws $50 cash using her debit card the merchant imposes a surcharge of $2.*

44. *The price of the meat is $22 as the $2 surcharge forms part of the consideration for the supply. The surcharge has a sufficient nexus with the supply of the meat to be regarded as being paid for the supply. It does not have a sufficient nexus with the supply of the service to access the relevant payment system as the surcharge remains the same regardless of whether Joanne exercises the option to make a cash withdrawal. No GST is imposed because the supply of the meat is GST-free under section 38-2.*

Example 10: Debit card surcharge – percentage

45. *Assume the same facts as for Example 9 except that the merchant charges a surcharge calculated as 1.5% of the combined price of the meat and amount of the cash withdrawal.*

46. *When Joanne pays for the meat and withdraws $50 cash using her debit card, the merchant imposes a surcharge of $1.05 (being 1.5% of $70).The surcharge has a sufficient nexus with both the supply of the meat and the supply of the service to access the relevant payment system as, under the arrangement, the calculation of the surcharge is directly impacted by both the price of the meat and the amount of the cash withdrawal.*

47. *It would be fair and reasonable for the merchant to allocate $0.75 from the $1.05 debit card surcharge to the taxable supply of the service of accessing the relevant payment system through the use of the terminal to make a cash withdrawal on the following basis:*

$$\frac{50}{70} \times 1.05 = 0.75$$

Date of effect

48. 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 2006/10).

49. However, taxpayers can rely on the former description of an 'Automatic Teller Machine (ATM)' contained in the Glossary of Terms set out in Schedule 1 of Goods and Services Tax Ruling GSTR 2002/2 *Goods and services tax: GST treatment of financial supplies and related supplies and acquisitions* for the purposes of this Ruling for periods prior to its date of issue.

Commissioner of Taxation
17 December 2014

Appendix 1 – 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.

ATM Services

50. Subregulation 40-5.09(4A) of the GST Regulations provides that a supply by an entity for a fee of not more than $1,000 is a financial supply if it is a supply of one or more of the following ATM services:

- a withdrawal from an account
- a deposit into an account
- an electronic transfer from an account;
- advice of the balance of an account.

51. The term 'ATM services' in subregulation 40-5.09(4A) of the GST Regulations is not defined. Combining the term 'ATM' with the word 'services' restricts the listed services to those performed through the use of an ATM.

52. Under section 11 of the *Payment Systems (Regulation) Act 1998*, the RBA has designated the ATM system as a payment system operated within Australia.[10] The ATM system is a funds transfer system utilising automatic teller machines and is governed by the set of rules set out in the CECS Manual. The ATM system allows a person to use an ATM card to withdraw cash or obtain other services from automatic teller machines.

53. The terms 'ATM' and 'ATM transaction' are defined in the CECS Manual as:

> **ATM** means an approved electronic device capable of automatically dispensing Cash in response to a *Cash withdrawal* Transaction initiated by a Cardholder. Other Transactions (initiated by a debit card) such as *funds transfers, deposits and balance enquiries* may also be supported. The device must accept either magnetic stripe Cards or smart (chip) Cards where Transactions are initiated by the Cardholder keying in a Personal Identification Number (PIN). Limited service devices (known as 'Cash dispensers') that only allow for Cash withdrawal are included**.**

54. As the term 'ATM services' is not defined in the GST Regulations, it takes the industry meaning of the term 'ATM' as set out in the CECS Manual.

[10] See Designation No 1 of 2008 under the *Payment Systems (Regulation) Act 1998*.

55. In *Collector of Customs v. Agfa-Gevaert Ltd*[11] the High Court observed that, when construing revenue statutes that use trade or technical terms, the law generally favours interpretation of the terms as they are understood in the trade to which the statute applies.[12] This was applied in *P & N Beverages Australia v. Federal Commissioner of Taxation*[13] where the Supreme Court stated at [10] that:

> Since the GST Act is directed to persons who supply goods and services in the course of commerce, many exemption items employ technical terms that are "framed by reference to trade usage", as Hill J observed in *Pepsi Seven-Up Bottlers Perth Pty Ltd v FCT* (1995) 62 FCR 289 at 296; 31 ATR 445 at 451; 95 ATC 4746 at 4751; 132 ALR 632 at 638. An interpretation of such terms as they are understood in the relevant trade is to be preferred, as was observed by the High Court in *Collector of Customs v Agfa-Gevaert Ltd* (1996) 186 CLR 389 at 398; 35 ATR 249 at 255; 71 ALJR 123 at 128; 24 AAR 282 at 288-289; 96 ATC 5240 at 5246; 141 ALR 59 at 66.

56. The industry meaning of the term 'ATM' is consistent with statements made in the Explanatory Statement to *A New Tax System (Goods and Services Tax) Amendment Regulations 2009 (No. 1)* which discusses the introduction of subregulation 40-5.09(4A) of the GST Regulations. The Explanatory Statement refers to the need for the amendment arising from the RBA introducing rules permitting ATM providers to charge users directly when they make use of the providers' ATM. The reference in the Explanatory Statement to the rules introduced by the RBA supports 'ATM' in subregulation 40-5.09(4A) taking its industry meaning.

57. This approach is broadly consistent with comments by Rares J in *Westpac Banking Corporation v. Australian Securities & Investments Commission*[14]. In considering differences between particular types of debit cards, the judge discussed ATMs by reference to the Australian ATM system and the regulatory and standards framework administered by the Australian Payments Clearing Association Ltd.[15]

58. Accordingly, a fee imposed for an ATM service listed in subregulation 40-5.09(4A) of the GST Regulations is consideration for an input taxed supply.

59. A facility, machine or device used to access a payment system other than the ATM system (for example the payment system designated by the RBA as the EFTPOS system) is not used to provide an ATM service under subregulation 40-5.09(4A).

[11] (1996) 186 CLR 389; (1996) 35 ATR 249; 96 ATC 5240.
[12] (1996) 186 CLR 389 at 398.
[13] [2007] NSWSC 338; 2007 ATC 4481; (2007) 65 ATR 391.
[14] [2009] FCA 1506 at [2-13].
[15] The Australian Payments Clearing Association administers the CECS Manual.

Credit Card Surcharge

60. A customer acquiring goods or services from a merchant provides consideration for the acquisition by tendering their credit card to the merchant, or providing their credit card details to the merchant, and having the transaction authorised.[16]

61. Merchants who accept credit cards as payment of goods or services are able to charge a surcharge to recover credit card acceptance costs.[17]

62. For a credit card surcharge to be consideration for a supply[18] there must be a sufficient nexus between the surcharge paid by the customer and a supply made by the merchant. A credit card surcharge is consideration for a supply if the payment is 'in connection with', 'in response to' or 'for the inducement of' a supply. The test is an objective one.[19]

63. Further, in identifying the character of the connection, the word 'for' ensures that not every connection between supply and consideration meets the requirements for a taxable supply. That is, merely having any form of connection of any character between a supply and payment of consideration may not be sufficient to constitute a taxable supply[20].

64. In *Waverley Council v. Commissioner of Taxation*[21] *(Waverley Council),* the Administrative Appeals Tribunal (Tribunal) considered the GST treatment of an administration fee payable by a customer to the Waverley Council when the customer used a credit card to pay fees or charges to the Council. The Tribunal stated at [42]:

> The question comes down to one of characterising the credit card administration fee – either as a stand-alone fee in itself, or as part of the 'underlying' tax, fee or charge that the credit card is being used to pay. We think that the fee is correctly characterised as part of the fee for the underlying supply. The person procuring the supply is buying, for example, a parking permit. There is one payment. In a practical sense there is one supply.

65. A credit card surcharge imposed by a merchant on a customer for a credit card transaction forms part of the consideration for the supply of the goods or services made by the merchant. There is a sufficient nexus between the surcharge paid by the customer and the supply made by the merchant for the surcharge to be regarded as being paid for the supply.

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[16] See paragraphs 30 to 31 of Goods and Services Tax Ruling GSTR 2003/12 *Goods and services tax: when consideration is provided and received for various payment instruments and other methods of payment*.
[17] See Standard No. 2, Merchant Pricing for Credit Card Purchases (MasterCard System) and Standard No. 2, Merchant Pricing for Credit Card Purchases (VISA System), made under section 18 of the *Payment Systems (Regulation) Act 1998*.
[18] Paragraph 9-5(a).
[19] See also Goods and Services Tax Ruling GSTR 2012/2 *Goods and services tax: financial assistance payments* and Goods and Services Tax Ruling GSTR 2001/8 *Goods and services tax: non-monetary consideration*.
[20] *AP Group Limited v. Commissioner of Taxation* [2013] FCAFC 105 at [33].
[21] [2009] AATA 442; 2009 ATC 10-095; (2009) 73 ATR 243.

66. The credit card surcharge forms part of the consideration for a taxable, input taxed or GST-free supply depending on the GST treatment of the supply of the goods or services in question. Where a surcharge is imposed on payment for more than one supply, the merchant can use any fair and reasonable method to apportion the surcharge to the respective supplies of goods or services.[22]

67. Practical issues may arise where a merchant needs to apportion a credit card surcharge between supplies. These issues can similarly concern a merchant seeking to apportion debit card surcharges (see below). The Commissioner will consider any reasonable approaches that reduce compliance costs.

68. An entity may act as an agent for a third party that supplies goods or services to the customer, but make a separate supply to the customer of processing the transaction including accessing the relevant payment system to authorise the transaction. Where the entity imposes a credit card surcharge for the processing service, the surcharge has a sufficient nexus with the supply of the service to be regarded as being paid for that supply. The credit card surcharge does not form part of the consideration for the supply of the goods or services made by the third party.

69. Where a customer uses a credit card to satisfy an outstanding liability for a supply of goods or services and incurs a credit card surcharge, the surcharge is additional consideration for the supply of goods or services. The change in consideration is an adjustment event under paragraph 19-10(1)(b) which may cause an increasing adjustment under section 19-50 to the merchant and a decreasing adjustment under section 19-85 to the customer in certain circumstances.[23]

70. Where an amount is required to be paid by a specified date, and an additional fee or charge becomes payable if the amount is not paid by that date, the additional fee or charge is consideration for the supply of an interest in or under a credit arrangement. It is therefore consideration for an input taxed financial supply.[24]

71. Where the customer incurs a credit card surcharge when paying for both the goods or services and the additional fee or charge under the credit arrangement, the merchant can use any fair and reasonable method to apportion the surcharge between the supplies.

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[22] See GSTR 2001/8.

[23] This will depend on whether the supply made by the merchant was a taxable supply under section 9-5 with GST being attributed to an earlier tax period and whether the acquisition by the customer was a creditable acquisition under section 11-5 with an input tax credit being attributed to an earlier tax period.

[24] Under section 40-5, subregulation 40-5.09(1) and item 2 of subregulation 40-5.09(3) of the GST Regulations. See paragraphs 29 to 32 of Goods and Services Tax Ruling GSTR 2000/19 *Goods and services tax: making adjustments under Division 19 for adjustment events*.

Credit card surcharge on payment of taxes, fees or charges subject to Division 81

72. Division 81 provides rules as to when a payment, or the discharging of a liability, is consideration for a supply to the extent that the payment is an Australian tax, or an Australian fee or charge.

73. When a person pays an Australian tax, or an Australian fee or charge by credit card and incurs a credit card surcharge, the surcharge is a payment incurred by the person in discharging the liability to pay the Australian tax, or Australian fee or charge. Depending on the facts, the credit card surcharge may be characterised as forming part of an Australian fee or charge.

74. Consistent with the approach taken in *Waverley Council*, a credit card surcharge imposed on a person in both circumstances has the same treatment under Division 81 as the payment of the tax, fee or charge.

Debit card surcharge

75. Merchants who accept debit cards as payment of goods or services are able to charge a surcharge to recover debit card acceptance costs. The debit card payment systems include the EFTPOS system, the Visa Debit system and the MasterCard Debit system.

EFTPOS system

76. Under section 11 of the *Payment Systems (Regulation) Act 1998*, the RBA has designated the EFTPOS system as a payment system operated within Australia.[25] The EFPTOS system is the electronic funds transfer system governed by the EFTPOS Scheme Rules[26] promulgated under the constitution of eftpos Payments Australia Limited and any schedule, document, specification or rule published by eftpos Payments Australia Limited pursuant to those EFTPOS Scheme Rules.[27]

77. The EFTPOS Scheme Rules provide that an eftpos transaction is an electronic funds transfer that:

- involves an eftpos issuer and an eftpos acquirer
- is processed via an Interchange Link and/or processing infrastructure owned or operated by, or on behalf of, eftpos Payments Limited Australia and
- is one of the transaction types described in clause 20.1 of the EFTPOS Scheme Rules.[28]

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[25] See Designation No 1 of 2012 under the *Payment Systems (Regulation) Act 1998.*
[26] EFTPOS Scheme Rules version 2.0 (effective 14 April 2013).
[27] Designation No 1 of 2012 under the *Payment Systems (Regulation) Act 1998.*
[28] Schedule 1 of the EFTPOS Scheme Rules.

78. Clause 20.1 of the EFTPOS Scheme Rules includes what is called a cashout transaction. In a transaction of this kind, the Acquirer Member[29] (on behalf of the merchant) obtains authorisation from the Issuer Member[30] to complete an eftpos Cardholder initiated cashout request at an eftpos terminal.[31]

79. Under clause 22.3 of the EFTPOS Scheme Rules, a merchant is permitted to surcharge an eftpos transaction.

Visa Debit system and Debit MasterCard system

80. Under section 11 of the *Payment Systems (Regulation) Act 1998*, the RBA has designated the Visa Debit system as a payment system operated within Australia.[32] A merchant is not prohibited from charging a surcharge to recover part or **all** of the reasonable cost of it accepting a Visa Debit card.[33]

81. The RBA has not designated the Debit MasterCard system as a payment system. However, MasterCard Asia/Pacific (Australia) Pty Ltd has made an undertaking to the RBA which includes that it will voluntarily comply with consistent requirements set out in paragraph 9 of The 'Honour All Cards' Rule in the Visa Debit and Visa Credit Systems and the 'No Surcharge' Rule in the Visa Debit System Standard.[34] Accordingly, a merchant is not prohibited from charging a surcharge to recover part or all of the reasonable cost of it accepting a Debit MasterCard card.

Debit card surcharge – purchase of goods or services

82. A debit card surcharge imposed by the merchant on a customer for a debit card transaction forms part of the consideration for the supply of goods or services made by the merchant. There is a sufficient nexus between the surcharge paid by the customer and the supply made by the merchant for the surcharge to be regarded as being paid for the supply in question. This view is consistent with the approach taken in *Waverley Council*.[35]

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[29] The entity that acquires the eftpos transactions – see Schedule 1 of the EFTPOS Scheme Rules.
[30] The entity which gives the eftpos cardholder the ability to initiate the eftpos transactions – see Schedule 1 of the EFTPOS Scheme Rules.
[31] See the definition of 'cashout' in Schedule 1 of the EFTPOS Scheme Rules.
[32] See Designation of Payment Systems dated 18 February 2004.
[33] Under paragraph 9 of The 'Honour All Cards' Rule in the Visa Debit and Visa Credit Systems and the 'No Surcharge' Rule in the Visa Debit System Standard made by the RBA under section 18 of the *Payment Systems (Regulation) Act 1998*.
[34] See the Undertaking entered into by MasterCard Asia/Pacific (Australia) Pty Ltd dated 6 January 2014. See also *Westpac Banking Corporation v. Australian Securities & Investments Commission* [2009] FCA 1506 at [12].
[35] See paragraph 64 of this Ruling.

83. The debit card surcharge forms part of the consideration for the taxable, GST-free or input taxed supply depending on the GST treatment of the supply of the goods or services in question. Where a surcharge is imposed on payment for more than one supply, the merchant can use any fair and reasonable method to apportion the surcharge to the respective supplies of goods or services.[36]

84. Where a customer uses a debit card to satisfy an outstanding liability for a supply of goods or services and incurs a debit card surcharge, the surcharge is additional consideration for the supply of goods or services. The change in consideration is an adjustment event under paragraph 19-10(1)(b) which may cause an increasing adjustment under section 19-50 to the merchant and a decreasing adjustment under section 19-85 to the customer in certain circumstances.[37]

85. Where an amount is required to be paid by a specified date, and an additional fee or charge becomes payable if the amount is not paid by that date, the additional fee or charge is consideration for the supply of an interest in or under a credit arrangement. It therefore forms consideration for an input taxed financial supply.[38]

86. Where the customer incurs a debit card surcharge when paying for both the goods or services and the additional fee or charge under the credit arrangement, the merchant can use any fair and reasonable method to apportion the surcharge between the supplies.

Debit card surcharge – withdrawal of cash

87. A merchant who imposes a surcharge on a customer for withdrawing cash under a debit card transaction makes a taxable supply under section 9-5. The merchant is supplying the customer with the service of accessing the relevant payment system through the use of the terminal to authorise the transaction.[39]

Debit card surcharge – purchase and withdrawal of cash

88. A fixed debit card surcharge imposed by a merchant on a customer in respect of a debit card transaction that includes both a supply of goods or services and a cash withdrawal forms part of the consideration for the supply of the goods or services.

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[36] See GSTR 2001/8.

[37] This will depend on whether the supply made by the merchant was a taxable supply under section 9-5 with GST being attributed to an earlier tax period and whether the acquisition by the customer was a creditable acquisition under section 11-5 with an input tax credit being attributed to an earlier tax period.

[38] Under section 40-5 of the GST Act and subregulation 40-5.09(1) and item 2 of subregulation 40-5.09(3) of the GST Regulations.

[39] This service of accessing the relevant payment system is not a supply covered by item 6(b) of the table in subregulation 70-5.02(2) of the GST Regulations concerning the reduced credit acquisitions. See paragraphs 244 to 254 of GSTR 2004/1.

89. The surcharge has a sufficient nexus with the supply of the goods or services to be regarded as being paid for that supply. It does not have a sufficient nexus with the supply of the service to access the relevant payment system through the use of the terminal to authorise the transaction. This is because the surcharge is not increased if the customer exercises the option to make a cash withdrawal at the time of acquiring the goods or services.

90. A debit card surcharge forms part of the consideration for both the supply of goods or services and the service of accessing the relevant payment system through the use of the terminal to make a cash withdrawal where the surcharge is calculated as a percentage of the listed price[40] of the goods or services and the amount of cash withdrawn. This is because the surcharge has a sufficient nexus with all of the supplies made by the merchant to the customer.

91. The merchant may allocate the debit card surcharge to the different supplies using any fair and reasonable method of apportionment.[41]

[40] In this context, the listed price of the goods or services excludes the debit card surcharge.
[41] See GSTR 2001/8.

Appendix 2 – Detailed contents list

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Previous draft:

GSTR 2014/D2

Related Rulings/Determinations:

TR 2006/10; GSTR 2000/19; GSTR 2001/8; GSTR 2002/2; GSTR 2003/12; GSTR 2004/1; GSTR 2012/2

Subject references:

- credit cards
- Division 81
- Payment of taxes, fees and charges

Legislative references:

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- Standard No. 2, Merchant Pricing for Credit Card Purchases (MasterCard System)
- Standard No. 2, Merchant Pricing for Credit Card Purchases (VISA System)
- The 'Honour All Cards' Rule in the Visa Debit and Visa Credit Systems and the 'No Surcharge' Rule in the Visa Debit System Standard
- Undertaking by MasterCard Asia/Pacific (Australia) Pty Ltd dated 6 January 2014

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