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Ms Virginia Grogan
Tax Counsel Network
Australian Taxation Office

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Dear Ms Grogan,

Draft GST ruling – determining the creditable purpose of acquisitions in relation to transaction accounts

CPA Australia represents the diverse interests of more than 164,000 members working in 150 countries and regions around the world. We make this submission on behalf of our members and in the broader public interest.

Draft Ruling GSTR 2019/D1 identifies the challenge of establishing the nexus between acquisitions and what may be input taxed supplies in the narrow context of transaction accounts. It is almost exactly the same as GSTR 2018/D1, except that that Draft considers the narrow context of credit cards. The following comments refer to GSTR 2019/D1, and apply equally to GSTR 2018/D1.

The identified challenge, which has existed since the introduction of GST in 2000, and some expressions of the ATO's view as to how taxpayers should deal with such issues of nexus and potential dual use are already covered in great detail in GSTR 2006/3, GSTR 2008/1 and numerous other ATO GST public rulings. Such matters of principle were also specifically considered in the HP Mercantile case ([2005] FCAFC 126) and Rio Tinto Services case ([2015] FCAFC 117).

CPA Australia recommends that the issuance of this draft ruling as final should be reconsidered. We consider that readers of the draft ruling are unlikely to be any better informed in dealing with the challenge of complying with the requirements of the GST law in relation to claiming GST credits in respect of acquisitions with potential nexus, with both taxable and input taxed supplies. There are also some conclusions reached by the Commissioner in the Draft with which we do not agree (these are articulated in the attached). We recommend that an alternative to issuing a final ruling would be to incorporate appropriate examples related to transaction accounts in an existing ruling such as GSTR 2006/3.

Further specific comments are included in the attachment.

We thank Ken Fehily FCPA of Fehily Advisory for his assistance with this submission. If you have any queries do not hesitate to contact Gavan Ord, Manager Business and Investment Policy at CPA Australia on gavan.ord@cpaaustralia.com.au or 03 9606 9695.

Yours sincerely

Dr Gary Pflugrath CPA

Head of Policy and Advocacy
CPA Australia

Attachment

1. Consistent with the Rio Tinto Services case, GSTR 2006/3, GSTR 2008/1 and numerous GST Rulings, the draft ruling explains that in determining nexus, one must make an 'objective assessment of surrounding facts and circumstances' (paragraph 23). It clarifies that 'the connection may be direct or indirect, substantial or real' and must be 'direct and immediate', 'real and substantial' and 'relevant' (paragraph 22). We agree with these principles that are already known, accepted and covered in many other rulings.
2. The draft ruling goes on to state that there is only a relevant connection between acquisitions and input taxed financial supplies, and no connection with taxable supplies, in respect of 'branch networks costs' (paragraph 58), 'call centre services' (paragraph 63), and 'product comparison website' (paragraph 69). We disagree with that broad analysis.
3. It is critical to determine specific suppliers' applications of its acquisitions to supplies that it makes or might make, and the draft ruling inappropriately seems to take a 'class of suppliers' approach. Further, each individual acquisition by taxpayers must be considered, rather than a 'class of acquisitions'. Taxpayers and the Commissioner sometimes do group certain acquisitions together for practical purposes where the extent of nexus between certain acquisitions with certain input taxed supplies are the same. However, this cannot be mandated, as is implied in this draft ruling, and should only be used after careful analysis of all individual acquisitions, all individual supplies and the broader enterprise of the supplier.
4. The draft ruling also inappropriately appears to refer to potential acquisitions by a 'class of customers' from the supplier in determining the application of acquisitions made by a supplier. It is not the acquisitions of a taxpayer's class of customers that is relevant, rather it is the application by the suppliers to all supplies they make or might make. Furthermore, as acquisitions precede supplies, the intent of the supplier is determinative when claiming GST input tax credits. The actual supplies made, if different to the intentions, are the subject of adjustment events (eg Division 129).
5. We agree with the Commissioner's comments that 'the relevant connection does not turn upon a characterisation of the purpose or the occasions of the purpose, of the supplier in the sense of a broader commercial objective' (paragraph 27). However, the Commissioner does not sufficiently explain in this draft ruling that taxpayers are generally entitled to GST input tax credits in respect of all acquisitions made 'in carrying on your enterprise' (section 11-5(1)). The draft ruling seems to take a position that anything other than the single most direct supply to a particular customer is all that should be considered.

   For example, a financial supplier acquires website services to encourage customers to open an input taxed account, but the financial supplier is equally concerned with making taxable interchange and merchant supplies as a direct result of the website. The mere fact that the content of the website appears by customers to be directed to a single supply of an account to a customer, does not mean that it is not for the purpose or intent of the financial supplier making both input taxed and taxable supplies.
6. We also do not agree with the Commissioner treating the other supplies by the supplier to be a broader commercial objective of the supplier, and for these not to be taken into account in determining the nexus of acquisition of the supplier with all supplies. With reference to the Commissioner's comments that the connection may be 'direct, or indirect' (paragraph 22), the positions stated in paragraphs 58, 63 and 69 therefore, in our view, go beyond section 11-5 (2)(a).
7. Finally, the Draft contains a number of examples where the Commissioner accepts that an acquisition may have a dual purpose, such as the acquisition of 'scheme services' (paragraph 74), 'card production services' (paragraph 86), 'mobile payment services' (paragraph 91) and 'online banking' (paragraph 100). However, there is insufficent guidance on how the apportionment of nexus between input taxed supplies, taxable supplies, and carrying on enterprise activities should be approached. It is noted that each one of those acquisitions is different, and a different methodology should be adopted; and that may be beyond the intent of this draft ruling.