Australian Banking Association

5 February 2020

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By email: Megan.Croaker@ato.gov.au

Dear Megan

Working Draft of the Practical Compliance Guideline on Goods and Services Tax Apportionment – Schedule 2 – Transaction Accounts

The Australian Banking Association (**ABA**) thanks the Australian Taxation Office (**ATO**) for the opportunity to review the working draft of a Practical Compliance Guideline (**PCG**) on the ATO's proposed risk framework on apportionment methods used to determine the extent of GST credit entitlement relating to deposit and transaction accounts of Australian Authorised Deposit-taking Institutions. We appreciate the opportunity to maintain dialogue with the ATO, despite our long-term technical view differences. Following the meeting and discussion on 12 December, the ABA agreed to provide a written response to the draft PCG, which is set out below.

As was highlighted in our meeting on 12 December, the ABA does not see it helpful to re-prosecute in detail our significant disagreement with the technical basis of GSTR 2019/D1. This Draft Ruling is the primary technical source for Schedule 2, and therefore the flaws of that Draft Ruling flow through to Schedule 2.

We emphasise that this should not be taken as the ABA resiling from any of the positions put in ABA's submission of 30 August 2019 on that draft determination, and in numerous subsequent meetings and discussions. In this regard, we also note that that the ABA is yet to receive feedback from the ATO on our submission to the public consultation to the draft GSTR 2019/D1 which is the document providing the "technical basis" for the Examples underlying this draft PCG Schedule.

Overall, we consider that current draft of the PCG contains several fundamental flaws which would need to be addressed before it can be released for public consultation. We outline our key concerns below.

Key issues of the Colour Zones

Green Zone

We note that the PCG Green Zone rate at [6] Table relies heavily on a number of technical assumptions, flowing on from GSTR 2019/D1, which have significantly reduced the extent of creditable purpose (**ECP**) rate, and which ABA members fundamentally disagree with. These include:

- Paragraphs [1 – 2] repeat a similar wording formulation around a "weighted average" ECP rate, as was used in Schedule 1. We understand that this means that it is open to taxpayers to <u>either</u> (i) apply a straight 20% rate to <u>all</u> relevant acquisitions, <u>or</u> (ii) apply different ECP rates to different classes of acquisitions <u>resulting in</u> a weighted average 20% ECP across all relevant acquisitions. Assuming this is the intended result, the language should be modified to more readily express it.

- The transaction account definition [Para 3] applied both in the Green Zone and throughout the PCG is incorrect and suggests that there is only a single upfront supply of rights in the account provided. The ABA has on numerous occasions noted our disagreement with this technical position, including in the context of the (recently finalised) GSTD 2018/D1. We also note that the analysis justifying this "single supply of rights" does not appear in the draft GSTR 2019/D1; and
- The exclusion of on-us transactions from any connection to acquisitions, which has been a point of significant disagreement between the ABA and ATO in various draft rulings[1].

Blue zone

We note that, as currently drafted, the Blue Zone trigger requirements are convoluted and add unnecessary complexity to the method of calculation. Specifically, we find the number of GST-free requirements at [Step 2] confusing and summarise our Blue Zone concerns below:

- We note that [at Step 2A] the ATO intends to release a revised determination on GST-free offshore use. It is clearly inappropriate to reference a ruling product which has not been drafted yet (let alone circulated for comment) to justify a contentious position in another product;
- It is unclear what the requirement at [Step 2C] is seeking to achieve. The intention may be to avoid double-counting the percentage of GST free supplies. We recommend the ATO clarifies this;
- The requirement at [Step 2E] to ensure that an on-charged transaction fee passing on a customer an offshore scheme provider fee to the account provider is not a separate GST-free supply could be read to mean that this cardholder charge from the offshore scheme provider to the account provider is not itself a GST-free supply. We recommend that this be clarified by the ATO; and
- The methodology used for the formula at [Step 4C] to determine the ECP for other costs not identified in [Step 4A and 4B] is flawed as it does not recognise taxable interchange supplies as valid separate taxable supplies. We reiterate our fundamental disagreement with this approach taken by the ATO.

Red Zone

In terms of the Red Zone triggers, we note the similarity with that of the PCG Schedule 1, and outline similar concerns to those we have raised before:

- The list, at the fifth bullet, includes any methodology treating any scheme debit or EFTPOS purchase transactions, or where the account provider is the Biller financial institution for BPAY transactions, as relating in any way to taxable 'on us' supplies. As previously discussed, the ABA fundamentally disagrees with the ATO's insistence on dismissing this methodology and note that the reasons for doing so have not been coherently articulated, in writing or verbally, despite numerous opportunities to do so; and

- The inclusion, at bullet four, of any methodology which results in "some acquisitions as having a closer relationship to the supply of interchange services than to the supply of the transaction account" suggests that in the ATO view, it is never possible to demonstrate a fair and reasonable apportionment methodology resulting in a recovery rate of >50% for any class of acquisitions. We remain firmly of the view that this is incorrect in principle and policy, and should be removed as a Red Zone trigger.

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[1] GSTD 2018/D1 and GSTR 2019/D1.

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Overall, if the basis of this draft PCG is to provide certainty and consistency to the treatment of ECP calculations on deposit and transaction accounts, the existence of so much uncertainty with regard to the technical positions in GSTR 2019/D1 fundamentally undermines this intention. The ABA strongly recommends that the ATO consider additional methods to review the technical issues introduced in GSTR 2019/D1 before using those positions to finalise the draft PCG.

The ABA would support further ABA/ATO workshops to discuss the key points of difference in both GSTR 2019/D1 and this draft PCG to ensure an appropriate resolution.

Thank you for the opportunity to provide comments on the working draft of this PCG.

Yours sincerely

Signed by

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