

QUESTION WE'VE BEEN ASKED

QB 18/14

GST treatment of fees that suppliers charge customers for using a credit or debit card

This item will be of interest to suppliers who charge their customers a fee for using a credit or debit card to pay for goods or services. The GST treatment of credit or debit card fees almost always follows the GST treatment of the underlying goods or services.

Key provisions

Sections 3, 14 and 60(1) of the Goods and Services Tax Act 1985

Question

What is the GST treatment of the fee that suppliers charge their customers for using a credit or debit card to purchase goods or services?

Answer

Where suppliers charge their customers a fee for using a credit or debit card to purchase goods or services, that fee will form part of the consideration for the goods or services being supplied where:

- **the supplier supplies the payment facility directly to the customer;**
- **the supplier arranges for an agent to supply the payment facility to the customer on the supplier's behalf; or**
- **the supplier contracts with a third party to supply a payment facility to the customer.**

Key terms

Payment facility: a service for processing credit or debit card transactions.

Payment facility provider: a company (often a third party) appointed by a supplier to process credit and debit card payments on the supplier's behalf.

The fee will have the same GST treatment as the goods or services being supplied. If the goods or services are taxable, output tax must be returned on the amount of the fee.

Explanation

Background

1. All legislative references are to the Goods and Services Tax Act 1985.
2. Suppliers that accept payment by credit or debit card may sometimes impose a fee on their customers to recover the cost of providing credit or debit card payment facilities. Sometimes the supplier charges this fee directly to the customer and sometimes a third party or an agent of the supplier charges the fee to the customer.

3. This **Question We've Been Asked (QWBA)** considers the GST treatment of these fees. The issue is whether the fee forms part of the consideration for the goods or services being supplied (so there is a single composite supply of the goods or services and the payment facility) or whether the fee is a separate supply of a payment facility. This QWBA therefore **expands on the analysis in Interpretation Statement "IS 17/03: Goods and services tax – single supply or multiple supplies" *Tax Information Bulletin* Vol 29, No 4 (May 2017):102.**
4. Inland Revenue has previously published items on the GST treatment of credit card fees charged by suppliers: see *Agents Answers* No 142 (December 2011); *Business Tax Update* No 26 (December 2011); *Large Enterprises Update* No 18 (February 2012); *Business Tax Update* No 4 (July 2016). These items concluded that the fee was part of the underlying supply of goods or services and should therefore be treated in the same way as the underlying supply for GST purposes. This means that if the underlying supply is subject to GST, the fee will be too. This QWBA is consistent with the position taken in these items.

Analysis

5. This QWBA explains how to determine the GST treatment of credit or debit card fees charged by suppliers to customers. This involves:
 - Identifying who is actually making the supply of the payment facility. In some cases, the supplier may provide the customer with the payment facility directly. In other cases, the supplier may engage an agent or third-party to provide the customer with the payment facility.
 - Determining whether a supplier has made one composite supply or multiple separate supplies.

Identifying who makes the supply

6. In some cases, a supplier may provide the payment facility directly to the customer. In other cases, a supplier may contract with a third party or an agent to provide a credit or debit card payment facility to the supplier's customer. It is therefore necessary to determine who makes the supply of the payment facility to the customer.
7. The approach of the New Zealand courts is to consider the true nature of the legal arrangements actually entered into and carried out by the supplier and the recipient in light of the surrounding circumstances. The contractual arrangements between the parties must be examined to determine who is supplying what to whom: *Marac Life Assurance Ltd v CIR* (1986) 8 NZTC 5,086 (CA); *CIR v Databank Systems Ltd* (1990) 12 NZTC 7,227 (PC); *Auckland Institute of Studies v CIR* (2002) 20 NZTC 17,685 (HC) and *Wilson & Horton Ltd v CIR* (1995) 17 NZTC 12,325 (CA).
8. In *Auckland Institute* the High Court stated that it is necessary to "examine the supply from the point of view of the consumer" by considering "the true and substantial nature of the consideration given for the payment by the consumer".
9. Overseas courts have considered consumer perspectives where customers use credit or debit cards to purchase goods or services. In *HMRC v Debenhams Retail plc* [2005] EWCA Civ 892, the English Court of Appeal observed that where the customer uses a credit or debit card to pay for the goods, they must be taken to appreciate that the purchase of goods in this way will give rise to rights and duties with the credit card company or issuing bank. The general understanding of the public is that once the supplier has accepted payment by way of the credit or debit card, the customer has discharged their obligations to the business and they will need to pay the credit card company for the goods or services purchased. The court noted that ordinary customers would also be taken to be aware that some businesses levy a

small additional charge on their customers **to cover the cost to them of their customers' use** of some cards. The *Debenhams* decision is discussed in more detail from [28].

10. In Case C-276/09 *Everything Everywhere Ltd v HMRC* [2010] ECJ (2 December 2010), and Case C-607/14 *Bookit Ltd v HMRC* [2016] ECJ (26 May 2016), the Court of Justice of the European Union noted that customers expect suppliers to make available an infrastructure enabling them to pay for the goods or services they purchase. It also stated that access to the payment facility was not an end in itself for customers who can have no interest in accessing that infrastructure independently of purchasing the goods or services. In both cases, the court concluded that there was a single composite supply of the goods or services and the payment handling services.

A single composite supply or multiple supplies

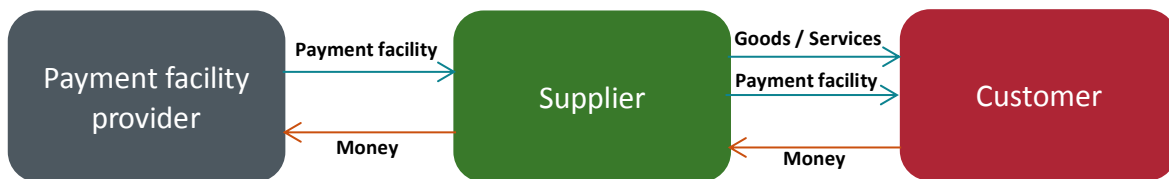
11. Where the supplier is supplying both the payment facility and the goods or services it is necessary to determine whether the supplier is making two separate supplies or a single composite supply.
12. **IS 17/03 sets out the Commissioner's approach for determining** whether a supplier has made one composite supply or multiple separate supplies. The approach involves identifying the multiple elements being supplied and deciding whether it is reasonable for those elements to be treated as a single composite supply or separate supplies. The **Commissioner's approach** is to ask three key questions:
- What is the true and substantial nature of what is supplied to the recipient (the customer) for their payment?
 - This question is determined objectively, by examining what is supplied **from the recipient's perspective**.
 - The fact that elements could have been supplied separately does not mean those elements should be severed from the rest of the supply.
 - Simply because a single price is charged for multiple elements does not determine whether one or more than one supply is made. It is the actual supply made to the recipient that must be considered and not how the supply is invoiced or charged to the recipient.
 - What are the relationships between the elements supplied?
 - This question involves determining whether one element is merely ancillary or incidental to, or a necessary or integral part of, any other element being supplied in the transaction.
 - Factors that indicate whether an element is ancillary or incidental to, or a necessary or an integral part of, a dominant element include whether the element is:
 - not an aim in itself; instead, the element facilitates, contributes to, or enables the supply of the dominant element;
 - a means of better enjoying the dominant element;
 - an optional extra and is not in any real or substantial sense part of the consideration for which a payment is made.
 - Is it reasonable to sever the elements into separate supplies?

- This question requires taking an overall view and looking for the essential purpose of the transaction.
- An element should not be artificially split from what, from an economic point of view, is a single supply.

Applying the law to the facts

13. A supplier can supply a payment facility to a customer in a number of ways.

The supplier supplies the payment facility directly to the customer



14. In this scenario, the supplier has acquired the payment facility from the payment facility provider. The supplier then supplies the payment facility directly to the customer (for example, by presenting the customer with an EFTPOS terminal at the point of sale).
15. From **the customer's perspective**, the supplier is supplying them with goods or services for consideration. In addition, the supplier is supplying the customer with the payment facility. The additional fee charged to the customer is consideration for the supply of the payment facility. Applying the principles from IS 17/03, there is a single composite supply of the goods or services and the payment facility.
16. Overseas courts have also held that a supplier who supplies a payment facility directly to a customer is making a single composite supply of the goods or services and the payment facility: see *Waverley Council v FC of T* 2009 ATC 10-095 (AAT) and *Everything Everywhere Ltd*.

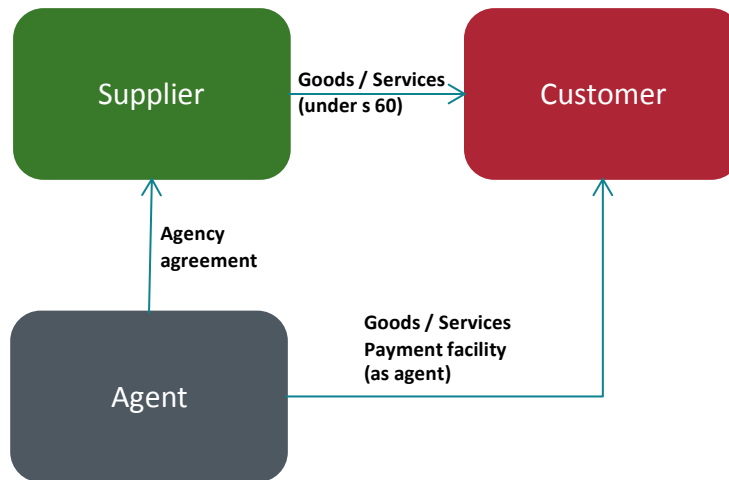
Example 1 – Meal at a restaurant

Li takes her parents out for a meal at a restaurant. After they finish the meal, Li goes to pay the bill using her credit card. The waiter informs Li there is a 2% surcharge for using a credit card.

The true nature of the legal arrangement is that the restaurant has made a supply of multiple elements, namely the meal and the credit card facility. Viewing the arrangement between Li and the restaurant **from Li's perspective**, the dominant supply is the supply of the meal in a restaurant. For Li, the ability to use the credit card is not an aim in itself. Instead, the facility to pay by credit card is ancillary to the dominant supply of the meal, in the sense that it enables the supply to occur.

There is therefore a single composite taxable supply of a meal, with the surcharge being part of the consideration for that supply. This means the restaurant is required to return GST output tax on the total consideration.

An agent supplies the payment facility to the customer on the supplier's behalf



17. In this scenario, a supplier enters into an agency agreement with an agent. The agent agrees to supply the goods or services to the customer as agent for the supplier. The agent also provides **the supplier's customers with** access to a payment facility on behalf of the supplier.
18. Unless the parties have agreed otherwise, where an agent makes a supply of goods or services to a recipient for and on behalf of their principal, that supply is deemed to be made by the principal to the recipient: s 60(1). Therefore, if a supplier's **agent provides** goods or services and a payment facility to a customer for and on behalf of the supplier, the supply of those goods or services and the payment facility will be deemed to be made by the supplier to their customer. The position is the same if the agent only provides the payment facility on behalf of the supplier and not the goods or services.
19. Applying the principles from IS 17/03, in both cases there will be a single composite supply of the goods or services and the payment facility.
20. **Bookit Ltd supports the view that from the customer's perspective there is a single composite supply.** In this decision, the Court of Justice of the European Union concluded that the supply of the card handling services by a booking agent was part of the supply of the tickets by the cinema (as principal).

Example 2 – Ticketing agency

Wiremu purchases a theatre ticket for \$50 from Book Now Ltd. Because Wiremu uses his credit card to pay for the ticket, Book Now charges him a \$2 card-handling fee. Book Now has an agency agreement with the theatre. Under this agreement, Book Now sells the tickets on behalf of the theatre as its agent; agrees to provide purchasers with a credit or debit card payment facility; and is permitted to charge purchasers a \$2 fee for using the payment facility. In addition, the theatre pays Book Now an agency fee.

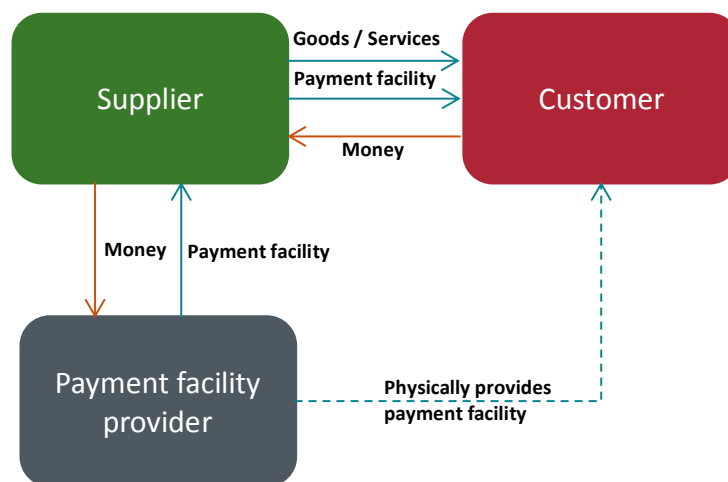
Book Now is supplying Wiremu with the ticket (to be redeemed for entertainment services) and the payment facility as agent for the theatre. Therefore, the theatre (as principal) and not Book Now (as agent) is treated as supplying the ticket and the payment facility to Wiremu (s 60(1)).

The issue is whether this supply is a single composite supply or two separate supplies.

The true nature of the legal arrangement is for the supply of multiple elements, namely the ticket and the payment facility. Viewing the **arrangement between Wiremu and Book Now (as the theatre's agent) from Wiremu's perspective**, the dominant supply is the supply of the ticket. The payment facility is ancillary to that supply. Accessing the payment facility is not an aim in itself for Wiremu; it only facilitates the supply of the ticket in the sense of enabling Wiremu to pay for it.

There is therefore a single composite taxable supply of a ticket with the card handling fee being part of the consideration for that supply. As a consequence, all the elements of the supply under the agreement are subject to GST.

The supplier contracts with a third party to supply a payment facility to the customer



21. Section 60(1) will not apply where a payment facility provider supplies goods or services **to the supplier** under a contract between them, and the supplier then subsequently supplies those goods or services to the customer. In this situation there are two separate supplies: a supply between the payment facility provider and the supplier and a supply between the supplier and the customer of the payment facility: see *CIR v Databank Systems Ltd* (1989) 11 NZTC 6,093 (CA) and *Databank* (PC).
22. Where there is no agency arrangement, *Databank* is authority for the principle that where a supplier contracts for a third party to supply it with goods or services that the supplier then uses to make an overall supply to the customer, two separate supplies are made: the supply by the third party to the supplier and the supply by the supplier to its customers. In such cases, the third party does not make a supply to the customer. Therefore, where a supplier contracts with a third party to provide a payment **facility to the supplier's customers, the supplier** – not the third party – will be treated as supplying the payment facility to the customers where the customers contract only with the supplier.
23. In *Databank*, Databank provided banks with computer data-processing services. The services involved processing cheques, crediting and debiting the banks' customers' accounts, and

general account maintenance. The issue was whether Databank supplied GST-exempt “financial services” to the banks under s 3 of the Act or GST standard-rated taxable computing services.

24. The Privy Council recognised that the banks used Databank’s computing services to supply financial services to customers. However, it held that the computing services Databank supplied did not satisfy the definition of “financial services”. Delivering the majority judgment, Lord Templeman rejected the relevance of s 60 and noted that it does not address the supply of agency services by an agent **to its principal** for consideration; rather, s 60 addresses supplies made by an agent **for and on behalf of** its principal. The terms of the agreements between Databank and the banks meant Databank was supplying its services to **the banks, not to the banks’ customers**. The agreements showed that the banks supplied the financial services to the customers. Consequently, there were two supplies: the supply of computing services by Databank to the banks and the supply of financial services by the banks to their customers.
25. This approach is consistent with *Auckland Institute*. In *Auckland Institute*, the taxpayer was an educational institute which provided tuition to overseas students. The institute contracted with a subsidiary to provide pre-arrival services to the students. The pre-arrival services included arranging the payment of tuition fees to the institute and completing enrolment and application forms for other services the institute provided. Under **the institute’s** contract with **the subsidiary, the institute agreed the subsidiary was permitted to charge an “overseas assistance fee” for the pre-arrival services**. The students only contracted with the institute. **The subsidiary’s overseas assistance fee** was not separately charged to the students; instead, the students paid the institute a global fee for all the services they received.
26. The High Court stated that the issue was to determine the true and substantial nature of the consideration given for the payment by the customer. This involved examining the contractual agreements between the students, the institute and its subsidiary to identify what the customer sought and was given.
27. The High Court held that the pre-arrival services were provided to facilitate the students undertaking a course of study. Viewing the arrangements between the students and the **institute from the customer’s (the student’s)** perspective, the dominant element of the transaction was the provision of tuition. That was the true and substantial nature of the consideration given for the payment. The pre-arrival services were necessary, but incidental to that tuition. Therefore, the services the institute provided to students through its subsidiary comprised a single supply of tuition services by the institute to the students.
28. The English Court of Appeal’s decision in *Debenhams* is consistent with *Databank* and *Auckland Institute*. In *Debenhams*, the court held that there was no separate supply of card-handling services by a third-party payment processor to Debenhams’ customers. Debenhams had contracted with the payment processor, but the customers had not, so the third-party payment processor could not be treated as making a supply of card-handling services to **Debenhams’** customers. Consequently, Debenhams was treated as supplying the card-handling services to the customers. This is consistent with *Auckland Institute* because, from **the customer’s perspective, the customer** paid the fees as consideration for the supply of the payment facility.

Example 3 – Paying online using a payment facility provider

Andrew has a monthly plan with his mobile phone company Ember. His \$100 mobile phone bill is due for payment. He goes to the "Pay Online" page of **Ember's website**. Before making the \$100 payment, Andrew is advised that paying online with a debit or credit card will incur an additional 2% processing fee that will appear on his next statement as a separate transaction. Andrew proceeds and is redirected to a third-party payment facility provider. He provides his debit card details and his payment is processed.

Ember has entered into a contract with the third-party payment facility provider to process its **customers' credit and debit card payments**.

Ember, not the third-party payment facility provider, has supplied the payment facility to Andrew. A contract exists between Ember and the third-party payment facility provider, but no contract exists between Andrew and the third-party payment facility provider. Andrew has only contracted with Ember. This is made clear in the terms and conditions **of Andrew's monthly plan** and the invoice that shows that Ember is charging the fee to Andrew.

The true nature of the legal arrangement is that Ember has supplied Andrew with multiple elements – mobile phone services and a payment facility – with each element itemised and charged for separately. Viewing the arrangement between Andrew and Ember **from Andrew's perspective**, the dominant supply is the supply of mobile phone services, even though he is paying a fee as consideration for using the payment facility. **Andrew's ability to use his debit card** is not an aim in itself. The payment facility is ancillary to the dominant supply of the mobile phone services in that it enables that supply to occur.

Consequently, the card processing fee is part of the \$102 of consideration for a single composite supply of mobile phone services. It is not consideration for a separate supply. Therefore, Ember should return GST on the phone charges and the processing fee when calculating GST on the supply of mobile phone services.

Example 4 – Buying furniture on an interest-free deal

Mariana's **favourite furniture store**, IKEO is advertising **12 months' interest-free credit** on purchases over \$1,000 made using a Wow credit card. Wow credit cards are issued by a finance company. Mariana decides to purchase a \$2,500 lounge suite using her Wow credit card, taking advantage of the **12 months' interest-free deal**. The consultant tells Mariana there will be a 2% credit card fee on her purchase (\$50) and an advance fee (\$35). The advance fee is a one-off fee the Wow credit card company charges to cover the costs of processing the interest-free credit offer.

The consultant provides Mariana with a sales voucher from the Wow credit card company that she asks Mariana to sign. The voucher states that Wow is advancing Mariana \$2,550 for the furniture purchase and \$35 for the advance

fee at 0% per annum for 12 months.

IKEO is not a party to the agreement between Mariana and Wow. Wow is not a party to the agreement between Mariana and IKEO. Based on the legal arrangements, there are two separate supplies for GST purposes. IKEO is supplying furniture to Mariana and Wow is supplying finance to Mariana.

The \$50 credit card fee relates to the supply of furniture by IKEO. It is charged and invoiced by IKEO as consideration for Mariana using the credit card payment facility IKEO offers to its customers. The credit card fee is calculated by reference to the amount of the furniture purchase. The \$35 advance fee relates to the supply of the interest-free credit. The advance fee is charged by Wow under its credit contract with Mariana and is identified as consideration for the processing services required to supply the credit.

The \$50 credit card fee is part of the consideration for a single composite supply of furniture by IKEO. It is not consideration for a separate supply of the payment facility by IKEO. The payment facility is ancillary to the dominant supply of the furniture. Accessing the credit card payment facility is not an aim in itself for Mariana; instead, it only facilitates the supply of the furniture in the sense of enabling Mariana to pay for it. Therefore, there is a single, composite, taxable supply of furniture, so all the elements of the supply under the agreement (that is, the furniture and the credit card fee) are subject to GST.

The \$35 advance fee is part of the consideration for a single composite supply of interest-free credit by Wow. It is not consideration for a separate supply of processing services by Wow. The true nature of the legal arrangement is for the supply of multiple elements, namely the interest-free credit and the documenting and processing services. Viewing the arrangement between Mariana and Wow from Mariana's perspective, the dominant supply is the supply of the interest-free credit. The processing services are ancillary to the dominant supply of the interest-free credit. Obtaining the processing services is not an aim in itself for Mariana. She has obtained these services only as a necessary pre-condition for securing the interest-free credit. Therefore, there is a single, composite supply of interest-free credit, which is an exempt supply of "financial services". As a result, the processing service element of that supply is also exempt from GST.

A third party supplies the payment facility directly to the customer

29. Depending on the contractual arrangements, it may be that instead of the supplier supplying the payment facility to the customer, a third party supplies the payment facility to the customer under a separate contract. In these cases, the contract between the supplier and the customer will only be for the goods or services. A separate contract will occur between the third party providing the payment facility and the customer.



30. If it can be established that there is a separate supply of a payment facility to a customer by a third party, the GST treatment of that separate supply will not be determined by the GST treatment of the supply of goods or services by the supplier. This is because the supply of the payment facility is a separate supply between different parties. The GST treatment of the supply of the payment facility will need to be determined by considering the nature of what has actually been supplied.
31. Even where the supply of the payment facility is a separate supply, **the Commissioner's view is that it will not be an exempt supply of a "financial service" if the payment facility only provides access to the payment network and facilitates the exchange of information between the card issuer, the acquiring bank and the supplier.**
32. **The provision of such a payment facility does not amount to the "arranging" of "financial services" under s 3(1)(l), because whether the credit or debit card is charged or settlement occurs, depends on the card issuer's overriding decision. The payment facility provider's role on these facts is limited to transmitting and recording the information that is relied on by the card issuer in making these decisions.**

Example 5 – a third party supplies the payment facility directly to the customer

Lucas has set up an online shop called Cheap Feet to sell his animal print socks. Customers select socks and add them to an online shopping cart. When it comes time to pay for their order, customers are automatically directed to an online payment website called PAYBO.

PAYBO is an online payment platform that provides access to the payment network and facilitates the exchange of information between the card issuer, the acquiring bank and Cheap Feet. It does **not debit or credit the customer's** account nor does it provide a guarantee to Cheap Feet that settlement will occur.

Customers using this service must agree to the PAYBO terms and conditions, which includes permitting PAYBO to charge a 2% credit card surcharge on top of the purchase price. That charge is paid directly to PAYBO.

The true nature of the legal arrangements is that there are two separate supplies being made. Cheap Feet has made a supply of goods (the socks) to the customer. PAYBO has made a supply of credit card payment facilities to the customer. Cheap Feet is not a party to the agreement between the customer and PAYBO.

The supply of goods from Cheap Feet to the customer is subject to GST at the standard rate. PAYBO will need to determine how to treat the supply of payment facilities to the customer by analysing the services provided under its contract with the customer.

Summary

33. The relevant legal principles for determining the GST treatment of fees that suppliers charge customers for using a credit or debit card to purchase goods or services are:
- To identify what has been supplied, consider the true nature of the legal arrangements actually entered into and carried out by the supplier and the recipient in light of the surrounding circumstances: *see Marac Life Assurance*.

- Where two (or more) persons are involved in supplying goods or services to a customer, contractual arrangements between **all** the parties need to be examined to determine who is supplying what to whom: see *Databank* (PC) and *Auckland Institute*.
- It is necessary to examine the supply from the point of view of the consumer (the customer) by considering the true and substantial nature of the consideration given for the payment by the consumer: see *Auckland Institute*.
- If an agent makes a supply of a payment facility to the **supplier's** customer, then the supplier will be treated as making the supply of the payment facility to the customer: see s 60(1) and *Databank*.
- Where a supplier contracts with a third-party to provide a payment facility to the supplier's customers, the supplier and not the third-party will be treated as supplying the payment facility to the customers: see *Databank*; *Auckland Institute* and *Debenhams*.

References

Subject references

credit and debit cards
GST
multiple supplies
payment facility
single supply

Legislative references

Goods and Services Tax Act 1985, ss 3, 14, 60

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