



## **Local Government Finance Professionals Conference 2013**

### **GST Division 81 changes**

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## Overview

- Overview of the new rules (Finpro paper)
- A 'road map' to interpret
- Worked examples
- Suggestions on implementation steps

## Overview of the new rules

- Rationale for new rules – self assess!
- Commercial v non-commercial activities
- Accept the old rules – useful to implement new rules
- Broadly, the new rules provide for the following;
  - Payment of taxes – exempt (not treated as consideration)
  - Payment of fees and charges for permission, licences, authorities – exempt
  - Payment of fees and charges for information/records – exempt
  - Payment of fees and charges listed in regulations (non-commercial) – exempt
  - Payment of fees and charged listed in regulations (commercial in nature) - taxable
- Timeframes – apply from 1 July 2011! Grandfathering rules apply!
- Tie breaker rules apply

## Exempt fees and charges listed in Regulations

- Current fees and charges covered by Regulation (reg 81.15.01)
  - Fee or charge for kerbside collection of waste
  - Supply, exchange, removal of bins/crates used in connection with kerbside collection of waste
  - Royalties for natural resources
  - Fee or charge on industry to finance regulatory or other government activities connected with industry
  - Fee or charge to compensate an Australian government agency for costs incurred in undertaking regulatory activities
  - Fee or charge imposed in relation to court, tribunal, commission of inquiry or Sheriff's office
  - Fee or charge for a supply of a regulatory nature made by an Australian government agency

## Taxable fees and charges listed in Regulations

- Regulations make the following **subject to GST** (Regulation 81.01.01)
  - Fee for parking motor vehicle
  - Road tolls
  - Hire, use of facilities (except entry into National Park)
  - Fee for use of waste disposal facility
  - Pre-lodgement advice if advice relates to s81-10(4) (licence , permission, etc) and it is not compulsory to seek advice
  - Fee or charge for information by an Australian government agency if the information is non-regulatory in nature
  - Fee or charge for a supply that is non-regulatory in nature
  - Supply that can be made by both an Australian government agency and non Australian government agency.

## Road map to interpret and apply new rules

- Step 1 – Recognise the revenue inflow
  - Is the inflow a tax, fee/charge, grant, donation or conventional fee for service?
- Step 2 – If the payment is in the nature of a tax, then consider....
  - Is it a tax (definition of a tax) – must relate to an Australian law – recognise the nexus
- Step 3 – If the payment is in the nature of a fee and charge, then consider....
  - What does the fee represent? Is the imposition of fee regulatory in nature (covered under an Australian Law?) – is the fee payable to an Australian government agency?
  - Permissions, authorities, licences, exemptions, information, record keeping - exempt
- Step 4 – If the payment is not a tax (as per Step 2), or fee or charge (as per step 3), then consider....
  - Whether fee or charge is listed in the **Regulations** as either exempt or taxable
- Step 5 – Consider application of tie breaker rules (Step 4 payments)

## Road map to interpret and apply new rules

- Step 6 – Confirm / decide the GST treatment
- Step 7 – Sufficiently substantiate and document the outcome
- Understand the risk of getting it wrong (DR Revenue, CR Balance Sheet)

## Case study 1 – the payment of rates

- Step 1 – Recognise the nature of the inflow
  - Rating income (ordinary rates)
- Step 2 – Does it meet the definition of a tax?
  - Definition of an Australian Tax?
  - Ordinary meaning of a tax ‘*a compulsory exaction of money by a public authority for public purposes, enforceable by law, and is not a payment for services rendered..*’ (*Matthews v Chicory Marketing Board*)
- Step 3-5 can be ignored
- Step 6 – GST treatment should be exempt
- Step 7 – Substantiate and document the outcome
  - Document the nature of tax, legislation reference, the above steps.
- What about the Fire Property Services Levy?



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## Case study 2 – fee to apply for a subdivision of an existing premise

- Step 1 – Recognise the nature of the inflow
  - Appears to be a fee for a permission, licence, authority?
- Step 2 – Ignore (unlikely to be a tax)
- Step 3 - What does the fee represent?
  - Is the fee an Australian fee or charge?
  - Is the fee covered under an Australian Law? Planning & Environment Regulations 2005.
  - Is the fee payable to an Australian Government Agency? Yes
  - Clearly a permission!
- Step 4-5 – Can be ignored
- Step 6 – GST treatment should be exempt
- Step 7 – Substantiate and document the outcome
  - Document the nature of the fee, legislation reference, the above steps.

## Case study 3 – fee for requesting copies of building permits

- Step 1 – Recognise the nature of the inflow
  - Appears to be a fee for obtaining information?
- Step 2 – Ignore (unlikely to be a tax)
- Step 3- What does the fee represent?
  - Is the fee an Australian fee or charge?
  - Is the fee covered under an Australian Law? Planning & Environment Regulations 2005.
  - Is the fee payable to an Australian Government Agency? Yes
- Step 4-5 – Can be ignored
- Step 6 – GST treatment should be exempt
- Step 7 – Substantiate and document the outcome
  - Document the nature of the fee, legislation reference, the above steps.

## Case study 4 – fee for a 3<sup>rd</sup>/4<sup>th</sup> domestic waste bin (eg 240 litre)

- Step 1 – Recognise the nature of the inflow
  - Appears to be a fee for the ‘supply of goods’ (bins)?
- Step 2 – Ignore (unlikely to be a tax)
- Step 3- What does the fee represent?
  - Is the fee an Australian fee or charge? Unlikely
- Step 4- Consider application of Regulations
  - *‘Supply, exchange, removal of bins/crates used in connection with kerbside collection of waste’*
  - Exempt regulation under Reg 81-15.01(a)(ii)
- Step 5 – Consider application of tie breaker rules
  - Potential application – *‘supply that can be made by both an Australian government agency and non Australian government agency’* (supply of a bin..)

## **Case study 4 – fee for a 3<sup>rd</sup>/4<sup>th</sup> domestic waste bin (eg 240 litre)**

- Step 6 – GST treatment – should be exempt
- Step – Substantiate and document the outcome

## Case study 5 – fee for use of Council Civic Centre

- Step 1 – Recognise the revenue inflow
  - Rental income, Council facilities. Look at the fee and its nexus with something!
- Step 2 – Ignore (unlikely to be a tax)
- Step 3- What does the fee represent?
  - Is the fee an Australian fee or charge? Unlikely
- Step 4- Consider application of Regulations
  - *'Hire, use of facilities (except entry into National Park'*
  - Taxable regulation under Reg 81-10.01(1)(c).
- Step 5 – consider application of tie breaker rules
  - Will apply to confirm that the treatment is taxable

## Case study 6 – fee for use of Council/Shire tip

- Step 1 – Recognise the revenue inflow
  - Use of facilities (commercial charge).
- Step 2 – Ignore (unlikely to be a tax)
- Step 3- What does the fee represent?
  - Is the fee an Australian fee or charge?
- Step 4- Consider application of Regulations
  - *Fee or charge for a supply of a regulatory nature made by an Australian government agency – Exempt (Reg 81-15.01(1)(g))*
  - *Supply that can be made by both an Australian government agency and non Australian government agency – Taxable (Reg 81-10.01(1)(c)).*

## Case study 6 - fee for use of Council/Shire tip

- Step 5 – Consider application of tie breaker rules
  - Fee can be both taxable and exempt
  - A fee will be taxable if it could also be exempt under Reg 81-15.01 (1)(g)
  - Therefore, taxable (intended to treat commercial activities as being taxed)
- Step 6 – Likely to be subject to GST.
- Step 7 – Substantiate and document the outcome.

## Next steps – timeframe critical

- Understand the new rules.
- Review all taxes and the register of fees and charges.
- Determine which taxes, fees and charges are exempt under the new rules.
  - Ensure substantiation - justification
- Catalogue pre July 2013 taxes, fees and charges that have been treated as being exempt (under the old rules).
  - Ensure substantiation
- Identify and resolve any gaps and uncertain issues that arise in implementing new rules (possible permutations, exempt-exempt, taxable-exempt, exempt-taxable, taxable-taxable).



## Next steps – timeframe critical

- Allow sufficient time to update billing systems by no later than 30 June 2013.
- Engagement with Audit Committee?
- Consider collectively engaging with industry bodies to seek clarity on uncertain issues (cost and time efficiencies)
  - Known ATO rulings on Division 81
- Consider process for ongoing compliance with Division 81 for new charges.

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