

# *Local Councils*

## GST Update

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# ***GST Technical Update Agenda***

## **Div 81**

- What's changed?
- What do you need to do?

## **New Developments**

- Property opportunities

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## ***Div 81 – up to 1 July 2011***

- GST applies to payments of Australian taxes, fees and charges, except those that are listed in the Treasurers' Determination
- A tax, fee or charge listed in the Determination is not 'consideration' for a supply
  - out of scope for GST and not reportable on the BAS
- The Determination was reissued on 1 January and 1 July each year
- The most recent determination released on 1 January 2011 was *A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2011 (No 1)* – over 680 pages
- Fees and charges listed according to administrative Principles.

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## ***Administrative Principles previously applied***

- Taxes, fees and charges levied for general purposes and used to finance the operations of governments (such as income tax, payroll tax, general rates, etc)
- Fees and charges levied on specific industries (such as industry or business levies)
- Application fees, licenses, permits and certifications required by government prior to undertaking an occupation (such as occupational licenses)
- Regulatory charges imposed to undertake an activity (such as compulsory testing and inspection fees, land title searches, FOI applications, etc)

**Note:** *Fees or charges that involve a fee for service are not listed, or at least are not intended to be listed, in the Determination and are therefore subject to GST*

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## ***Self Assessment from 1 July 2011***

- General rule – Australian \*taxes and certain types of Australian fees and charges will be ***exempt from*** GST

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## ***Key Principles***

- a. The tax, fee or charge must be imposed under an Australian law
- b. The tax, fee or charge must be payable to an Australian government agency
- c. It must be an Australian tax or an Australian fee or charge that relates to the provision or retention under an Australian law of a permission, exemption or license
- d. Regulations must not specifically prescribe that the tax, fee or charge is consideration for a supply

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# *Taxes*

- exempt from GST (unless regulated)
- EM – income tax, stamp duty, ‘ordinary rates’
- what about special rates?

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## ***Fees and charges covered by Bill***

- Fees or charges that (i) relate to; or (ii) relate to an application for:
  - the provision, retention or amendment, under an Australian law, of a permission, exemption, authority or license however described – e.g.;
    - Application fees, licenses, permits and certifications that are required by government, prior to undertaking an occupation and adjustments to such licenses
    - Regulatory charges imposed to undertake an activity such as:
      - › compulsory testing fees for regulatory purposes
      - › compulsory **\*inspection fees** for regulatory purposes
      - › a permit for restaurants to occupy the footpath
      - › a licence for an event to close roads.



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## ***Fees and charges covered by Bill (cntd)***

- Note re: Inspection fees – The EM contrasts the GST treatment of inspection fees payable to an Australian government agency, as opposed to a private entity:
  - payment made to an Australian government agency – **NOT** be subject to GST
  - payment made to a private entity – **IS** subject to GST **IF** other conditions of the definition of taxable supply are present
- Fees and charges paid to an Australian government agency, where it relates to the agency recording, copying, modifying, allowing access to, receiving, processing and searching for information – e.g.,
  - Fees and charges that relate to the lodgment of, or access to, documents provided under an Australian law:
    - › obtain information from a government agency under FOI legislation
    - › searches and extracts from registers
    - › copies of official documents
    - › registration and lodgment fees for property transfers
    - › deeds, plans and instruments.

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## ***Fees and charges covered by Bill (cntd)***

### **Examples of fees and charges that will be subject to GST:**

- commercial sales by government agencies of information, such as supplies of books by a government bookshop
- supplies made under commercial arrangements, including the hire of government assets (such as recreation halls, office space, conference centres and equipment), will be subject to GST in the first instance.

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# ***Regulations proposed***

## **Fees and Charges that will be subject to GST:**

- a fee for parking a motor vehicle in a ticketed or metered parking space
- a toll for driving a motor vehicle on a road
- a fee for transporting a motor vehicle on a car ferry
- a fee for hire, use of, or entry to a facility, except for an entry fee to a national park
- a fee for the use of waste disposal facilities
- a fee for pre-lodgement advice if:
  - i. the advice relates to an application to which subsection 81-10 (4) of the Act applies
  - ii. it is not compulsory to seek the advice
- a fee for the sale of maps and related products
- a subscription fee for access to a database.

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## ***Transitional period***

- New taxes, fees and charges imposed on or after 1 July 2011 will be subject to the new mechanism.
- However, any taxes, fees and charges listed under the 2011 Determination released on 1 January 2011 will not be subject to the new mechanism until 1 July 2012
- What about fees and charges 1 January 2011 – 30 June 2011?

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## ***What do Councils need to do?***

- Introduce new procedures for new fees and charges
- Seek clarification from the ATO re: 1 July 2012
- Identify and document all current taxes, fees and charges:
  - how and why are they exempt under Div 81?
  - which ones aren't exempt under current Div 81?
  - does this treatment change under the new regime?
  - how are the 'grandfathered' fees and charges going to be treated from 1 July 2012?
- Seek clarification from the ATO
  - workshops held with Treasuries
  - maybe Questions and Answers issued prior to 1 July 2011
  - If issued at all, Public ruling at least 12 months away
  - has to be private rulings!

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## *Councils are the State*

- ATO has conceded that Councils are the State
- This has significant implications in respect of GST
- Major implication is that GST is a notional tax in many instances
  - Property implications
    - GST potentially reduced from 9% to approximately 1%
    - Can potentially supply land GST-free which improves the GST position of a developer
    - Review all past property dealings for GST overpayments
    - Pay close attention to the structure of future transactions with developers to ensure benefits are not passed on unwittingly
  - Other implications

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