
Goods and Services Tax (GST) treatment of certain government taxes, fees and charges (Division 81 of the GST Act)

This Circular applies to all agencies that impose taxes, fees and charges. It explains the actions that agencies must carry out under federal government regulation that affects the GST status of certain government taxes, fees and charges. This Circular withdraws and replaces the previous 2012 Treasury Circular TC12-16, without change.

Division 81 in the *A New Tax System (Goods and Services Tax) Act 1999 (the GST Act)* ensures that Australian taxes, and certain government fees and charges are not subject to the GST (see Attachment A for an extract of Division 81 from *the Act*). The provisions in the *Act* are supported by the *A New Tax System (Goods and Services Tax) Regulations 1999 (the GST Regulations; see Attachment B)*.

Agencies must carry out the following actions to ensure items are treated correctly for GST purposes under *the GST Act* and *the GST Regulations*:

- Action 1:** Ensure the proper tax treatment, based on the Division 81 GST legislation and associated regulations, is applied on an on-going basis to new and existing fees and charges.
- Action 2:** If you are uncertain about the tax status of a fee or charge, apply to the Australian Taxation Office for a private binding ruling or obtain advice from your tax adviser (Note that NSW Treasury is not able to provide agencies with tax advice).
- Action 3:** If it is found that a fee or charge has been treated incorrectly for tax purposes, adjust the fee or charge to reflect their correct tax status (after Ministerial approval for price adjustments).
- (a) If an item that has been treated as exempt is found to be taxable, gross up the item to account for GST. This ensures there is no cost to government in accounting for GST.
 - (b) If an item that has been treated as taxable is found to be exempt, pass on savings to consumers. This ensures consumers benefit from any tax reduction.

Following these action steps should ensure that items are treated correctly for GST purposes. Additional information and guidance on Division 81 of *the GST Act* is available on the Australian Taxation Office [website](#).

This Circular withdraws and supersedes the previous 2012 Treasury Circular NSW TC12-16, without change.

History

Before July 2011, Division 81 of *the GST Act* treated a tax, fee or charge as being subject to GST unless it was listed on a Treasurer's determination as specifically exempt from GST.

Division 81 of *the GST Act* was amended with effect from 1 July 2011 to introduce self-assessment arrangements (*Tax Laws Amendment (2011 Measures No.2) Act 2011*, extract reproduced in Attachment A below). The self-assessment arrangements replaced the previous mechanism under Division 81 that relied on the Treasurer's determination. At the same time, regulations were introduced to make certain fees or charges taxable (*A New Tax System (Goods and Services Tax) Amendment Regulations 2011*).

Following these changes, certain limitations and ambiguity around the treatment of some fees and charges were identified. In order to address this issue and provide greater clarity for certain fees and charges, additional GST regulations were introduced with effect from 1 July 2012 (*A New Tax System (Goods and Services Tax) Amendment Regulations 2012*). The 2012 amendment to *the Regulations* (reproduced in Attachment B below):

- updated the list of taxable fees and charges (81-10-01)
- introduced a list of exempt fees and charges (81-15-01)
- introduced a 'tiebreaker' provision for items that fall within both an exempt and taxable status (81-15-02)

The Explanatory Statement for the 2012 amendments can be found on the Federal Register of Legislation [website](#).

Michael Pratt AM
Secretary
NSW Treasury

Further Information: State Tax Policy Branch (02 9228 4377), NSW Treasury
NSW Treasury website: www.treasury.nsw.gov.au/

Attachment A: Extract of Division 81 from the A New Tax System (Goods and Services Tax) Act 1999, Compilation No. 76

Division 81—Payments of taxes, fees and charges

81-1 What this Division is about

GST does not apply to payments of taxes, fees and charges that are excluded from the GST by this Division or by regulations.

GST applies to certain taxes, fees and charges prescribed by regulations.

81-5 Effect of payment of tax

Australian tax not consideration

- (1) A payment, or the discharging of a liability to make a payment, is not the provision of *consideration to the extent the payment is an *Australian tax.

Regulations may provide for exceptions

- (2) However, a payment you make, or a discharging of your liability to make a payment, is treated as the provision of *consideration to the extent the payment is an *Australian tax that is, or is of a kind, prescribed by the regulations.
- (3) For the purposes of subsection (2), the *consideration is taken to be provided to the entity to which the tax is payable, for a supply that the entity makes to you.

81-10 Effect of payment of certain fees and charges

Certain fees and charges not consideration

- (1) A payment, or the discharging of a liability to make a payment, is not the provision of *consideration to the extent the payment is an *Australian fee or charge that is of a kind covered by subsection (4) or (5).

Prescribed fees and charges treated as consideration

- (2) However, a payment you make, or a discharging of your liability to make a payment, is treated as the provision of *consideration to the extent the payment is an *Australian fee or charge that is, or is of a kind, prescribed by the regulations.
- (3) For the purposes of subsection (2), the *consideration is taken to be provided to the entity to which the fee or charge is payable, for a supply that the entity makes to you.

Fees or charges paid for permissions etc.

- (4) This subsection covers a fee or charge if the fee or charge:
- (a) relates to; or
 - (b) relates to an application for;
- the provision, retention, or amendment, under an *Australian law, of a permission, exemption, authority or licence (however described).

Fees or charges relating to information and record-keeping etc.

- (5) This subsection covers a fee or charge paid to an *Australian government agency if the fee or charge relates to the agency doing any of the following:
- (a) recording information;
 - (b) copying information;
 - (c) modifying information;
 - (d) allowing access to information;
 - (e) receiving information;
 - (f) processing information;
 - (g) searching for information.

81-15 Other fees and charges that do not constitute consideration

The regulations may provide that the payment of a prescribed *Australian fee or charge, or of an Australian fee or charge of a prescribed kind, or the discharging of a liability to make such a payment, is not the provision of *consideration.

81-20 Division has effect despite sections 9-15 and 9-17

This Division has effect despite sections 9-15 and 9-17 (which are about consideration).

81-25 Retrospective application of regulations

Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply in relation to regulations made for the purposes of subsection 81-5(2) or 81-10(2) or section 81-15.

Attachment B: Extract of Division 81 from the A New Tax System (Goods and Services Tax) Regulations 1999, Compilation No. 38

Division 81—Taxes, fees and charges

81-10.01 Fees and charges which constitute consideration

- (1) For subsection 81-10(2) of the Act, the following kinds of Australian fee or charge are prescribed:
- (a) a fee for parking a motor vehicle in a ticketed or metered parking space;
 - (b) a toll for driving a motor vehicle on a road;
 - (c) a fee for hire, use of, or entry to a facility, except for an entry fee to a national park;
 - (d) a fee for the use of a waste disposal facility;
 - (e) a fee for pre-lodgment advice if:
 - (i) the advice relates to an application to which subsection 81-10(4) of the Act applies; and
 - (ii) it is not compulsory to seek the advice;
 - (f) a fee or charge for the provision of information by an Australian government agency if the provision of the information is of a non-regulatory nature;
 - (g) a fee or charge for a supply of a non-regulatory nature;
 - (h) a fee or charge for a supply by an Australian government agency, where the supply may also be made by a supplier that is not an Australian government agency.
- (2) Despite subregulation (1), a fee or charge, the payment of which is covered by subsection 9-17(3) or (4) of the Act, is not a prescribed fee or charge.

Note: *Australian fee or charge* is defined in section 195-1 of the Act.

81-15.01 Fees and charges which do not constitute consideration

- (1) For section 81-15 of the Act, the following kinds of Australian fees and charges are prescribed:
- (a) a fee or charge for:
 - (i) the kerbside collection of waste; or
 - (ii) the supply, exchange or removal of bins or crates used in connection with kerbside collection of waste;
 - (b) royalties charged in relation to natural resources;
 - (c) a fee or charge imposed on an industry to finance regulatory or other government activities connected with the industry;
 - (d) a fee or charge to compensate an Australian government agency for costs incurred by the agency in undertaking regulatory activities;
 - (e) a fee or charge imposed in relation to a court, tribunal, commission of inquiry or Sheriff's office;
 - (f) a fee or charge for a supply of a regulatory nature made by an Australian government agency;
 - (g) a fee or charge for entry to a national park;
 - (h) any other fee or charge:
 - (i) specified in the *A New Tax System (Goods and Services Tax)(Exempt Taxes, Fees and Charges) Determination 2011 (No. 1)*, as in force immediately before the commencement of Schedule 4 to the *Tax Laws Amendment (2011 Measures No. 2) Act 2011*; and
 - (ii) imposed before 1 July 2013.
- (2) In this regulation:

waste includes green waste and recyclables.

81-15.02 Fees and charges covered by regulations 81-10.01 and 81-15.01

- (1) The payment of a fee or charge covered by both paragraph 81-10.01(1)(g) and regulation 81-15.01, or the discharge of a liability to pay the fee or charge, is not to be treated as the provision of consideration.
- (2) The payment of a fee or charge covered by both paragraph 81-10.01(1)(a), (b), (c), (d), (e), (f) or (h) and regulation 81-15.01, or the discharge of a liability to pay the fee or charge, is to be treated as the provision of consideration.
- (3) However, payment of a fee or charge covered by both regulations 81-10.01 and 81-15.01, or the discharge of a liability to pay the fee or charge, is not to be treated as the provision of consideration if the fee or charge:
 - (a) is specified in the *A New Tax System (Goods and Services Tax)(Exempt Taxes, Fees and Charges) Determination 2011 (No. 1)*, as in force immediately before the commencement of Schedule 4 to the *Tax Laws Amendment (2011 Measures No. 2) Act 2011*; and
 - (b) was imposed before 1 July 2013.