

TAX BULLETIN

An update publication for our clients

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Important changes to the GST status of charges levied by Government agencies

The Government has recently amended the law that determines the GST status of taxes, fees and charges levied by Australian government agencies. The law changes have significant implications for all government agencies in relation to the future GST status of fees and charges they are responsible for collecting.

The *Tax Laws Amendment (2011 Measures No. 2) Act 2011* received royal assent on 27 June 2011. Schedule 4 to the Act changes the way that Australian government agencies determine whether they have a GST liability on the receipt of taxes, fees and charges.

Position prior to the law changes

Prior to the law change Division 81 of the GST Act provided that the receipt of an Australian tax, fee or charge by an Australian government agency was taken to be consideration for a supply that the government agency made to the payee.

However, Division 81 then stated that particular taxes, fees and charges listed in a Determination made by the Treasurer would not be regarded as consideration for any supply.

Since July 2000 the Treasurer has issued regular Determinations listing what have become known as 'exempt taxes, fees and charges'. While the Determination process has provided certainty to Australian government agencies on whether they have a GST liability in relation to particular receipts, the process has become cumbersome due to the need for all States and Territories to agree to the inclusion of any new tax, fee or charge in the Determination.

New law

The changes to the GST Act introduce a principle based legislative exemption for Australian taxes, fees and charges, which can be overridden by regulations in appropriate circumstances. The application of the GST exemption will from now on need to be self assessed by Australian government agencies.

There are three elements to the changes:

1. The payment of any Australian tax will not be treated as the provision of consideration for any supply unless the regulations provide otherwise. Accordingly, no GST is payable on the receipt of any "Australian tax". Examples of Australian taxes are income tax, payroll tax, stamp duty, local government rates and various industry levies.
2. The payment of an Australian fee or charge will not be consideration for any supply if it relates to (or relates to an application for) the provision or retention of a permission, exemption or licence. Examples include applications for medical and legal professionals' right of practice, pilots' licences and heavy vehicle drivers' licences.



3. The payment of an Australian fee or charge will not be consideration for any supply if it relates to an Australian government agency recording information, copying information, modifying information, allowing access to information, receiving information or processing information. This would include, for example, fees payable under freedom of information legislation.

Regulations can override the GST exempt status of the taxes, fees and charges under each of the categories referred to above.

The changes take effect for all new taxes, fees and charges introduced on or after 1 July 2011.

A transitional provision will allow all taxes, fees and charges listed in a Treasurer's Determination as at 30 June 2011 to continue to have exempt status until 30 June 2012. However, from 1 July 2012, the GST implications arising from the receipt of all existing and future taxes fees and charges will be determined under the new provisions.

Regulations

The new regulations for the purposes of Division 81 of the GST Act were passed on 30 June 2011 and take effect from 1 July 2011. The regulations prescribe the Australian fees and charges listed below for the purposes of category 2 above and override the GST exempt status of those fees and charges. As a result, the receipt of these fees and charges will be regarded as consideration for a supply made by an Australian government agency and the agency will be liable to pay GST on that supply:

- 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 the hire, use of, or entry to a facility, except for an entry fee to a national park;
- d. A fee for the use of waste disposal facilities;
- e. A fee for pre-lodgement advice if:
 - i. the advice relates to an application for the provision, retention, or amendment, under an Australian law, of a permission, exemption, authority or licence (however described); and
 - ii. it is not compulsory to seek the advice;
- f. A fee for the provision of information if the information is not required to be provided under an Australian law.



Issues to consider

Here are some of the issues that Pitcher Partners believes arise in relation to the law changes -

- What is the meaning of “Australian government agency”? While the GST Act incorporates the income tax definition of the expression, it can be difficult to apply that definition in practice, particularly in relation to bodies that appear not to be subject to Ministerial control and review.
- What is the meaning of “Australian tax”? Again there is a definition in the legislation but it can be difficult to apply in practice.
- How broadly will the circumstances of categories 2 and 3 above be applied and how will the regulations apply in practice?

We understand the ATO expects that some of the taxes, fees and charges that are currently listed in the Treasurer’s Determination will cease to be exempt from GST when the proposed amendments become fully operational from 1 July 2012.

Recommended action

To ensure that the Australian government agencies correctly apply the new GST law, we recommend the following steps be undertaken:

1. Identify all taxes, fees and charges that the agency is responsible for collecting.
2. Undertake a structured review of those taxes, fees and charges by applying the principles under the new law to try and determine the GST status of each tax, fee and charge moving forwards.
3. Identify any taxes, fees and charges which the agency believes may have a different GST treatment under the new law.
4. Consider making an application to the ATO for a private ruling to confirm the proposed GST treatment of any taxes, fees or charges which cannot be clearly be determined as either exempt from GST or subject to GST.

Pitcher Partners has a team of GST specialists who are experienced in advising government entities on a range of GST issues. We would be pleased to assist with the review process. Please contact Pitcher Partners tax consulting partner **Craig Whatman** on (03) 8610 5617 or email craig.whatman@pitcher.com.au for further information.

