



Express law *fast track information for clients*

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Changes to the operation of Division 81 of the *A New Tax System (Goods and Services Tax) Act 1999*

From 1 July 2013, government agencies will be required to use a principles-based approach to determine whether taxes, fees and charges currently listed in the *A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2011 (No 1)* (the 2011 Determination) are exempt from GST.

Background

A person is liable to pay goods and services tax (GST) under the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) in circumstances where, amongst other things, they make a supply *for consideration*.

Division 81 of the GST Act is relevant to determining the GST treatment of 'taxes, fees and charges'. More specifically, Div 81 is relevant to determining whether a tax, fee or charge constitutes *consideration* for a supply for GST purposes.

Amendments made to Div 81 by the [Tax Laws Amendment \(2011 Measures No 2\) Act 2011](#), which took effect on 1 July 2011, changed the way that agencies determine whether taxes, fees and charges are exempt from GST.

Former Division 81

Under former Div 81, a payment of any Australian tax, fee or charge was treated as consideration (provided to the entity to which it was paid) for a supply that the entity made to the payer, *unless* it was specified by the Treasurer in a legislative instrument as not being the provision of consideration.

The legislative instrument most recently issued by the Treasurer under former Div 81 was the 2011 Determination.

Amendments to Division 81 introduced a principles-based approach

Significant amendments were made to Div 81 in 2011 by the *Tax Laws Amendment (2011 Measures No 2) Act 2011*. The Act introduced a principles-based approach to determining whether taxes, fees and charges constitute consideration. For example, s 81-5 provides that a payment of Australian tax is not the provision of consideration, and s 81-10 provides that certain fees and charges (including those relating to the provision, retention or amendment of a permission, exemption, authority or licence under Australian law, and those relating to an Australian government agency recording, copying, modifying, allowing access to, receiving, processing or searching for information) are not consideration.

Although this principles-based approach has formed part of the GST Act since 1 July 2011, taxpayers have been able to continue to rely on the 2011 Determination as exempting the taxes, fees and charges listed in the determination from attracting GST. However, from 1 July 2013 taxpayers will no longer be able to rely on the 2011 Determination.

What this means for agencies

From 1 July 2013 taxpayers will no longer be able to rely on the 2011 Determination as exempting the taxes, fees and charges listed in the determination from GST. Government agencies will need to determine – applying the principles-based approach contained in Div 81 – whether any taxes, fees and charges currently listed in the 2011 Determination will continue to be exempt from GST.

AGS has a number of tax experts who are able to assist agencies to determine the appropriate GST treatment of taxes, fees and charges.

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