



CR 2013/1 - Goods and services tax: the GST treatment of rates and annual charges levied by NSW councils

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 This Ruling contains references to provisions of the *A New Tax System (Goods and Services Tax) Regulations 1999*, which have been replaced by the *A New Tax System (Goods and Services Tax) Regulations 2019*. This Ruling continues to have effect in relation to the remade Regulations.

Paragraph 32 of [TR 2006/10](#) provides further guidance on the status and binding effect of public rulings where the law has been repealed and rewritten.

A [comparison table](#) which provides the replacement provisions in the *A New Tax System (Goods and Services Tax) Regulations 2019* for regulations which are referenced in this Ruling is available.



Class Ruling

Goods and services tax: the GST treatment of rates and annual charges levied by NSW councils

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A [comparison table](#) which provides the replacement provisions in the *A New Tax System (Goods and Services Tax) Regulations 2019* for regulations which are referenced in this Ruling is available.

❗ This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provisions identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:

- Division 81 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act)
- Regulation 81 of the *A New Tax System (Goods and Services Tax) Regulations 1999* (GST Regulations)

3. Unless otherwise stated, all legislative references in this Ruling are to the GST Act, and all references to the regulations are to the GST Regulations.

Class of entities

4. The class of entities to which this Ruling applies consists of all councils that are members of the Local Government Association of New South Wales (NSW) and the Shires Association of NSW.

5. Within this Ruling the class of entities are collectively referred to as Council.

Qualifications

6. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

7. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 11 to 20 of this Ruling.

8. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then this Ruling:

- has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- may be withdrawn or modified.

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Date of effect

10. This Ruling applies from 1 July 2013 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

11. The following description of the scheme is based on information provided by the applicant.

12. Council is registered for goods and services tax (GST).

13. By force of section 220 of the *Local Government Act NSW 1993* (LG Act), Council is a body politic of the State of NSW with perpetual succession and the legal capacity and powers of an individual, both in and outside the State.

14. Council is empowered under the LG Act to:

- provide goods, services and facilities and to carry out activities, appropriate to the current and future needs of local communities and of the wider public;
- maintain responsibility for administering the regulatory systems under the LG Act; and
- manage, improve and develop the resources of their local government areas.

15. Council may in accordance with section 491 of the LG Act obtain income from rates. The types of rates that can be made by council are ordinary rates and special rates (in accordance with section 492 of the LG Act).

16. Section 494 of the LG Act provides that a Council must levy ordinary rates on all rateable land in its area. The ratepayer is liable under section 560 of the LG Act to pay the rates to Council. Sections 712 and 713 of the LG Act provide recovery options where rates are unpaid.¹

¹ Details of these sections of the LG Act are contained in Appendix 2.

17. Subsection 495(1) of the LG Act provides that Council may make a special rate towards meeting the cost of any works, services, facilities or activities provided or undertaken, or proposed to be provided or undertaken, by Council within the whole or any part of Council's area. Subsection 495(2) of the LG Act provides that the special rate is to be levied on such rateable land in the council's area that benefits from, contributes to the need or has access to the works, services, facilities or activities.²

18. For all special rates levied under section 495 of the LG Act Council does not provide any goods or services to the ratepayer.

19. A section 506 of the LG Act rate peg increase applies to the previous year's total rates revenue of each NSW council. In practice, the rate peg increase does not apply to the rates of every individual property. That is, rates on an individual property may not increase by exactly the rate peg. Some rates may increase by a percentage higher or lower than the rate peg increase. The Council may apply for a variation under sections 508(2) of the LG Act.³

20. The Blue Mountains City Council makes and levies an annual charge under section 501 of the LG Act for emergency services in its rateable area.⁴

Ruling

21. This Ruling addresses the GST treatment of the following rates and charges:

- ordinary rates;
- special variations of ordinary rates;
- special rates; and
- annual charges levied by the Blue Mountains City Council for emergency services.

22. The payment of ordinary rates or special variations to ordinary rates is 'exempt' from GST under subsection 81-5(1).⁵

23. The payment of special rates levied under section 495 of the LG Act is exempt from GST under subsection 81-5(1).

24. The emergency services annual charge levied by the Blue Mountains City Council is exempt under section 81-15 by virtue of regulation 81-15.01.

² Details of this section of the LG Act are contained in Appendix 2.

³ Details of these sections of the LG Act are contained in Appendix 2.

⁴ Details of this section of the LG Act and of the annual charges for emergency services are contained in Appendix 2.

⁵ In this Ruling, if a fee or charge is not consideration for a supply and is not subject to GST, it is referred to as being 'exempt'.

Commissioner of Taxation

9 January 2013

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

Division 81

25. Division 81 was amended with effect from 1 July 2011 to allow entities to self assess the GST treatment of a payment of an Australian tax or an Australian fee or charge in accordance with certain principles.

26. Under the transitional arrangements, those Australian taxes, fees and charges that were not subject to GST under the Treasurer's Determination remain not subject to GST until 30 June 2013 and thereafter will be assessed under Division 81 as amended.

27. The GST treatment of all Australian taxes or Australian fees or charges that were not listed in the Treasurer's Determination will be self assessed under the changes made to Division 81 with effect from 1 July 2011.

Australian Tax

28. Section 81-5 considers the effect of the payment of a tax. It states:

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 that 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.

29. Currently, there are no regulations that prescribe the payment of an Australian tax to be the provision of consideration.

30. The term 'Australian tax' is defined in section 195-1 as:

Australian tax means a tax (however described) imposed under an *Australian law.

Australian Fees and Charges

31. Sections 81-10 and 81-15 consider the effect of certain fees and charges and state:

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, it 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.

32. The term 'Australian fee or charge' is defined in section 195-1 as:

Australian fee or charge means a fee or charge (however described), other than an Australian tax, imposed under an *Australian law and payable to an *Australian government agency.

Australian Law

33. The term 'Australian law' is defined by section 995-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) and relevantly includes a State law.

34. An Australian law includes Acts and law making powers which are delegated by parliaments, such as regulations, by-laws, proclamations and orders made under Acts.

35. Council derives its authority to impose rates and annual charges under the LG Act. Therefore, rates and charges are imposed under an Australian law for the purposes of Division 81.

Australian Government Agency

36. The term 'Australian government agency' is defined by section 995-1 of the *Income Tax Assessment Act 1997* (ITAA 1997). 'Australian government agency' means:

- the Commonwealth, a State or Territory; or
- an authority of the Commonwealth or of a State or a Territory.

37. For the purposes of Division 81, it is accepted that Council comes within the definition of an Australian government agency.

GST Regulations

38. Regulation 81-15.01 sets out those fees and charges that are prescribed for section 81-15 and which do not constitute consideration. In particular subregulation 81-15.01(1)(f) refers to 'a fee or charge for a supply of a regulatory nature made by an Australian government agency'.

39. The term 'regulatory nature' is not defined in the GST Regulations or the GST Act. The explanatory statement to the *A New Tax System (Goods and Services Tax) Amendment Regulation 2012 (No. 2)* states:

The term 'regulatory' captures those supplies made by a government agency, where that agency is legislatively empowered to make the relevant supply and the supply is to satisfy a regulatory purpose.

In some instances, although the consumer acquires something that may be of intrinsic value to the consumer, the acquisition is made in the context of satisfying a regulatory requirement of an Australian law ...

40. Regulation 81-10.01 sets out Australian fees and charges that are prescribed fees and charges treated as consideration for subsection 81-10(2).

Ordinary rates

41. The usual description of a tax, as cited in the High Court case of *Roy Morgan Research Pty Ltd v. CMR of Taxation* [2011] HCA 35 (*Roy Morgan*), as per Latham CJ in *Matthews v. Chicory Marketing Board (Vict)* (1938) 60 CLR 263, is that it is:

.....a compulsory exaction of money by a public authority for public purposes, enforceable by law, and is not a payment for services rendered ...

42. Section 494 of the LG Act provides that a Council must levy ordinary rates on all rateable land in its area. The ratepayer is liable under section 560 of the LG Act to pay the rates to Council. Sections 712 and 713 provide recovery options where rates are unpaid. Therefore, the ordinary rates are a compulsory exaction of money that is enforceable by law.

43. General rates levied by the Council are levied by a public authority; a local government. Legislation empowers the entity to levy general rates and to enforce their payment and, as opposed to being payment for services rendered, the general rates are levied on all land owners by incidence of their ownership of land in a local government area, and are applied for the general expenditure of the local government area, i.e. public purposes.

44. As the ordinary rates levied by Council satisfy the usual description of a 'tax' as cited in the High Court case of *Roy Morgan*,⁶ the Commissioner considers a payment of ordinary rates to be a payment of an Australian tax for the purposes of section 81-5. Therefore, the payment of ordinary rates is not subject to GST.

⁶ The High Court in *Roy Morgan* also cited the High Court decision in *The Municipal Council of Sydney v. The Commonwealth* (1904) 1 CLR 208; (1904) 10 ALR (CN) 29 as authority for the view that general rates or ordinary rates levied under State legislation are a 'tax'.

Special variations of ordinary rates

45. A rate peg increase under section 506 of the LG Act applies to the previous year's total rates revenue of each NSW council. In practice, the rate peg increase does not apply to the rates of every individual property. That is, rates on an individual property may not increase by exactly the rate peg. Some rates may increase by a percentage higher or lower than the rate peg increase.

46. When an increase under section 506 or subsection 508(2) of the LG Act applies to the ordinary rates levied on a ratepayer, the ratepayer is liable to pay the rates as one amount under subsection 560(1) of the LG Act. That is, either the increase under section 506 or subsection 508(2) of the LG Act is included in the ad-valorem amount used to calculate the rates. The ratepayer does not pay an amount of ordinary rates and a separate amount of 'variation'.

47. Therefore, the GST treatment of any variation in ordinary rates would take on the same GST treatment as that for ordinary rates.

Special Rates

48. Subsection 495(1) of the LG Act provides that Council may make a special rate towards meeting the cost of any works, services, facilities or activities provided or undertaken, or proposed to be provided or undertaken, by Council within the whole or any part of Council's area. Subsection 495(2) of the LG Act provides that the special rate is to be levied on such rateable land in the council's area that benefits from, contributes to the need or has access to the works, services, facilities or activities. The ratepayer is liable under the LG Act to pay the special rates to Council and therefore the special rates are a compulsory exaction of money that is enforceable by law.

49. For all special rates levied under section 495 of the LG Act, Council do not provide any good or service to the ratepayer. It is considered that a special rate satisfies the usual description of a tax, and is an Australian tax for purposes of subsection 81-5(1).

Annual charge for emergency services

50. Pursuant to section 501 of the LG Act, Council may make and levy an annual charge on a parcel of rateable land for which a specified service is provided by Council. Subsection 501(3) of the LG Act provides that the annual charge may be levied on each parcel of rateable land for which the service is provided or proposed to be provided.

51. The Blue Mountains City Council levies an emergency services annual charge on all rateable land in its area to cover the cost of providing emergency services. The annual charge is a fixed amount for all rateable land, regardless of land value and is itemised separately on the annual rates and charges notice.

52. The Blue Mountains City Council levies the emergency services annual charges on rateable developed land and vacant land to which those services are available, whether or not they are actually used. The Blue Mountains City Council considers, pursuant to section 501 of the LG Act, that all owners of rateable land should contribute to the current and future provisions of these services.

53. Money that the Blue Mountains City Council has received as a result of levying the annual charge must be used for the purpose for which the annual charge is levied. To do so, the Blue Mountains City Council organises, maintains and undertakes these services on a network basis in readiness for delivery to whichever parcel of rateable land is in need of them on a particular occasion. In this way, Council is responsible to provide the emergency services to each parcel of rateable land on which the annual charge is levied. Therefore, the emergency services which the Blue Mountains City Council undertakes has a relationship to each parcel of rateable land.

54. The emergency services annual charge is less than the unit costs of maintaining emergency services, or the costs of delivering (or providing) them to a specific parcel of rateable land on a particular occasion. It is used to pay for these costs and cannot be used for payment of any other expenses unrelated to the provision of emergency services. These facts show that the Blue Mountains City Council does not levy the annual charge for revenue raising purposes.

55. The unit costs have a relationship to each parcel of rateable land on which the annual charge is levied. Similarly, the costs of delivering emergency services to a specific parcel of rateable land on a particular occasion has a relationship to that parcel of rateable land notwithstanding that the annual charge is less than the value of what is acquired.

56. On these facts, it appears that there exists a connection between the emergency services annual charge levied on a parcel of rateable land and the emergency services provided for that parcel of land. Therefore, the emergency service annual charge is a payment for services rendered and is not a tax.

57. Subregulation 81-15.01(1)(f) provides that a fee or charge for a supply of a regulatory nature made by an Australian government agency is not the provision of consideration. It is considered that the emergency services annual charge satisfies subregulation 81-15.01(1)(f). Therefore, the annual charge is not the provision of consideration for the purposes of section 81-15 and is not subject to GST.

Appendix 2 – Legislative references

Ordinary Rates

58. Section 494 of the LG Act states:

494 Ordinary rates must be made and levied annually

- (1) A council must make and levy an ordinary rate for each year on all rateable land in its area.
- (2) Each category or subcategory of ordinary rate is to apply only to land of the same category or subcategory.

59. Before making an ordinary rate, Council are required to categorise land in their local government area pursuant to section 514 of the LG Act. Section 514 of the LG Act states:

514 Categorisation of land for purposes of ordinary rates

Before making an ordinary rate, the council must have declared each parcel of rateable land in its area to be within one or other of the following categories:

- farmland
- residential
- mining
- business

Note: Land falls within the 'business' category if it cannot be categorised as farmland, residential or mining. The main land uses that will fall within the 'business' category are commercial and industrial.

60. Council has discretion as to how they structure a rate. Section 497 of the LG Act states:

497 What is the structure of a rate?

A rate, whether an ordinary rate or a special rate, may, at a council's discretion, consist of:

- (a) an ad valorem amount (which may, in accordance with section 548, be subject to a minimum amount of the rate), or
- (b) a base amount to which an ad valorem amount is added.

61. Sections 712 and 713 of the LG Act provide recovery options for any unpaid rates and charges. Section 712 provides special provisions with respect to the recovery of unpaid rates and charges and section 713 provides for the sale of land for unpaid rates and charges.

Special rates

62. The LG Act states:

495 Making and levying of special rates

- (1) A council may make a special rate for or towards meeting the cost of any works, services, facilities or Activities provided or undertaken, or proposed to be provided or undertaken, by the council within the whole or any part of the council's area, other than domestic waste management services.
- (2) The special rate is to be levied on such rateable land in the council's area as, in the council's opinion:
 - (a) benefits or will benefit from the works, services, facilities or Activities, or
 - (b) contributes or will contribute to the need for the works, services, facilities or Activities, or
 - (c) has or will have access to the works, services, facilities or Activities.

Under section 495, a council could, for example make and levy:

- different special rates for different kinds of works, services, facilities or Activities
- different special rates for the same kind of work, service, facility or Activity in different parts of its area
- different special rates for the same work in different parts of its area.

The amount of the special rate will be determined according to the council's assessment of the relationship between the cost or estimated cost of the work, service, facility or Activity and the degree of benefit afforded to the ratepayer by providing or undertaking the work, service, facility or activity.

409 The consolidated fund

- (1) All money and property received by a council must be held in the council's consolidated fund unless it is required to be held in the council's trust fund.
- (2) Money and property held in the council's consolidated fund may be applied towards any purpose allowed by this or any other Act.
- (3) However:
 - (a) money that has been received as a result of the levying of a special rate or charge may not be used otherwise than for the purpose for which the rate or charge was levied...

503 What is the relationship between rates and charges?

- (1) A charge may be made:
 - (a) in addition to an ordinary rate, and
 - (b) in addition to or instead of a special rate.

- (2) If land is not rateable to a special rate for a particular service, a council may not levy a charge in respect of that land relating to the same service, unless the charge is limited to recovering the cost of providing the service to that land.

560 Who is liable to pay rates?

- (1) The owner for the time being of land on which a rate is levied is liable to pay the rate to the council, except as provided by this section...

561 Who is liable to pay charges?

The person liable to pay a charge is:

- (a) the person who, if the charge were a rate and if the land on which the charge is levied were rateable in respect of that rate, would be liable under section 560 to pay the rate, or
- (b) the Crown in respect of land owned by the Crown, not being land held under a lease for private purposes.

Special rate variation

63. Section 506 of the LG Act states:

Variation of general income

506 Variation of general income

The Minister may, by order published in the Gazette specify the percentage by which councils' general income for a specified year may be varied.

64. Subsection 508(2) of the LG Act states:

Orders under secs 506 and 507

508 Orders under secs 506 and 507

- (1) The Minister may, by instrument in writing given to a council:
- (a) specify the percentage by which the council's general income or the amount of an annual charge for domestic waste management services, or both, for a specified year (being the year in which the instrument is given or a later year) may be varied, and
 - (b) impose conditions with respect to the variation of that percentage.

65. Subsection 508A of the LG Act states:

Special variation over a period of years

508A Special variation over a period of years

- (1) The Minister may, by instrument in writing given to a council, determine that the council's general income, or the amount of an annual charge for domestic waste management services provided by the council, or both, for a specified period consisting of two or more years, may be varied by a specified percentage over the whole period.

Annual charge for Emergency Services

66. The Blue Mountains City Council makes and levies an annual charge for emergency services in its rateable area. This annual charge is a flat rate for all properties, regardless of land value, and is itemised separately on the annual rates and charges notice. These annual charges are made under section 501 of the LG Act.

501 For what services can a council impose an annual charge?

- (1) A council may make an annual charge for any of the following services provided, or proposed to be provided, on an annual basis by the council:
- water supply services
 - sewerage services
 - drainage services
 - waste management services (other than domestic waste management services)
 - any services prescribed by the regulations.
- (2) A council may make a single charge for two or more such services.
- (3) An annual charge may be levied on each parcel of rateable land for which the service is provided or proposed to be provided.

67. Section 125 of the *Local Government (General) Regulation 2005* provides for services for which an annual charge may be imposed in accordance with section 501 of the LG Act. It provides:

125 Services for which an annual charge may be imposed (section 501)

- (1) Emergency services provided or proposed to be provided within the area of the Blue Mountains City Council are prescribed for the purposes of section 501 of the Act.

- (2) In this clause, 'emergency services' includes (without limitation) bushfire and other fire services, civil emergency services, and management services associated with emergency services.

68. The website of the Blue Mountains City Council provides:

The Blue Mountains City Council administration is based in Katoomba, New South Wales, and serves 26 townships in a local government area of 1433 square kilometres...

Special Rates/Special Variations to Rates

Currently the Blue Mountains Council does not levy any special rates, though it has following approved special variations which are included in your rates and charges:

- **Emergency Services Annual Charge** – this commenced in 1996-1997 and is unique to the Blue Mountains as the City is located in an at-risk landscape which requires higher levels of emergency service capability and response readiness than other local government areas. The Council charges this under Section 501(1) of the Local Government Act 1993 and Regulation 125 of the Local Government (General) Regulation 2005. This charge is a flat rate for all properties, regardless of land value and is itemised separately on the annual rates and charges notice.

Appendix 3 – Detailed contents list

69. The following is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- Goods and services tax
- Government entities
- Government related entities
- Local government
- Local government rates & taxes

Legislative references:

- ANTS(GST)A 1999 Div 81
- ANTS(GST)A 1999 81-5
- ANTS(GST)A 1999 81-5(1)
- ANTS(GST)A 1999 81-10
- ANTS(GST)A 1999 81-10(2)
- ANTS(GST)A 1999 81-10(4)
- ANTS(GST)A 1999 81-10(5)
- ANTS(GST)A 1999 81-15
- ANTS(GST)A 1999 195-1
- ANTS(GST)R 1999 81-10.01
- ANTS(GST)R 1999 81-15.01
- ANTS(GST)R 1999 81-15.01(1)(f)
- ANTS(GST)R 1999 81-15.01(h)
- ITAA 1997 995-1
- LG Act 1993 220
- LG Act 1993 409
- LG Act 1993 491
- LG Act 1993 492
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- LG Act 1993 495
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- LG Act 1993 506
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- LG Act 1993 508A
- LG Act 1993 514
- LG Act 1993 560
- LG Act 1993 560(1)
- LG Act 1993 561
- LG Act 1993 712
- LG Act 1993 713
- LG Regs 2005 125
- TAA 1953
- Copyright Act 1968

Case references:

- *The Municipal Council of Sydney v. The Commonwealth* (1904) 1 CLR 208; (1904) 10 ALR (CN) 29
- *Roy Morgan Research Pty Ltd v. CMR of Taxation* [2011] HCA 35
- *Matthews v. Chicory Marketing Board (Vict)* (1938) 60 CLR 263

Other references:

- Explanatory Statement to ANTS(GST) Amendment Regulation 2012 (No.2)
-

ATO references

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