

GSTR 2006/5ER - Erratum - Goods and services tax: meaning of 'Commonwealth, a State or a Territory'

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Erratum

Goods and Services Tax Ruling

Goods and services tax: meaning of 'Commonwealth, a State or a Territory'

This Erratum to Goods and Services Tax Ruling GSTR 2006/5 corrects editing and formatting errors within the Ruling.

GSTR 2006/5 is corrected as follows:

1. Paragraph 8

In the first sentence, insert:

not

before:

a 'government entity'

2. Paragraphs 9 and 10

Omit the paragraphs; substitute:

9. The Commissioner considers that this issue is to be determined in accordance with the principles developed by the High Court of Australia in the cases concerning the meaning of 'a State' in section 114 of the Australian Constitution, most recently in *SGH Ltd v. Commissioner of Taxation* [2002] HCA 18; (2002) 202 ATC 4366; (2002) 49 ATR 521; (2002) 210 CLR 51 (the *SGH* case).⁴ The discussion which follows is drawn from these cases.

10. For ease of reference, the discussions refer to a State, as that is the context in which the issue most commonly arises for GST purposes, but the principles apply equally in determining whether a corporation is the Commonwealth or a Territory. Similarly, while the discussion focuses upon corporations, many of the principles could apply to other structures, such as a trust.

⁴ Other relevant cases include *South Australia v. The Commonwealth of Australia & Anor* [1992] HCA 7; (1993) 174 CLR 235; (1992) 92 ATC 4066; (1992) 23 ATR 10 (*South Australia v. The Commonwealth*), *Deputy Commissioner of Taxation v. State Bank of New South Wales* (1992) 174 CLR 219; (1992) 92 ATC 4079; (1992) 23 ATR 1 (*DCT v. State Bank*), *State Bank of NSW v. Commonwealth Savings Bank of Australia* (1986) 161 CLR 639 (*State Bank NSW v. Commonwealth Savings Bank*), *Superannuation Fund Investment Trust v. Commissioner of Stamps (SA)* (1979) 145 CLR 330; 79 ATC 4429; (1979) 10 ATR 97 (*the SFIT case*) and *Inglis v. Commonwealth Trading Bank of Australia* (1969) 119 CLR 334 (*Inglis*).

3. Paragraphs 14, 15 and 16

Omit the paragraphs; substitute:

14. This is confirmed by the High Court case of *Federated Municipal and Shire Council Employees Union of Australia v. The Lord Mayor, Aldermen, Councillors and Citizens of the City of Melbourne* (1918-19) 26 CLR 508. The Court held that municipal corporations established under State laws are not, with regard to the making, maintenance, control and lighting of public streets, instrumentalities of State government.

15. Also, in *Sydney City Council v. Reid* (1994) 34 NSWLR 506 at 520, Kirby J in describing what a local government is said:

Whilst local government is indeed a form of government, it is also a creature of statute. Out of recognition of the imperatives of democratic self government, the statutory provisions have enacted the creation of largely independent corporations accountable (in the ordinary course) not to the Minister (that is the Crown), but to the people who elect them. In this sense, the measure of independence of statutory corporations, by which the government is ordinarily carried out is inconsistent with viewing their employees as servants of the Crown.²³

4. Editorial

Correct the following editorial errors:

- (a) Change paragraph 15 to paragraph 16 in the table of contents.
- (b) Change paragraph 12 to paragraph 13 in the Detailed Contents List.
- (c) Change paragraph 15 to paragraph 16 in the Detailed Contents List.

Commissioner of Taxation

9 August 2006

ATO references

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²³ See also *Bodney v. Westralia Airports Corporation Pty Ltd* (2000) 180 ALR 91; [2000] FCA 1609; (2000) 109 FCR 178 and *Townsend v. Waverley Council* (2001) NSWSC 384.