CR 2013/83 - Goods and services tax: the amount of input tax credits for creditable acquisitions made by members of the Waste Contractors & Recyclers Association of NSW in respect of supplies from landfill waste disposal facility managers who are liable entities, in relation to the carbon pricing mechanism, under Subdivision B of Division 2 of Part 3 of the Clean Energy Act 2011

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contains references to provisions of the *A New Tax System (Goods and Services Tax) Regulations 1999,* which have been replaced by the *A New Tax System (Goods and Services Tax) Regulations 2019.* This Ruling continues to have effect in relation to the remade Regulations.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32 of TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed and rewritten.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

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Contents Para

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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:

- section 9-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act),
- section 11-5 of the GST Act, and
- section 11-25 of the GST Act.

All subsequent legislative references in the Ruling are to the GST Act unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies consists of all waste and recycling organisations that are full members of the Waste Contractors & Recyclers Association of NSW.

4. Within this Ruling the class of entities are collectively referred to as members.

Qualifications

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

6. 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 9 to 17 of this Ruling.

7. 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
- this Ruling may be withdrawn or modified.

Date of effect

8. This Ruling applies to tax periods commencing on or after 1 July 2012. However, this Ruling does 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

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

10. Members consist of waste and recycling entities.

11. Members are registered for goods and services tax (GST) in respect of carrying on waste and recycling activities as enterprises.

12. In carrying on their enterprises, members dispose of waste or recycling material at a landfill waste disposal facility (facility).

13. The facility manager is registered for GST. The facility manager makes a taxable supply under section 9-5 of waste management services to members when allowing members to dispose of waste or recycling material at the facility.

14. Members make a creditable acquisition under section 11-5 from the facility manager of waste management services when disposing of waste or recycling material at the facility.

15. The facility is a landfill facility in relation to which, under the carbon pricing mechanism (CPM) of the *Clean Energy Act 2011* (CE Act), the facility manager is a 'liable entity' under Subdivision B of Division 2 of Part 3 of the CE Act and is required to pay an amount to the Clean Energy Regulator (CER).

16. The facility manager issues a tax invoice to members showing the fees charged for allowing disposal of waste at the facility. The amounts shown on the tax invoice are expressed as amounts of money and members make payment in money only.

17. The tax invoice may separately show an amount in relation to the CPM costs of the facility manager of operating the facility.

Ruling

18. The fee charged for the waste management services, including on-charging of any CPM costs, is subject to GST.

19. The amount of input tax credits under section 11-25 is an amount equal to the GST payable on the taxable supply of waste management services made by the facility manager.[1]

20. Costs incurred by facility managers under the CPM of the CE Act, as a 'liable entity' under Subdivision B of Division 2 of Part 3 of the CE Act, are exempt[2] from GST as Division 81 applies. The CER is not liable to pay GST in respect of these amounts.

21. However, where facility managers recover these costs from members they are not exempt from GST, even if the amount is identified separately in invoices issued to members. Facility managers are not imposing the cost in relation to the CPM on members under the authority of the relevant law. Rather, they are passing on the costs that have been, or will be, imposed on them. These amounts form part of the total charge to members for waste management services, and the facility manager is liable to pay GST in respect of the amount.

Commissioner of Taxation
13 November 2013

[1] However, the amount of the input tax credits is reduced if the acquisition is only partly creditable under section 11-30 of the GST Act.
[2] Under Division 81, certain payments of taxes, fees and charges are treated as not being the provision of consideration, with the effect that supplies to which they relate are not subject to GST. In this Ruling, we refer to such payments as being 'exempt' from GST.

Appendix 1 – Explanation

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 11 – creditable acquisitions

22. Under section 11-20 an entity is entitled to the input tax credit for any creditable acquisition it makes.

23. Section 11-30 provides that the amount of the input tax credit for a creditable acquisition is an amount equal to the GST payable on the supply of the thing acquired. However, the amount of the input tax credit is reduced if the acquisition is only partly creditable.

24. The note to section 11-30 explains, in so far as is relevant, that the basic rule for working out the GST payable on the supply is in Subdivision 9-C.

Subdivision 9C – GST payable on taxable supplies

25. Section 9-70 provides that the amount of GST on a taxable supply is 10% of the value of the taxable supply.

26. Subsection 9-75(1) sets out a formula for working out the value of a taxable supply. The formula provides that the value is as follows:

$$\text{Price} \times \frac{10}{11}$$

where:

price is the sum of:

(a) so far as the *consideration for the supply is consideration expressed as an amount of *money – the amount (without any discount for the amount of GST (if any) payable on the supply); and

(b) so far as the consideration is not consideration expressed as an amount of money – the *GST inclusive market value of that consideration

(* Asterisked terms are defined in section 195-1.)

Consideration

27. The term 'consideration' is defined in section 195-1 as having the meaning given in sections 9-15 and 9-17. Section 9-15 provides that consideration includes any payment.

28. In transactions involving money only, the consideration is the amount of the payment (without any discount for the amount of GST (if any) payable on the supply).

29. However, in some circumstances, the GST Act may apply to treat a payment as not being the provision of consideration.

Subdivision B of Division 2 of Part 3 of the CE Act

30. Subdivision B of Division 2 of Part 3 of the CE Act provides that a person who has operational control of a landfill facility is a 'liable entity' and is required to pay an amount to the CER in relation to the CPM. For the purposes of this Ruling, the 'liable entity' is referred to as the facility manager.

Division 81 and payment of the waste levy to the EPA

31. Division 81 of the GST Act applies to the payment (or the discharging of the liability to make a payment) of Australian taxes or Australian fees or charges, to an Australian government agency by an entity which is liable for the tax, fee or charge under the provisions of the applicable Australian law. The payment of fees or charges to which Division 81 applies is not subject to GST.

32. The CPM amount payable by a 'liable entity' under Subdivision B of Division 2 of Part 3 of the CE Act is imposed on the facility manager who is required to pay it to the CER (an Australian government agency).

33. When the facility manager pays the CPM amount, Division 81 applies to the payments and these payments are exempt from GST. This is because these amounts are Australian taxes, fees or charges imposed on the manager under an Australian law that are payable to an Australian government agency, and the manager is the entity that is liable to pay for these amounts under the CE Act.

Payment of fees charged by the facility manager

34. The tax invoice issued to members by the facility manager may show that the fees charged for waste management services include an amount in relation to the CPM costs of the manager.

35. A facility manager calculates the fees charged on a commercial basis. Generally, the calculation of such fees can be affected by many factors and typically reflect the costs of providing the services. This may include, for example, costs of Australian taxes, fees and charges for which the facility manager is liable and which the manager may seek to recover. A facility manager may identify a separate amount in relation to CPM costs in the tax invoice issued to members to indicate that some, or all, of this cost is being recovered in the total amount charged for the services.

36. Accordingly, Division 81 does not apply to amounts in relation to CPM costs of the facility manager, included in the total amount charged for disposing of waste at the facility.[3] Such amounts form part of the consideration for the supply of the services.

37. Therefore, the amount charged by the facility manager is the consideration for the supply of waste management services to members, even if the amounts are identified separately in tax invoices issued to members.

38. Under section 9-40, the facility manager is liable for GST on the taxable supply of waste management services made to members. The amount of GST payable can be worked out by the manager using the formula set out in subsection 9-75(1) for working out the value of a taxable supply.

Note: *Subsection 81-10(2) provides that an Australian fee or charge may be prescribed by the regulations as being a fee or charge that constitutes consideration. Fees for the use of a waste disposal facility are covered by paragraph 81-10.01(1)(d) of the A New Tax System (Goods and Services Tax) Regulations. This means that payment of the total amount charged to members, including an amount in relation to the waste levy which may be shown on the tax invoice issued by the facility manager, is specifically treated as consideration for a supply.*

[3] This view is consistent with the view expressed at paragraphs 8 and 9 of Goods and Services Tax Determination GSTD 2000/10 *Goods and services tax: are outgoings payable by a tenant under a commercial property lease part of the consideration for the supply of the premises?*

Appendix 2 – Detailed contents list

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

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10; GSTD 2000/10

Subject references:

- creditable acquisition
- Goods and services tax
- GST consideration
- input tax credit
- tax invoices
- taxable supply

Legislative references:

- ANTS(GST)A 1999 9-5
- ANTS(GST)A 1999 9-15
- ANTS(GST)A 1999 9-17
- ANTS(GST)A 1999 9-40
- ANTS(GST)A 1999 9-70
- ANTS(GST)A 1999 9-75(1)
- ANTS(GST)A 1999 11-5
- ANTS(GST)A 1999 11-20
- ANTS(GST)A 1999 11-25
- ANTS(GST)A 1999 11-30
- ANTS(GST)A 1999 Div 81
- ANTS(GST)A 1999 81-10(2)
- ANTS(GST)A 1999 195-1
- ANTS(GST)R 1999 81-10.01(1)(d)
- Clean Energy Act 2011
- CEA 2011 Subdiv B Div 2 Pt 3
- TAA 1953

ATO references

NO:	1-4G01N3X
ISSN:	1445-2014
ATOlaw topic:	Goods and Services Tax ~~ General rules and concepts ~~ input tax credits