PS LA 2013/2 (GA) (Withdrawn) - GST treatment of Australian fees or charges under Division 81 of the A New Tax System (Goods and Services Tax) Act 1999

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This Practice Statement is withdrawn with effect from 23 July 2025, as the administrative approach it outlined no longer has any application given the passage of time.

This administrative approach applied from 1 July 2013 to 22 July 2025 to Australian Government agencies self-assessing the GST classification of supplies under Division 81 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). Under that approach, the ATO agreed to not disturb the past treatment by Australian Government agencies (that is, prior to 1 July 2013) where they had treated a fee or charge as exempt because it was listed in the former Treasurer's Determination *A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2011 (No. 1)* (now repealed) and the fee or charge was now no longer exempt under the GST Act.

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Law Administration Practice Statement (General Administration)

PS LA 2013/2 (GA)

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contains references to provisions of the *A New Tax System (Goods and Services Tax) Regulations 1999*, which have been replaced by the *A New Tax System (Goods and Services Tax) Regulations 2019*.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

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 LAPS is available.

This law administration practice statement is issued under the authority of the Commissioner and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. ATO personnel, including non ongoing staff and relevant contractors, must comply with this law administration practice statement, unless doing so creates unintended consequences or is considered incorrect. Where this occurs, ATO personnel must follow their business line's escalation process.

SUBJECT: **GST treatment of Australian fees or charges under Division 81 of the *A New Tax System (Goods and Services Tax) Act 1999***

PURPOSE: **This practice statement sets out the administrative approach the Australian Taxation Office (ATO) will take on and from 1 July 2013 where Australian government agencies determine the GST classification of supplies that they make for which Australian fees or charges are received as consideration**

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SCOPE

1. This practice statement applies on and from 1 July 2013 to Australian government agencies[1] self-assessing the GST classification of supplies under section 81-10 of the *A New Tax System (Goods and Services Tax) Act 1999.*[2] It applies to Australian fees or charges[3] listed in the *A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2011 (No. 1)* (Treasurer's determination) which are received as consideration for the supplies they make.
2. Australian government agencies encompass local municipal and shire councils, state and territory entities, and Commonwealth entities.
3. The treatment in this practice statement applies to Australian government agencies that self-assess Australian fees or charges as being 'exempt'[4] in accordance with the Treasurer's determination. If an Australian fee or charge that receives this treatment is subsequently considered not to be exempt, the Commissioner will require the treatment to be changed prospectively.
4. It does not apply to Australian government agencies in self-assessing:
   (a) Australian taxes – subsection 81-5(1) applies to these items; and
   (b) Australian fees or charges not listed in the Treasurer's determination.

BACKGROUND

5. Division 81 provides the GST treatment of Australian taxes and Australian fees or charges received by Australian government agencies for supplies that they make.
6. Division 81 was amended with effect from 1 July 2011 to enable Australian government agencies to self-assess the GST treatment of Australian taxes and Australian fees or charges. Regulations 81-10.01, 81-15.01 and 81-15.02 of the *A New Tax System (Goods and Services Tax) Regulations 1999* (GST Regulations),[5] were introduced to make certain Australian fees or charges:
   - consideration for a supply and subject to GST;[6] or

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[1] The term 'Australian government agency' is defined in section 195-1 by reference to section 995-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) as meaning:
   (a) 'the Commonwealth, a State or a Territory; or
   (b) an authority of the Commonwealth or of a State or a Territory.'

[2] Unless otherwise stated, all legislative references in this practice statement are to the *A New Tax System (Goods and Services Tax) Act 1999.*

[3] The term 'Australian fee or charge' is defined in section 195-1 as 'a fee or charge (however described), other than an *Australian tax, imposed under an *Australian law and payable to an *Australian government agency.'

[4] In this practice statement, if an Australian tax or an Australian fee or charge is not consideration for a supply and is not subject to GST, it is referred to as being 'exempt'.

[5] Unless otherwise stated, all references to the GST regulations are to the *A New Tax System (Goods and Services Tax) Regulations 1999*.

[6] The supply will be a taxable supply if all other requirements of section 9-5 are satisfied.

- not consideration for a supply and exempt.

7. The Division 81 amendments including the GST regulations are intended to largely maintain the GST treatment of the Australian taxes, fees or charges provided by the Treasurer's determination.

8. The Treasurer's determination made for purposes of Division 81 ceases to have effect on and from 1 July 2013.[7] Australian government agencies as a result need to self-assess the GST treatment of all the fees and charges previously listed in the Treasurer's determination.

STATEMENT

Administrative treatment of Australian fees and charges

9. On and from 1 July 2013, and subject to paragraph 10, the ATO will take the administrative approach that:

   (a) if an Australian government agency classifies Australian fees or charges listed on the Treasurer's determination as being 'exempt' in accordance with the Treasurer's determination, the Commissioner will not disturb the treatment retrospectively;

   (b) if an Australian fee or charge that is treated as 'exempt' is subsequently considered not to be 'exempt', the Commissioner will require the treatment to be changed prospectively.

10. Australian fees or charges that will not be eligible to receive this treatment are those Australian fees or charges:

    (a) listed on the Treasurer's determination that are regarded as being consideration for a supply under regulation 81-10.01 of the GST regulations;[8]or

    (b) in respect of which the Commissioner has issued a private ruling to an entity or issued a public ruling (including a Class Ruling).

11. Australian government agencies should self-assess Australian taxes and Australian fees or charges ***not*** listed on the Treasurer's determination by using Division 81 and regulations 81-10.01, 81-15.01 and 81-15.02 of the GST regulations.

EXPLANATION

Legislation and GST regulations

12. Australian government agencies must self-assess their GST obligations in relation to Australian taxes and Australian fees or charges using Division 81 and the GST regulations.

13. Up until 30 June 2011, Division 81 operated by treating a payment of any Australian tax, fee or charge as consideration for a supply unless it was of a kind specified in a legislative instrument by the Treasurer (the Treasurer's determination) made for the purposes of former subsection 81-5(2).

14. Former subsection 81-5(2) provided that the payment of an Australian tax, fee or charge of a kind specified in a Treasurer's determination, or the discharging

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[7] Paragraph 81-15.01(1)(h) of the GST Regulations extended the operation of the Treasurer's determination in respect of fees and charges to 30 June 2013.

[8] Regulation 81-10.01 of the GST regulations prescribes fees or charges that are consideration for a supply and hence subject to GST, if the other requirements of section 9-5 are satisfied.

of a liability to make such a payment, was not the provision of consideration and hence was not subject to the GST.

15. Division 81 was amended with effect from 1 July 2011 to enable government agencies to self-assess the GST treatment of Australian taxes and Australian fees or charges.

16. On and from 1 July 2011, Division 81 operates as follows:

    (a) the payment of an Australian tax[9] will be 'exempt' under subsection 81-5(1); or

    (b) an Australian fee or charge will be 'exempt' under subsection 81-10(1) if it is of a kind to which subsections 81-10(4) and (5) apply.

17. However, regulations can be made with the effect of treating a payment of an Australian tax, or the discharging of a liability to make such a payment, as the provision of consideration for a supply, which may be a taxable supply if the requirements of section 9-5 are satisfied.[10]

18. Also, regulations can be made with the effect of treating a payment of an Australian fee or charge, or the discharging of a liability to make such a payment, as:

    (a) the provision of consideration for a supply, which may be a taxable supply if the requirements of section 9-5 are satisfied[11] – regulation 81-10.01 of the GST regulations has been made specifying particular Australian fees or charges that are consideration for a supply; and

    (b) not the provision of consideration for a supply and therefore 'exempt'[12] – regulation 81-15.01 of the GST regulations has been made specifying particular Australian fees or charges that are not consideration for a supply.

19. Tie-breaker rules exist if regulations 81-10.01 and 81-15.01 of the GST regulations both apply. Under the tie-breaker rules:

    (a) If paragraph 81-10.01(1)(g) and regulation 81-15.01 apply, the fee or charge is not the provision of consideration for a supply under subregulation 81-15.02(1). The supply is therefore 'exempt'.

    (b) If paragraphs 81-10.01(1)(a), (b), (c), (d), (e), (f) or (h) and regulation 81-15.01 apply, the fee or charge is the provision of consideration for a supply under subregulation 81-15.02(2). The supply may be a taxable supply if the requirements of section 9-5 are satisfied.

    (c) However, if the fee or charge is specified in the Treasurer's determination and was imposed before 1 July 2013, the fee or charge is not the provision of consideration under subregulation 81-15.02(3). The supply is therefore 'exempt'.

20. The operation of the legislation and the GST regulations is represented in a diagram at Appendix A to this Practice Statement.

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[9] 'Australian tax' is defined in section 195-1 as: 'means a tax (however described) imposed under an *Australian law.'

[10] Subsection 81-5(2). At the time of preparing this practice statement there are no regulations prescribing a payment that is, or is a kind of, an Australian tax.

[11] Subsection 81-10(2).

[12] Section 81-15.

Treasurer's determination

21. Treasurer's determination is a legislative instrument developed for the purposes of former subsection 81-5(2) that specified Australian taxes, fees and charges that are not consideration for a supply, and therefore exempt from GST.

22. Despite the repeal of former subsection 81-5(2), the application provisions in the *Tax Laws Amendment (2011 Measures No. 2) Act 2011* provided that the Treasurer's determination continued to have effect until 30 June 2012. The GST treatment for Australian fees or charges covered by the Treasurer's determination was maintained until 30 June 2013 by paragraph 81-15.01(1)(h) of the GST regulations.

23. The explanatory memorandum to Tax Laws Amendment (2011 Measures No. 2) Bill 2011 that amended Division 81 states that the process of updating the Treasurer's determination placed an administrative burden on all levels of government. The Treasurer's determination was made bi-annually and extended to approximately 700 pages of taxes, fees or charges. The amendment was intended to reduce this burden by allowing government agencies to self-assess.

24. The amendment also provides increased certainty by allowing Australian government agencies to treat eligible items as exempt from the time that they are introduced rather than some later time when they are listed in a Treasurer's determination.

25. Prior to the amendments, to determine the GST treatment of a fee or a charge, Government agencies simply needed to consult the Treasurer's determination.

26. Some Australian government agencies expressed concerns that the amended Division 81 and the GST regulations that applied from 1 July 2011 did not provide the same certainty of GST treatment for Australian fees or charges that existed prior to the amendments. These concerns were reduced by the publishing of amended GST regulations that applied on and from 1 July 2012 and that extended the operation of the existing Treasurer's determination to 30 June 2013.

27. The administrative treatment in this Practice Statement provides increased certainty that Australian government agencies have sought in order to administer their GST obligations in respect of Australian fees or charges.

A fee or charge not covered by the administrative treatment

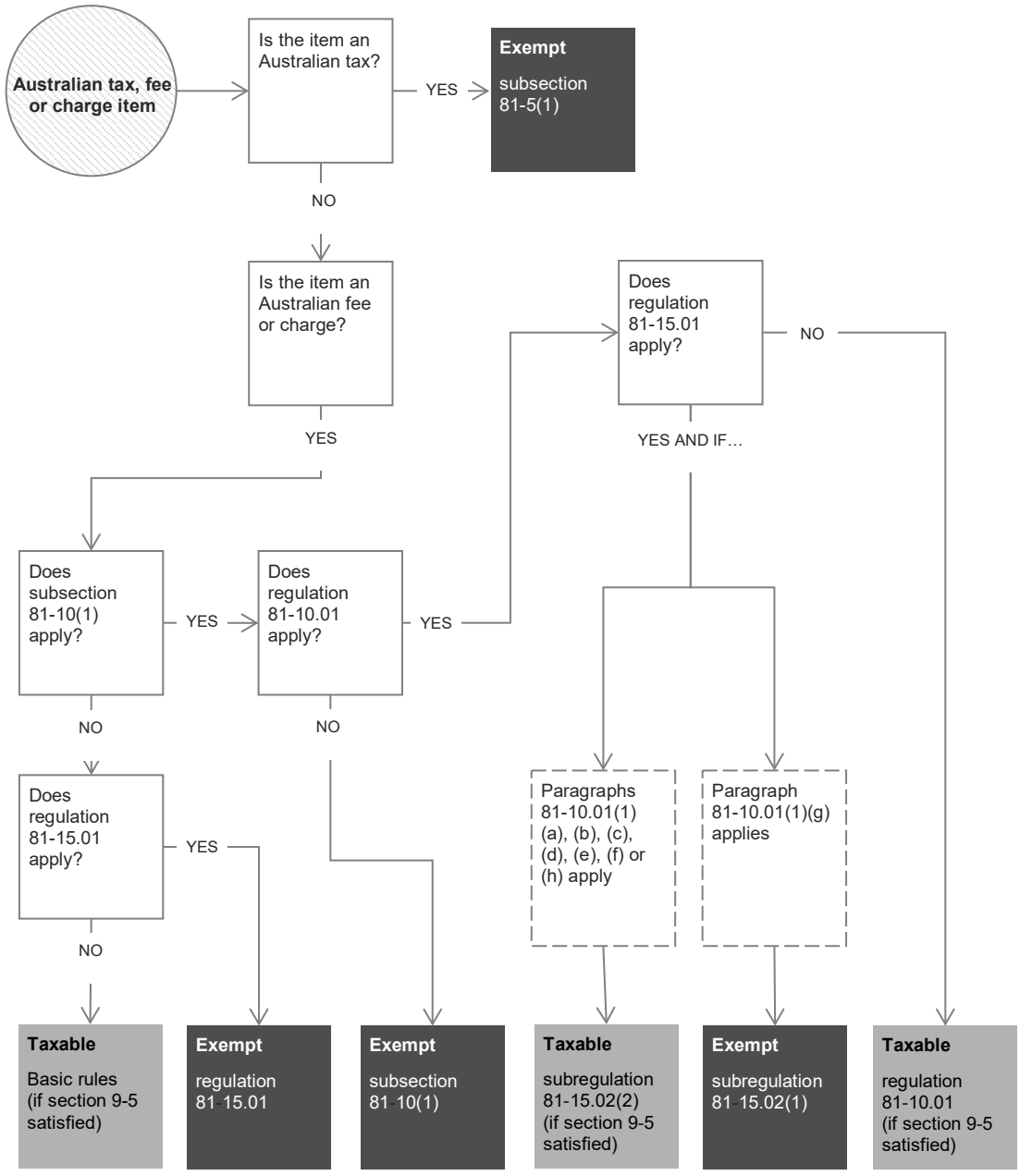
28. For Australian fees or charges not covered by the administrative treatment under this Practice Statement, an Australian government agency should self-assess by applying the rules of Division 81 and regulations 81-10.01, 81-15.01 and 81-15.02 of the GST regulations.

29. If an Australian government agency is uncertain of the GST treatment of an Australian fee or charge, they are encouraged to seek a private ruling.

Appendix A

Diagram of the law and regulations

This diagram shows how Division 81 of the *A New Tax System (Goods and Services Tax) Act 1999* and regulations 81-10.01, 81-15.01 and 81-15.02 of the A New Tax System (Goods and Services Tax) Regulations 1999 determines whether a supply by a government agency is subject to GST.



***Please note:** The operation of subsection 81-5(2) has not been inserted into this diagram.

Subsection 81-5(2) enables a regulation to be made that would make an Australian tax subject to GST where subsection 81-5(1) otherwise applies to make the Australian tax exempt. At the time of preparing this practice statement there are no regulations made under subsection 81-5(2), so the provision does not apply at this stage and hence it has not been included in the diagram.

Subject references	Australian fee or charge Australian tax goods and services tax Treasurer's determination
Legislative references	ITAA 1997 995-1 ANTS(GST)A 1999 9-5 ANTS(GST)A 1999 Div 81 ANTS(GST)A 1999 81-5(1) ANTS(GST)A 1999 81-5(2) ANTS(GST)A 1999 81-10 ANTS(GST)A 1999 81-10(1) 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 81-10.01(1)(a) ANTS(GST)R 1999 81-10.01(1)(b) ANTS(GST)R 1999 81-10.01(1)(c) ANTS(GST)R 1999 81-10.01(1)(d) ANTS(GST)R 1999 81-10.01(1)(e) ANTS(GST)R 1999 81-10.01(1)(f) ANTS(GST)R 1999 81-10.01(1)(g) ANTS(GST)R 1999 81-10.01(1)(h) ANTS(GST)R 1999 81-15.01 ANTS(GST)R 1999 81-15.01(1)(h) ANTS(GST)R 1999 81-15.02 ANTS(GST)R 1999 81-15.02(1) ANTS(GST)R 1999 81-15.02(2) ANTS(GST)R 1999 81-15.02(3) Tax Laws Amendment (2011 Measures No. 2) Act 2011
Other references	A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2011 (No. 1)
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