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GOODS AND SERVICES TAX (GST) EXEMPTION FOR CERTAIN GOVERNMENT TAXES, FEES AND CHARGES (DIVISION 81 OF THE GST ACT)

This circular is to inform councils that the Commonwealth Government has replaced the 'Division 81 Determination listing' approach to exempting certain government taxes, fees and charges from GST with a new self assessment 'principles-based' approach to providing the exemptions.

The GST Act (ie, *A New Tax System (GST) Act 1999*) has been amended to replace the mechanism under Division 81 with specific legislative exemptions for ensuring Australian taxes and certain government fees and charges are not subject to the Goods and Services Tax (GST). The legislation also allows for the making of regulations to treat an Australian tax, or an Australian fee or charge, in a particular way.

The new arrangements apply from 1 July 2011. The current (and last) Division 81 Treasurer's Determination, which lists items that are exempt from GST, will be 'grandfathered' for one year until 30 June 2012. This gives councils an opportunity to review the GST status of items listed on the Determination against the new legislative mechanism.

The Division understands that the intention of the new legislation is to replace the Determination. Therefore, it is anticipated that most items in the Determination will remain GST exempt. However, councils should commence, if not already underway, a review of the GST status of items currently exempt under the previous 'Division 81 Determination' against their status under the new Division 81 self assessment principles.

The Determination can be accessed via the Commonwealth Treasury's website at: <http://www.treasury.gov.au/contentitem.asp?NavId=&ContentID=1463>.

Councils should use guidance material produced by the Australian Taxation Office to assist with the review. The guidance material is available on the Australian Taxation Office website at www.ato.gov.au.

The new Division 81 contains three broad categories that set out the taxes, fees and charges that qualify for exemption. These categories are:

- Australian taxes (section 81-5 of the GST Act)

- Fees or charges for the provision, retention, or amendment, under an Australian law, of a permission, exemption, authority or license (however described) (subsection 81-10(4) of the GST Act)
- Fees or charges paid to an Australian government agency for recording, copying, modifying, receiving, processing, searching for or allowing access to information (subsection 81-5(5) of the GST Act).

For example, as indicated by the associated explanatory memorandum to the Bill, Australian taxes include local government 'ordinary rates', therefore local government 'ordinary rates' are exempt from GST.

The Division of Local Government has been asked to collect information regarding items that have changed their GST taxable status as a result of the new arrangements, ie, items that have become either taxable or exempt under the new arrangements.

Councils are therefore asked to notify the Division of Local Government by **24 October 2011** of any such items. Councils can notify the Division by emailing finance@dlg.nsw.gov.au using the subject header '**GST - Division 81**'. This information will be forwarded to NSW Treasury.

If applicable, councils should include in their email a short description of the fee or charge, the change in GST status and the annual budgeted amount.

The Division of Local Government does not provide technical or legal advice on GST. Councils should consult the Australian Taxation Office, internal qualified officers, or external tax advisors for technical or legal advice when seeking further clarification.

NSW Treasury has also issued Circular TC11/11, which can be accessed via the NSW Treasury website at:

http://www.treasury.nsw.gov.au/_data/assets/pdf_file/0013/20164/nswtc11-11_dnd.pdf

regarding the amendments to GST legislation.



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