



CR 2013/25 - Goods and services tax: the GST treatment of fees and charges imposed by NSW councils in relation to cemeteries, facilities, leases, legal services, libraries and sales.

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 This document has changed over time. This is a consolidated version of the ruling which was published on *1 May 2013*



Class Ruling

Goods and services tax: the GST treatment of fees and charges imposed by NSW councils in relation to cemeteries, facilities, leases, legal services, libraries and sales.

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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 provision(s) 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);
- Division 81 of the GST Act; and
- 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.

Class of entities

4. The class of entities to which this Ruling applies consists of all councils that are members of the Local Government and Shires Association of New South Wales (NSW).
5. Within this Ruling the class of entities is 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 17 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. The scheme incorporates the supplies made by NSW Councils in relation to management and control of cemeteries, the use of facilities, leases of land, legal services, operating libraries and sales of goods, information, rights and services.
13. Council is registered for goods and services tax (GST).
14. The supplies made by Council are connected with Australia and made in the course or furtherance of Council's enterprise.
15. 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.
16. 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.
17. Council levies charges for goods and services under various sections of the LG Act and the other NSW State statutes¹. In particular, under subsection 608(1) of the LG Act, Council may charge and recover a fee for any service it provides.

Ruling

18. This Ruling addresses the GST treatment of supplies made by Council in relation to cemeteries, facilities, leases, legal services, libraries and sale of things for which particular fees and charges are imposed. The following table sets out the GST treatment.
19. In this Ruling:
- when we indicate a fee or charge relates to a taxable supply under section 9-5, we assume that all the requirements of section 9-5 have been met and that the supply is not otherwise GST-free or input taxed under other provisions of the GST Act; and

¹ Details of these sections are contained in Appendix 2.

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- if a fee or charge is not consideration for a supply and is not subject to GST by virtue of Division 81, it is referred to as being 'exempt'.

Cemeteries

Fees and Charges	Description	GST Treatment
Accessories fee	Provision of an additional vase etc.	Taxable – section 9-5
Administration fee for burial on private land	Includes inspection fees.	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations
Council buyback of plot	Includes grave plot, wall niche or garden niche.	This is an acquisition from the entity that holds the right to a plot. This is not a fee or charge imposed by Council.
Private cemetery fee	Application for private cemetery. Includes inspection fee and fee for signing of linen plan; private plot.	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations
Cremation fee	Cremation charge and/or Chapel hire.	Taxable – section 9-5
Fee for Safe Custody of Ashes		Taxable – section 9-5
Digging and Backfilling fee		Taxable – section 9-5 and paragraph 81-10.01(1)(g) of the GST Regulations
Minor disturbance fee	Minor disturbance fee	Taxable – section 9-5 and paragraph 81-10.01(1)(g) of the GST Regulations
Subsequent interment excavation fee	Fee applicable for excavation for additional interments	Taxable – section 9-5
Exhumation fee	A fee for exhumation of a body. Exhumation includes reopening and closing of the grave. May include a fee for the removal and replacement of the Monument and an administration fee.	Taxable – section 9-5
Exhumation permit fee	A fee for permit for approved exhumation.	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations
Fee collected from Funeral Director for incorrect burial		Taxable – section 9-5
Grave investigation fee	Grave investigation (probing, records search, computer records, grave registration). Search information for Family Trees.	Exempt – subsection 81-10(5) Information

Cemeteries cont'd

Fees and Charges	Description	GST Treatment
Interment fee	<p>A grave is a place of interment.</p> <p>Interment generally means the sinking of the grave, the placement of the coffin or ashes there in, backfilling of the grave and removal of debris.</p> <p>Includes single, double and triple depth graves with work being performed during normal working hours, when late notice given, overtime fee for weekend work.</p> <p>Also includes reopening for second interment fees and fees for removal and replacement of headstone or monument for a second or subsequent interment, as well as fees for adding a new inscription after a second interment.</p> <p>May include a fee for plaque where Council combines the fee for a plaque with the interment fee.</p>	<p>Taxable – section 9-5</p> <p>Relates to the supply of services rather than the supply of a permission</p>
Interment of Ashes fee	<p>Interment of Ashes; Interment of ashes in columbarium (a vault or room with niches for urns containing ashes).</p> <p>Includes fee for disinterment of ashes.</p> <p>Includes deposits to reserve niche. Inc. ashes relocation. May also include fee for provision and affixing of inscribed plaque and perpetual maintenance when Council charges a combined fee for all services. Includes fee for scattering of ashes.</p>	Taxable – section 9-5
Fee for late arrival at cemetery for funeral	Where Council charges a fee when the funeral party fails to arrive at the scheduled time for the funeral, also includes extended service.	Taxable – section 9-5
Lawn Cemetery – Burial Fee, Plaque and Vase	The comprehensive fee to be buried in the lawn section of the cemetery.	Taxable – section 9-5
Grave Maintenance charge	Maintenance charges, ceramic photo, refurbish or replace plaque, additional motifs or emblem, cast bronze vase, vase holder.	Taxable – section 9-5
On site cemetery meeting fee	Where the purpose of the meeting is to plan details of the burial and not merely to convey information.	Taxable – section 9-5
Supply of Monument fee	A charge for the supply and installation of a monument.	Taxable – section 9-5
Fee for wall niche	Wall niche or section of memorial wall without an actual niche. Also includes the fee for a wall niche reservation.	Taxable – section 9-5

Cemeteries cont'd

Fees and Charges	Description	GST Treatment
Burial permit fee	Burial permit fee. Fee for burial permit outside hours of 9 to 5 weekdays or on Sat/Sun. Burial permit fee for second interments This charge is essentially an administration fee.	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations
Monument or Headstone permit fee	Monumental / Headstone permit. Includes permit fee for the erection of foot stones, tombs, or other monuments such as stone or concrete slabs over graves, concrete kerbing, etc. Includes single and double graves. Includes fee for permit to perform work on cemetery grounds. Includes application fee for a War Grave.	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations
Fee for permit to carry out works in a cemetery	Permit fee for grave diggers, masons, funeral directors, etc. to perform works associated with funeral services in a cemetery.	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations
Fee for permit to install a plaque	Permit for permission to install or affix a plaque.	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations
Fee for the supply of a plaque	Fee for plaques and/or additional plaque and plaque upgrades, memorial trees/shrubs, ceramic photos of deceased, etc. Service and maintenance of graves, plaques, vases, ceramic photos etc. wall of remembrance plaque, plaque installation. Includes additional inscriptions on existing plaques or the provision of a cross.	Taxable – section 9-5
Burial site reservation fee	Pre-purchase and or reissue. Reservation Deposit – Columbarium and Burial Plot.	Taxable – section 9-5 Supply of a right to a plot The Explanatory Statement to the A New Tax System (Goods and Services Tax) Amendment Regulation 2012 (No. 2) (ES) specifically lists a fee for a right to a burial plot as non regulatory -paragraph 81-10.01(1)(g) of the GST Regulations
Charge for Plot – Single, double. child	Plot – Single, double, triple, child. Includes an 'Exclusive Rights' certificate and the fee for a replacement 'Exclusive Rights' certificate. Also includes fees for perpetual maintenance of the plot when Council combines the two fees. Includes fee for family estate plots.	Taxable – section 9-5

Cemeteries cont'd

Fees and Charges	Description	GST Treatment
Charge for Plot reservation and interment	Reservation fee plus first interment	Taxable – section 9-5
Fee to re-identify a burial plot	Investigate and identify a burial plot occupant.	Exempt – subsection 81-10(5) Information
Fee for Cemetery Register	A fee for the provision of information contained in the Cemetery Register.	Exempt – subsection 81-10(5) Information
Funeral services weekend or public holiday surcharge.	Where Council charges an additional fee for funeral services generally on weekends or public holidays.	Taxable – section 9-5
Admission fee – tours	Tours – Cemetery tours; Guided city bus or walking tours; Chinatown food and cultural tours; Chinese new year parade ticket; tickets for Town Hall concert series events; etc. Also includes fee for a tour guide, where applicable.	Taxable – section 9-5 and paragraph 81-10.01(1)(c) of the GST Regulations
Fee for transfer burial right.	Transfer of burial right within family or outside of the family. A fee to cover council's costs in updating the information contained on its cemetery register or otherwise kept by council when the owner of a burial right transfers that right to another person.	Exempt – subsection 81-10(5) Information and record-keeping
Fee for conveyance of body	Fee for conveyance or transportation of a body.	Taxable – section 9-5
Fee for Internal vehicle access for monumental work	Internal vehicle access for monumental work. Associated with permit to perform works in a cemetery [Monument/headstone permit].	Exempt – Paragraph 81-15.01(1)(f) of the GST Regulations
Funeral services package fee	Fee for funeral services. Where Council charges a flat fee for various funeral services including preparing the chapel and/or outdoor funeral area, land for the grave plot, 1st interment, community centre hall hire, supply and fixing of plaque, marquees at cemetery and a possible discount for pre-purchase. Where Council offers any combination of the above as a package deal including other supplies not specified herein.	Taxable – section 9-5
Fee for utilisation of Council staff for various activities within a cemetery	Charge for work performed by Council staff.	Taxable – section 9-5

Facilities

Fees and Charges	Description	GST Treatment
Use of Facilities – Airport	Landing fees (aircraft or helicopter), landing rights, site, hangar or clubhouse rental. Commercial operators, Flying Schools. Car parking charges in terminal car park and car park charges from Car Hire Operators. Hire of runway. Avdata exemption fee. Commercial charter service. Commercial Terminal Fee. Use of terminal. Fee for closure and use of airport for commercial organisations, recreational, volunteering & sporting organisations. Hire of airport hangars. Terminal after hours opening fees, apron parking fees, pavement concession processing fees.	Taxable – section 9-5 and paragraph 81-10.01(1)(c) of the GST Regulations
Use of Facilities – camping grounds and caravan parks	Fees payable for permit to camp on camping grounds, caravan park sites, fees for caravans at caravan parks/sites and on-site facilities at these venues, cabin hire. Lighting / electricity, water or gas charge for using facility. Includes fees for hiring facilities at holiday parks. Includes occupation agreements for holiday vans	Taxable – section 9-5 and paragraph 81-10.01(1)(c) of the GST Regulations
Use of Facilities – Civic centre	Use of Council offices, halls and/or community centres. Use of theatres, rehearsal room, stage, sound and lighting hire and use of technicians; auditorium, vestibule, entertainment theatre, theatrette, studio, kitchen facilities; use of lobby; Includes call out fees. Includes cleaning fees where applicable and security provided by Council.	Taxable – section 9-5 and paragraph 81-10.01(1)(c) of the GST Regulations
Use of General Equipment fee – Civic	General equipment hire fees for the use of equipment such as lecterns, PA trolleys, White board, display board, TV/video, overhead projector and/or screen, PA system, OHP, TV/VCR, projectors, portable sound system, barbeque, kiln, plastic chairs, professional sound systems, microphones, mixers, miscellaneous audio/visual equipment, internet connection, grand piano, electronic whiteboard, Arts screens, tables, chairs, specialist equipment. Also includes the cost associated with repairing or replacing damaged, lost, or stolen equipment.	Taxable – section 9-5 and paragraph 81-10.01(1)(c) of the GST Regulations

Facilities cont'd

Fees and Charges	Description	GST Treatment
Use of General Equipment fee – Other	<p>Equipment hire fees.</p> <p>Hire of child restraint equipment such as baby capsules.</p> <p>Hire of Councils mobile food van or street stall caravan.</p> <p>Fee for use/hire of equipment in connection with the use of Council footpath or mall.</p> <p>The hire of equipment may include complimentary delivery of the equipment to a designated location or otherwise. Also includes surcharge for equipment to be picked up or delivered out of normal business hours.</p> <p>Fee for use of photocopying equipment at Council office or at a location owned by Council such as a visitor centre or library.</p> <p>Fee for the use of wireless access cards to access internet (charged by time increment).</p> <p>Fee for rental/hire of Sydney's New Years Eve operational assets including stage hire.</p>	Taxable – section 9-5 and paragraph 81-10.01(1)(c) of the GST Regulations
Use of General Equipment fee – Library	<p>Fees and charges for cleaning CD/DVD, word processing, use of equipment such as a photocopier, photocopying charge, microfilm, scanner, binder, laminator, facsimile/fax machine, paper reproduction, genealogy printers, facsimile, email, Wi-Fi, wireless (hotspots) access to internet, purchase a photocopy/printing credit/use card, use of a public telephone,</p> <p>Payment of costs associated with repairing or replacing damaged, lost, or stolen equipment.</p>	Taxable – section 9-5 and paragraph 81-10.01(1)(c) of the GST Regulations
Use of General Equipment fee – Sport	<p>Fees and charges for the installation of goal posts supplies of line marking equipment and stadium naming rights and other advertising fees in sports facilities.</p> <p>Includes the cost associated with repairing or replacing damaged, lost, or stolen equipment.</p>	Taxable – section 9-5 and paragraph 81-10.01(1)(c) of the GST Regulations
Fee for inspection of facility	Includes fee for inspection of an airport or other facility.	Taxable – section 9-5
Replacement key fee	Fees for providing keys and or altering locks.	Taxable – section 9-5
Mooring licence fee	<p>Fees related to a licence to moor a boat.</p> <p>Includes additional fee charged per person for occupation of a mooring over a 90 day period.</p>	Exempt – subsection 81-10(4) permission, authority or licence to moor a vessel
Mooring fee	Fees related to mooring a boat at a pier, wharf or jetty.	Taxable – section 9-5 and paragraph 81-10.01(1)(c) of the GST Regulations

Facilities cont'd

Fees and Charges	Description	GST Treatment
Use of Facilities – other	<p>Recovery of operational and other costs for cleaning and consumables required as a result of the use of Council facilities such as halls, parks, etc.</p> <p>Non-return fee of Council keys.</p> <p>Fees for providing barricading.</p> <p>Fee for revenue forgone, security and waste management etc.</p> <p>May include recovery of costs incurred by virtue of using electricity or water supply in connection with the use of facilities; particularly where Council may be simply passing on the usage costs to the user, rather than charging a flat rate.</p> <p>Fee for street sweeping or footpath cleaning for events or emergency response.</p> <p>Weddings on Council lands, reserves, property etc.</p> <p>Meeting rooms.</p> <p>Canine training facilities including ancillary services.</p> <p>Fee to use parks by Personal Trainers or Fitness groups (Where organisers charge a fee for entry).</p> <p>Access through reserves for construction and/or occupation of public space.</p> <p>Gate fee or gate opening service fee to parks and facilities. Council may allow its land to be used for storage or as a car park. May allow for residents or non-residents to hire storage space for dinghies.</p> <p>Any associated inspection fees for use of facilities for such access purposes and any fees applicable for restoration works required (i.e. to landscaped and turfed areas).</p> <p>Storage fees for a range of items.</p> <p>Security call outs.</p> <p>Reimbursement of cost of goods damaged; Also includes Fees collected by Council for agistment of cattle and other animals.</p> <p>Weddings on Council lands, reserves, property etc.</p>	Taxable – section 9-5 and paragraph 81-10.01(1)(c) of the GST Regulations

Facilities cont'd

Fees and Charges	Description	GST Treatment
Use of Facilities – other Cont'd	<p>Cafe hire including use of sink, chairs, tables and urn, microwave and fridge.</p> <p>Track and stable fees including horse training fees.</p> <p>Application fee to be a commoner and associated fee for assignment of sheep or other animals in relation to being a commoner. Includes access to private property via public land.</p> <p>Hire of Council-owned cruise boat for functions.</p> <p>Admission fees for natural areas such as caves where tours are offered.</p> <p>Fee for the use of CBD space, closed roads, malls and footpaths for market stalls and other vending and entertainment activities when conducted during a large-scale, city-wide festival such as the Tamworth Country Music Festival.</p>	Taxable – section 9-5 and paragraph 81-10.01(1)(c) of the GST Regulations
Use of Facilities – other	Fee for licences to operate surf or paddle board schools on beaches as well as hire and drive licences on beaches or water reserves.	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations
Recovery of costs in connection with usage of facilities	<p>Recovery of operational and other costs for cleaning and consumables required as a result of the use of Council facilities such as halls, parks, etc.</p> <p>Non-return fee of Council keys.</p> <p>Fees for providing barricading, revenue forgone, security and waste management etc.</p> <p>May include recovery of costs incurred by virtue of using electricity or water supply in connection with the use of facilities; particularly where Council may be simply passing on the usage costs to the user, rather than charging a flat rate.</p> <p>Fee for street sweeping or footpath cleaning for events or emergency response.</p>	Taxable – section 9-5 and paragraph 81-10.01(1)(c) of the GST Regulations

Facilities cont'd

Fees and Charges	Description	GST Treatment
Saleyard fees	<p>Saleyard dues or fees.</p> <p>Fees can be charged per animal (e.g. cattle, sheep, and pigs).</p> <p>Advertising panel fee.</p> <p>Animal weighing; Truck or vehicle washing;</p> <p>National Vendor Declaration (NVD) form microchip tag; includes scanning.</p> <p>Saleyard agent fees and Marshalling Charges.</p> <p>Scale weighing and private weighing, after hour call-out fees, etc.</p> <p>Fee for advertising signs at saleyards. Includes National Livestock Identification System (NLIS) scanning fee.</p> <p>Fee for office rental and other miscellaneous fees associated with the saleyard including use of truck wash facilities, telephone charges, removal of dead animals.</p>	Taxable – section 9-5 and paragraph 81-10.01(1)(c) of the GST Regulations
Use of Facilities – Sport	Application for vehicle to access Council controlled beaches; other than life-saver vehicles, emergency rescue vehicles etc.	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations
Use of Facilities – Sport	<p>Fees and season charges for access to a park or facility including 'gated' or 'locked'.</p> <p>Annual fee for maintenance of various sporting facilities on behalf of sports Council.</p> <p>Fees for issuing of access key to facility or replacement key.</p> <p>Court hire fees.</p> <p>Hire fees for sport fields for cricket football, soccer; basketball, netball, hockey, touch football or oz tag.</p> <p>Golf course fees, golf driving range or bay hire.</p> <p>Fee for skate parks.</p> <p>Race track fees with use of grandstand also trotting track including fee per horse; rodeo park, stables.</p> <p>Any type of Council arena or field used for athletics carnival; triathlon; fun run, cross country, commercial sporting activities, biathlons, etc.</p> <p>Includes kiosk hire fees, control room, canteen etc.</p> <p>Hire for any non- sport activity by group.</p>	Taxable – section 9-5 and paragraph 81-10.01(1)(c) of the GST Regulations

Facilities cont'd

Fees and Charges	Description	GST Treatment
Use of Facilities – Sport Cont'd	Field or facility lighting; line marking, parking fees; charges applied to use of special facilities requiring extra maintenance or set-up procedures, such as clay cricket pitches, athletics track and associated line markings of tracks; charges incurred for amendments to bookings made for use of park/facilities. Charges for ground site clean up; provision of bins and skips and removal of waste.	Taxable – section 9-5 and paragraph 81-10.01(1)(c) of the GST Regulations
Use of Facilities – Aquatic Centre	Admission and usage fees per session, yearly, monthly, swim pass, multi use pass, season pass, pay by instalments for adults, children, families (including additional persons), concessions, schools and non swimmer, swimming club members for use of pool, gym, sauna, water slide, showers, lockers, fitness centre, gym, diving boards; swim lane and pool lane reservation and hire fees, reciprocal usage fee to allow use of all centres diving board, token for showers, a massage, water polo. May include GP assessment consultation with fitness pass. Includes ancillary items, such as the cost of issuing/replacing a key or pass to access a facility out of season/out of hours, season tickets for residents of village area where pool located. Pre printed passes for players, participants, coaches, trainers, officials. Includes access to ancillary facilities or classes, such as yoga. Hire of rooms within the aquatic centre. Commercial activities. Pool parties. Out of open hours booking fee.	Taxable – section 9-5 and paragraph 81-10.01(1)(c) of the GST Regulations
Processing fees associated with use of airport facilities	Fees payable to Council by individuals for use of hangars and other airport facilities.	Taxable – section 9-5 and paragraph 81-10.01(1)(c) of the GST Regulations
Racecourse Statutory Fees	Fees payable to Council by the Miners Race Club, the Rodeo Association, Pony Club and other commercial sites to conduct business or otherwise operate at the racecourse.	Taxable – section 9-5 and paragraph 81-10.01(1)(c) of the GST Regulations
Assessment Fee	Application to use land or a building as a place of public entertainment. Relates to the grant of permission for use of private land.	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations

Leases

Fees and Charges	Description	GST Treatment
Annual charges under section 611 of LG Act	<p>A Council may make an annual charge on the person for the time being in possession, occupation or enjoyment of a rail, pipe, wire, pole, cable, tunnel or structure laid, erected, suspended, constructed or placed on, under or over a public place.</p> <p>Includes licences and permits for underground conduit or cable for a road crossing or occupation of Council land by cable or conduit.</p> <p>Gas and Oil Companies, Australia Post, Street Advertisers and Other persons, including owners of clothing collection bins without current licences, and restaurants on footpaths without current licences, who possess, occupy or enjoy structures located on, under or over public land in the local government area.</p> <p>Includes fees for petrol, gas or diesel pump on a footpath.</p>	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations
Application fee for a new lease of Council land	<p>Applications for Leases of Council Land or Public Road Reserve.</p> <p>Applications to formalise an existing encroachment on Council land by creation of an easement, positive covenant, lease or licence.</p> <p>Applications for a covenant variation.</p> <p>Includes costs of the preparation by Council of the lease, stamp duties and costs associated with investigating the applications or preliminary investigations and reports to Council upon an application to purchase community land.</p>	Taxable – section 9-5
Application fee and lease of Council property other than land	<p>Any application to lease, licence or purchase Council property.</p> <p>Leases of Council-owned vehicles to Council employees for private use.</p>	Taxable – section 9-5
Application to Assign a Lease or licence	Application to Assign a Lease or licence.	Taxable – section 9-5

Leases cont'd

Fees and Charges	Description	GST Treatment
Land leasing fee	<p>Lease of Council land commercial or residential including land rental and sewerage and/or water usage charges.</p> <p>Renewal of lease including preparation of lease, survey and valuation fees associated with leases.</p> <p>Includes provision of keys and additional sets of keys.</p> <p>(Note: A lease or rental of residential dwellings that are owned by Council will be input taxed under section 40-35.)</p>	Taxable – section 9-5
Fee for lease of air space over road	<p>Rental for an airspace licence for the construction of a veranda or balcony above Council land.</p> <p>Under section 149 of the Roads Act (NSW) a roads authority may lease the air space above, or land below the surface of, any public road (other than a Crown road) that is owned by the authority.</p>	Taxable – section 9-5
Fee for lease of unused public road to owner or lessee of adjoining land	<p>Leases of unused public roads.</p> <p>Under section 153 of the Roads Act (NSW) a roads authority may lease land comprising a public road (other than a Crown road) to the owner or lessee of land adjoining the public road if, in its opinion, the road is not being used by the public.</p>	Taxable – section 9-5
Footpath hoarding fee	<p>Application fees for permission to erect a temporary fence enclosing a building during construction or to erect a large billboard on which notices or advertisements are displayed.</p>	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations
Fee for occupying Council footpaths	<p>Application fees for a licence to use Council footpaths such as a licence for a restaurant allowing patrons to occupy and be served on the footpath</p> <p>Under section 125 of the Roads Act 1993 (NSW) a Council may grant an approval that allows a person who conducts a restaurant adjacent to a footway of a public road to use part of the footway for the purposes of the restaurant.</p>	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations

Legal fees

Fees and Charges	Description	GST Treatment
Legal fees recouped in the recovery of rates	The Local Government Act provides that these costs take the nature of rates and are therefore exempt as a tax.	Exempt – section 81-5
Legal fees related to a regulatory function	Legal fees recovered in the pursuit of a regulatory function by Council, such as under the Food Act or Public Health Act. These collections are a fee or charge to compensate an Australian government agency for costs incurred by the agency in undertaking regulatory activities.	Exempt – section 81-15 and paragraph 81-15.01(1)(c) of the GST Regulations
Court fees and Sheriff's fees	Fees collected by Councils as agents for a court, tribunal or Sheriff's office. Where Council accepts fees on behalf of the courts in the case of service of process on behalf of the sheriff.	Exempt – section 81-15 and paragraph 81-15.01(1)(e) of the GST Regulations
Fee for service of subpoenas	Fees for the service or attempted service of a subpoena.	Taxable – section 9-5
Conduct Money in relation to a Subpoena or Notice.	Where Council is required to supply information on subpoena in proceedings in which it is not itself directly involved. An entity must pay conduct money when it requires Council or its officers to attend to give evidence or to produce documents, data or information. The conduct money must be reasonable to cover the cost of travel of a witness to the court and the reasonable costs of locating information and preparing the required evidence, documents, etc. The requirement to pay conduct money is explain under the NSW Uniform Civil Procedures Rules. Council may apply to the court for an order that the issuing party pay an amount (in addition to conduct money and any witness's expenses) in respect of the loss or expense, including legal costs, reasonably incurred in complying with the subpoena.	Exempt – subsection 81-10(5) Information
Payments relating to requests to supply information to a court or other judicial entity which is not subpoenaed.	Where Council is required to supply information in proceedings in which it is not itself directly involved. An entity must pay conduct money when it requires Council or its officers to attend to give evidence or to produce documents, data or information.	Exempt – subsection 81-10(5) Information

Library

Fees and Charges	Description	GST Treatment
Combined Library lost or damaged book cost and processing fee	Also includes combined fee for overdue items that will be replaced and charged an administration and/or processing fee. Includes any ancillary fees, such as processing fees imposed by lending libraries for inter-loans.	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations
Overdue charges and late return fees – Library Fines	Charges relating to the late return of library material and overdue notice fees. Also referred to as Library fines. The prescribed fee for the late return of library material is the fee determined by the local authority for the library, being a fee that (whether calculated on a daily, weekly or other basis) does not exceed \$50 per item of library material. Part 4 of the <i>Library Act 1939 (NSW)</i> provides for the making of regulations to give effect to the Act including the making of charges in prescribed cases for the use of a library, library service or information service. The regulations do not authorise the imposition of taxes, fines or penalties of any kind other than the charges detailed in regulations 7 and 8.	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations
Library – book repair/damage – processing charge	Includes any ancillary fees, such as processing fees imposed by lending libraries for inter-loans.	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations
Library damage repair charge	Includes any ancillary fees, such as processing fees imposed by lending libraries for inter-loans.	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations
Library – lost library book – processing charge	Includes any ancillary fees, such as processing fees imposed by lending libraries for inter-loans.	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations
Library inter library loan processing fee	Handling fee for material obtained from other than Library's resources including Internet). The recommended national inter-lending charges as per Inter Library Resource Sharing (ILRS) Code will be passed on to the borrower only if the lending library charges our library for the service. Includes fees associated with inter-library services, such as fees for items provided by facsimile/fax, like journal articles; also includes ancillary charges, like courier or postal fees for delivery of items from other libraries and processing charges imposed by lending libraries. May also charge express service fee. Includes fee for non-collection of items ordered.	Taxable – section 9-5

Library

Fees and Charges	Description	GST Treatment
Lost or damaged library item replacement / repair cost	Replacement cost for an item such as a lost book, cassette, video, CD/DVD case, toy bag, etc. Includes processing fee.	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations
Laminating fee	Laminating	Taxable – section 9-5
Fee for access to records belonging to library	Local history research or search of records.	Exempt – subsection 81-10(5) Information
Library – lost library book – cost of book	Includes any ancillary fees, such as processing fees imposed by lending libraries for inter-loans.	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations
Replacement Membership Card fee – library or toy library	Replacement Membership card where original card is lost or destroyed.	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations
Membership fee – library or toy library	Membership to library or toy library. Includes charge to non-residents of the shire/area. Temporary borrower fee.	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations
Library charge for collection of overdue material	Fee for Library staff visiting borrower's premises to collect material.	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations
Library printing cost	Printing of items using library equipment. Could be printing of documents from a computer or other IT device. Also production of a hard copy from a microfilm.	Taxable – section 9-5
Book Reservation fee	Includes bulk book reservation fees.	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations
Fee for Sale of Merchandise	Sale of library material other than information.	Taxable – section 9-5
Fee for utilisation of library staff for various activities	Could include exam supervision.	Taxable – section 9-5

Sales

Fees and Charges	Description	GST Treatment
Admission fee – festival, gallery, exhibition, etc.	Includes fees for attendance of delegates and Council organised events. Includes Australasian Performing Right Association (APRA) fees and Phonographic Performance Company of Australia (PPCA) fees collected by Council upon admission to a music event. These fees are passed on to the APRA and PPCA based upon a percentage of gross box office receipts or a set amount per head.	Taxable – section 9-5 and paragraph 81-10.01(1)(c) of the GST Regulations
Admission fee – museum	Fee for admission into the museum. May include admission benefits, such as complimentary refreshments, tours etc. Includes fees associated with special museum tours not on the regular program.	Taxable – section 9-5 and paragraph 81-10.01(1)(c) of the GST Regulations
Symphony orchestra and choir admission fee	Concert tickets for admission to performance by Symphony Orchestra or choir, or concert performance.	Taxable – section 9-5 and paragraph 81-10.01(1)(c) of the GST Regulations
Fee for phone boxes with 3rd party advertising	Where Council charges an additional fee for phone boxes/booths on Council property (Telstra) that display third party advertisements.	Taxable – section 9-5
Fee for advertising of Public Notices (not DA)	Advertising of public notices relating to a range of activities. May be charged on a cost plus basis.	Taxable – section 9-5
Fee for advertising of visitor or tourism information	Where Council charges a fee for displaying brochures for third parties on Council property (e.g. a Visitor or Tourism Centre). Includes attaching a hyperlink to a third party's business on Council website / web advertising. Generally applicable where Council enters into an agreement to promote a particular trade or business establishment. Generally an annual fee paid to Council.	Taxable – section 9-5
Advertising in publication fee	Fee or charge per advertisement in Council publications such as <i>School Holiday Guide</i> , <i>Council Newsletter</i> , etc. Also includes fee charged by Council when advertising a development application in the newspaper.	Taxable – section 9-5
Fee for Provision of Written Advice	Includes a response to a written request for clarification.	Exempt – subsection 81-10(5) information

Sales cont'd

Fees and Charges	Description	GST Treatment
Archiving fee	Fee for archiving / scanning / recording documents, generally in relation to development applications, certificate applications etc. Storage fees, retrieval fees, archival search and delivery fees included. Could also include a service provided by Council such as an e-lodgement service where Council scans documents required as part of the service instead of the applicant. Includes fee charged by Council for documents being transferred to CD Rom. Includes scanning paper plans into Council's records system. Includes archiving interment information.	Exempt – subsection 81-10(5) store or record information
Fee for Swimming Pool Life Saving Certificates	Includes resuscitation, bronze medallion, pool lifeguard award, senior first aid, oxygen resuscitation certificates.	Taxable – section 9-5
Fee to attend a class, lesson, program, seminar or workshop	<p>Fees for full or half day public programs, classes, workshops or seminars which may be conducted at all centres, libraries, venues, facilities, Council beaches, parks, halls, etc.</p> <p>Fees for services such as squad or stroke correction; private swimming lessons; aquarobics.</p> <p>Group fitness; boot camps; surf awareness program, surf survival program at beaches and fee to provide lifeguards (extra lifeguard required if class exceeds 20); FitKid class; Kidz holiday program; other school holiday program for children.</p> <p>Personal trainer session.</p> <p>Personal fitness assessment; Fitness assessment, by GP or other person; Naturopath or Nutrition Consultant.</p> <p>Body Fat Test, massage or any centre initiated programs; short courses, weekend courses, youth programs.</p> <p>May be easy pay facility to allow payment over instalments, payroll deduction.</p> <p>Food Safe Costs. Food handler's course, cost to attend, cost of kit (Food Safe) Original Version.</p> <p>Book clubs and educational tours. First Aid Class. Includes aged day care programs, computer class.</p> <p>Booking fees. internet training; cost of providing activities or programs for children; word processing tuition; Information provision on services program.</p>	Taxable – section 9-5

Sales cont'd

Fees and Charges	Description	GST Treatment
Fee for engaging Council in a collaborative campaign for business / tourism / community development	Price negotiated upon application. Where Council and individual businesses work together to grow and better the community, improve local businesses, etc. Includes subscription fee for City/Council partnerships with individuals, students, families, businesses, organisations etc. Includes sponsorship packages purchased by businesses or organisations.	Taxable – section 9-5
Commission and booking fee on tourism tours, hotel bookings etc.	Accommodation, tour, tickets or bookings.	Taxable – section 9-5
Commission on sale of goods	Often related to a use of facilities.	Taxable – section 9-5
Competition fee	Fee for entry to or participation in a competition.	Taxable – section 9-5
Fire hazard reduction service fee	Fee for slashing service by consent or after notice, concerned with bushfire control. Clearing of land by contractor. Includes administration fee – Section 13 and 14 of the <i>Bushfire Act 1949 (NSW)</i> .	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations
General Equipment hire fee.	Fee for use of fitness equipment. Fee for Use of General Equipment – Sport.	Taxable – section 9-5
Fee for supply of ancillary services associated with Use of Facilities		Taxable – section 9-5
Ferry fees	Carrying all vehicles including commercial trucks, caravans, trailers, semi-trailers, motorcycles, etc. Includes application fee for water transport vessels and registration fees for vessels based on vessel capacity.	Taxable – section 9-5
Fee for General Food Services	Catering charges for meals, tea or coffee, snacks, sandwiches and other refreshments. Includes the costs received from the sale of any food stuffs from cafeterias, cafés, restaurants or food halls that form part of any community facility operated or owned by Council.	Taxable – section 9-5

Sales cont'd

Fees and Charges	Description	GST Treatment
Fee for Public Liability Insurance	Public Liability Insurance premiums to all eligible users of a Council owned or controlled facility. Permanent user of a Council facilities, Casual hire of a Council facility for a party or function, Casual Hirer of a Council facility other than a party or function, Use of a Council facility for a meeting.	Taxable – section 9-5
Sale of Land	Proceeds from the sale of Council land. Council land that is sold out of a development project. Note: Residential land with an existing residence may be input taxed under section 40-65 of GST Act.	Taxable – section 9-5
Administration or Processing fee for Sale of Land	Includes all associated fees such as administration fees, investigation fees, legal fees, survey costs, processing fees and valuation fees.	Taxable – section 9-5
Charge to Supply street sign	Supply and installation of a directional sign on a standard street sign blade or plate. <i>Roads Act 1993 (NSW) Section 217</i> <i>LG Act Section 608.</i>	Taxable – section 9-5
Fee for provision of road number plaque	Provide Rural Road Number Plaque, rural addressing marker. Includes fee for supply of post and fee for individual numbers.	Taxable – section 9-5
Fee for supply of services related to traffic control barriers	Fees for signs, barriers, warning lights, and signposting disabled parking. Installation of community signs. Includes vehicular crossing, design services and associated inspections. May include delivery of such items or fees charged to collect the item once no longer required. Includes regulatory signs and road markings. Includes temporary bus zone signs. Also includes lamp hire. Also includes signposting of driveways (e.g. No Parking).	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations The ES provides that fees and charges associated with erecting a stock crossing sign on the side of a road that a farmer has stock regularly crossing for example is not the provision of consideration.
Fee for supply of services related to traffic information	Payments received for traffic information and studies by traffic classifiers and traffic counters, including establishment fee.	Taxable – section 9-5 and paragraph 81-10.01(1)(g) of the GST Regulations
Fee to Issue traffic control badges	Issue of Traffic Control Authorisation Badge by Council – Each Badge.	Taxable – section 9-5 and paragraph 81-10.01(1)(g) of the GST Regulations

Sales cont'd

Fees and Charges	Description	GST Treatment
Graffiti removal kit charge	Graffiti removal kit; May also include fees for Council to remove graffiti from private property.	Taxable – section 9-5 and paragraph 81-10.01(1)(g) of the GST Regulations
Sale of natural cleaning kit	Natural cleaning kit.	Taxable – section 9-5 and paragraph 81-10.01(1)(g) of the GST Regulations
Sale or supply of Building Materials	Includes gravel, road base, virgin excavated material, aggregate, cracker dust, top soil, mulch. Includes loading of materials on to transport vehicle. Includes access fee to depot or quarry site (may be singular or annual). Where quarry or gravel pit is located on privately owned land, the sale may include a royalty to be paid to the private landowner. Also includes compost.	Taxable – section 9-5 and paragraph 81-10.01(1)(g) of the GST Regulations
Supply of materials at cost	For recovery of costs in relation to supply of materials for matters such as those connected with labour hire for handiwork, gardening, carpenters' work etc.	Taxable – section 9-5 and paragraph 81-10.01(1)(g) of the GST Regulations
Membership fees	Membership fees for: Golf clubs, community centre; friends of the church annual subscription; friends of the arts centre, aquatic centre; fitness centre; gym; friends of the museum, theatre, choir membership fee. Includes membership transfer fee and renewal fees.	Taxable – section 9-5 and paragraph 81-10.01(1)(g) of the GST Regulations
Fee for delivery of merchandise	Pots, plants and gardening equipment.	Taxable – section 9-5 and paragraph 81-10.01(1)(g) of the GST Regulations
Fee for Sale of Merchandise	Supply of miscellaneous items (some available from other merchants) e.g. flags, dog bag and dog bag dispensers and refills, promotional or historical memorabilia (such as anniversary magazines, books, videos, DVDs), calico bags, sharps containers and historical photographs of shire and buildings. Sale of recycling or recycled material bags and other 'eco-friendly' merchandise. Sale of recycled stormwater to external organisations. Bike Loan fees. Cost of tree plaque and perpetual maintenance in Council parks or reserves, street trees, woodchip sales, plant pots, young plants or trees sold in pots etc.	Taxable – section 9-5 and paragraph 81-10.01(1)(g) of the GST Regulations
Fee for supply of Infringement evidence	Fee to supply Photographs of Infringement of Parking or Loading laws.	Exempt – subsection 81-10(5) information

Sales cont'd

Fees and Charges	Description	GST Treatment
Sales of photos other than by the library	Sales of photos in tourism centres etc.	Taxable – section 9-5 and paragraph 81-10.01(1)(g) of the GST Regulations
Plant and machinery hire fee	Rate for hire of plant, plant operator and/or supervisor, labour fee, e.g. water jet, scaffolding, gurney, generator etc. Beach cleaning machine hire, diggers, rollers etc. Includes fee for travel cost per km.	Taxable – section 9-5 and paragraph 81-10.01(1)(g) of the GST Regulations
Annual fee for Australia Post Boxes		Taxable – section 9-5 and paragraph 81-10.01(1)(g) of the GST Regulations
Postage fee	Postage and handling. Includes handling and postage of ashes.	Taxable – section 9-5 and paragraph 81-10.01(1)(g) of the GST Regulations
Rent	Rent paid for Council Property. Rent paid to Council for placing equipment on Council's telecommunications tower.	Taxable – section 9-5 N.B: Rent of council residential premises is input taxed.
RTA fees	Fees for pink slips, WOV, design check, adjustment of records, imported vehicles, gas inspections, police referrals, defect clearance, etc.	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations
Fee associated with acquisition of Council land	Includes Council fee to RTA for acquisition of Council land for RTA purposes.	Taxable – section 9-5 and paragraph 81-10.01(1)(g) of the GST Regulations
Fee for Sale of Merchandise	Sale of items from library – withdrawn material, merchandise such as library bags, artworks on display/exhibition or otherwise; USB drives or other data storage media; Local history books; Local History database CD; Sale of local history books or other publications, whether in hard copy form (i.e. a paper book) or in electronic form (i.e. on CD/DVD or a USB stick). Sale of old library books. May also include library bags.	Taxable – section 9-5 and paragraph 81-10.01(1)(g) of the GST Regulations
Fee for Sale of Merchandise	Charges for brochures, books, or other media related to tourism or visitor information and associated merchandise. Includes sale of nursery stock such as seeds, tube stock, flowers etc.	Taxable – section 9-5 and paragraph 81-10.01(1)(g) of GST Regulations
Breath testing Service – Application and Service Fee		Taxable – section 9-5 and paragraph 81-10.01(1)(g) of the GST Regulations
Fee for signs	Industrial estate signs, erecting, rental. Commercial signs. Swimming Pool safety signs, swimming pool chart, resuscitation charts. Soil & Water Management Warning Signs.	Taxable – section 9-5 and paragraph 81-10.01(1)(g) of the GST Regulations

Sales cont'd

Fees and Charges	Description	GST Treatment
Fee for supply of development-related signage or notice	Signage or notices could include principal certifying authority signs or development application site notice. PCA site signage.	Taxable – section 9-5 and paragraph 81-10.01(1)(g) of the GST Regulations
Sponsorship fees	Fees charged to businesses or organisations to sponsor special events, conferences, conventions, exhibitions, etc.	Taxable – section 9-5 and paragraph 81-10.01(1)(g) of the GST Regulations
Fee for testing of building materials	Fee for testing of soil and aggregate materials for moisture content, liquid limit, plastic limit, linear shrinkage, particle size distribution, etc. Includes fees for travel, laboratory costs, and the test report.	Taxable – section 9-5 and paragraph 81-10.01(1)(g) of the GST Regulations
Community transport fee	Fees charged for access to community transport services. Fees for hire of any community transport vehicles/services provide by Council, such as a community bus or minibus. Includes fees associated with running costs for vehicles or related transport equipment and fees charged for cleaning community transport vehicles. Also includes sale of taxi vouchers and care car contributions.	Taxable – section 9-5 and paragraph 81-10.01(1)(g) of the GST Regulations
Fee for transport/ relocation of building	Transportation and/or relocation of a building. Includes fee for relocation on weekends or public holiday.	Taxable – section 9-5 and paragraph 81-10.01(1)(g) of the GST Regulations
Usage of vehicle fee	Private use of Council vehicles.	Taxable – section 9-5 and paragraph 81-10.01(1)(g) of the GST Regulations

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.***

20. Subsection 7-1(1) provides that GST is payable on taxable supplies. As such, Council is liable to pay the GST payable on any taxable supply it makes. Section 9-5 states:

9-5 Taxable supplies

You make a **taxable supply** if:

- (a) you make the supply for *consideration;
- (b) the supply is made in the course or furtherance of an *enterprise that you carry on;
- (c) the supply is *connected with Australia; and
- (d) you are *registered, or *required to be registered.

However, the supply is not a *taxable supply to the extent that it is *GST-free or *input taxed.

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

21. As Council is registered for GST and makes supplies in carrying on its enterprise in Australia, the issue that arises under section 9-5 is whether such supplies are supplies for consideration.

22. Section 9-39 provides special rules in relation to making taxable supplies. In particular, item 8 in the table in section 9-39 provides that where there is a payment of taxes, fees and charges the special rules in Division 81 may apply.

Division 81

Australian tax

23. 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 the 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.

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

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

25. 'Tax' is not defined in the GST Act. However, the following is 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.

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

26. The above description includes the words 'not a payment for services rendered'. It was discussed in *Air Caledonie International v. Commonwealth* (1988) 165 CLR 462 that in order to be classified as a fee for service rather than a tax, the fee or charge must be exacted for particular identified services provided or rendered individually to, or at the request or direction of, the particular person required to make the payment.

27. Apart from legal fees that are in the nature of rates and therefore a tax, we consider that none of the other fees or charges, or the discharging of a liability to make such payments, as detailed in the table commencing on page 5 of this Ruling, are a tax.

Australian fees and charges

28. 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, 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.

29. 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

30. The term 'Australian law' is defined in section 995-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) and relevantly includes a State law. It includes acts and law making powers which are delegated by parliaments, such as regulations, by-laws, proclamations and orders made under Acts.

Australian government agency

31. The term 'Australian government agency' is defined in section 995-1 of the ITAA 1997 and means:

- the Commonwealth, a State or Territory; or

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

32. For the purposes of this Ruling it is accepted that Council comes within the definition of Australian government agency.

GST Regulations

33. Division 81 gives effect to the principles contained in the *Intergovernmental Agreement on Federal Financial Relations* (Intergovernmental Agreement). Payments of taxes are exempt from the GST. Payments of fees and charges generally constitute consideration and if the requirements of section 9-5 are satisfied, the payment is for a taxable supply. Some supplies are excluded and are exempt. Division 81 provides for Regulations that prescribe payments that constitute consideration for a supply and, conversely, prescribe payments that do not constitute consideration.

Australian fees and charges that constitute consideration

34. Regulation 81-10.01 of the GST Regulations sets out those fees and charges that do not fall within the principles contained in the Intergovernmental Agreement, and therefore supplies to which they relate are not intended to be exempt from GST. These fees or charges include a fee for the non-regulatory provision of information and a payment for a commercial sale of books by a government bookshop. These fees or charges are treated as consideration for a taxable supply if the other conditions of section 9-5 are met.

35. Regulation 81-10.01 of the GST Regulations also ensures that the regulatory activities of government made in competition with the private sector are subject to GST where the other requirements of section 9-5 are satisfied.

36. The ES explains that the regulations ensure that the regulatory activities of government made in competition with the private sector are subject to GST where the other requirements of section 9-5 are satisfied. It states:

Fees and charges in this category are not excluded from being consideration for a taxable supply. This is consistent with the National Competition and Consumer Policy guidelines and ensures that a government entity is not given a competitive advantage over a private sector supplier making the same type of supply.

This covers situations in which government agencies have authorised private agencies to perform activities that form part of a regulatory process, for example, certification activities which are required for a regulatory process to be followed. Where government agencies, as well as government certifiers, have authorised private certifiers to perform certification activities these fees and charges will continue to be consideration for a supply that is subject to GST. This ensures competitive neutrality between supplies made by government and non-government agencies.

This paragraph applies only where a government agency is providing a supply in a competitive market, or where private suppliers have been accredited or authorised to make a supply over which the agency would otherwise have a monopoly.

This paragraph does not cover supplies of information that are regulatory in nature and can only be supplied by government agencies, notwithstanding that the public may obtain such information through a private sector supplier acting as a conduit for the information from the government agency. The supply is only a taxable supply where the private sector entity charges for the supply in its own right.

Australian fees and charges that do not constitute consideration

37. Regulation 81-15.01 of the GST Regulations sets out those fees and charges that are prescribed for section 81-15 and which do not constitute consideration. Because these fees and charges do not constitute consideration, the supplies to which they relate, if any, do not satisfy the requirements of section 9-5 and are not taxable supplies.

38. Those prescribed include a fee or charge imposed on an industry to finance regulatory or other government activities connected with the industry and a fee or charge for a supply of a regulatory nature made by an Australian government agency.

39. However, sub-regulation 81-10.01(2) of the GST Regulations provides that despite sub regulation 81-10.01(1), a fee or charge, the payment of which is covered by subsections 9-17(3) or (4), which are about payments made by government related entities to another government related entity, and the payment is specified in regulations made for this purpose, is not the provision of consideration.

Australian fees and charges covered by both regulations 81-10.01 and 81-15.01 of the GST Regulations

40. If a fee or charge is covered by both regulations 81-10.01 and 81-15.01 of the GST Regulations, regulation 81-15.02 of the GST Regulations determines which regulation would prevail. For example, a fee for recovering the costs for usage of facilities is covered by both paragraph 81-10.01(c) and paragraph 81-15.01(d) of the GST regulations. In such a situation, subregulation 81-15.02(2) of the GST Regulations provides that paragraph 81-10.01(c) of the GST Regulations would prevail and the fee would constitute consideration.

Cemeteries, facilities, leases, legal, library, sales

41. The following comments and explanation refer to particular groups of items in the table on pages 5 to 26 of this Ruling.

Cemeteries

42. Cemetery fees and charges are generally considered to be consideration for taxable supplies for purposes of the GST Act. However, section 81-10 provides that the payment, or the discharging of a liability to make a payment, is not the provision of consideration for GST purposes to the extent the payment is an Australian fee or charge that relates to, or relates to an application for; the provision, retention, or amendment, under an Australian law, of a permission, exemption, authority or licence (however described).

43. Fees and charges that relate to the granting of permission or the management of information are not consideration for a supply. Fees and charges that relate to the performance of activity or use of facilities will be the provision of consideration for GST purposes.

Facilities

44. The payment of a fee for the provision of a permission, authority or licence is covered under subsection 81-10(4) and would not be the provision of consideration. However, the payment 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.

45. GST Regulation 81-10.01 of the GST Regulations relevantly provides that for subsection 81-10(2), the following kinds of Australian fee or charge are prescribed:

- a fee for parking a motor vehicle in a ticketed or metered parking space;
- a toll for driving a motor vehicle on a road; or
- a fee for hire, use of, or entry to a facility, except for an entry fee to a national park.

46. Accordingly, a fee or charge for the hire or entry to a municipal Council facility or the use of municipal Council equipment is consideration for a supply. Where a supply satisfies the positive requirements of section 9-5 of the GST Act, the supply is taxable. However, the supply is not a taxable supply to the extent that it is either GST-free or input taxed.

Leases

47. An application fee for a new lease of council land, a covenant variation or public road reserve is consideration for a taxable supply. This includes an application to formalise an existing encroachment on council land by the creation of an easement, positive covenant or lease etc. It also includes any application to lease, licence or purchase council property. The application fee may include the costs of the preparation by council of the lease and stamp duty as well as fees associated with investigating the application. A fee for preliminary investigations and reports to Council upon an application to purchase community land is also consideration for a taxable supply.

Approval to occupy footway

48. Under section 125 of the *Roads Act 1993 (NSW)* a Council may grant an approval that allows a person who conducts a restaurant adjacent to a footway of a public road, to use part of the footway for the purposes of the restaurant. We consider the granting of an approval under this section is a permission for purposes of section 81-10(4).

Library

49. The operation of libraries in NSW is governed by the *Library Act 1939* and the *Library Regulation 2010*. Certain fees are imposed by Council to regulate the use of the libraries. These fees are exempt from GST under paragraph 81-15.01(1)(f) of the GST Regulations as they are for supplies of a regulatory nature.

Legal

50. Council may incur legal fees in administering their activity and is entitled to claim input tax credits if the legal services are taxable supplies to it.

51. The *Local Government Act* provides that Legal fees recouped in the recovery of rates take the nature of rates. These receipts are therefore regarded as taxes and are not consideration for a supply under section 81-5.

Sales

52. Generally, the supplies of goods and services by Council for consideration are taxable supplies unless the supply is GST-free or input taxed.

53. Where the payment is not treated as consideration under Division 81, the supply is not a taxable supply under section 9-5.

54. Where the payment is treated as consideration under Division 81, and the positive requirements of section 9-5 are met, the supply is a taxable supply.

Appendix 2 – Legislative references

New South Wales Acts

55. The following New South Wales Acts were considered in preparing this ruling:

Library Act 1939 (NSW)

Library Regulation 2010 (NSW)

Local Government Act 1993 (NSW)

Roads Act 1993 (NSW)

Local Government Act 1993 (NSW)

56. Section 220 of the LG Act states:

220 Legal status of a council

- (1) A council is a body politic of the State with perpetual succession and the legal capacity and powers of an individual, both in and outside the State.
- (2) A council is not a body corporate (including a corporation).
- (3) A council does not have the status, privileges and immunities of the Crown (including the State and the Government of the State).
- (4) A law of the State applies to and in respect of a council in the same way as it applies to and in respect of a body corporate (including a corporation).

57. Section 608 of the LG Act states:

608 Council fees for services

- (1) A council may charge and recover an approved fee for any service it provides, other than a service provided, or proposed to be provided, on an annual basis for which it is authorised or required to make an annual charge under section 496 (domestic waste management services) or 501 (water supply, sewerage, drainage services etc.).
- (2) The services for which an approved fee may be charged include the following services provided under this Act or any other Act or the regulations by the council:
 - supplying a service, product or commodity
 - giving information
 - providing a service in connection with the exercise of the council's regulatory functions-including receiving an application for approval, granting an approval, making an inspection and issuing a certificate
 - allowing admission to any building or enclosure.

(3) In particular, a council may charge an approved fee for inspecting premises that are reasonably required to be inspected in the exercise of the council's functions, whether or not the inspection is requested or agreed to by the owner or occupier of the premises.

(4) However, a council may not charge an approved fee for the inspection of premises that are not used for a commercial activity, except where it is necessary to inspect the premises in connection with an application for an approval concerning the premises or in connection with any inspection that is reasonably necessary to determine if an approval has been complied with.

...

(6) If inspections of premises are reasonably necessary to determine if an approval has been complied with:

(a) an approved fee may be charged for such an inspection only if the charging of the fee has been included as a condition of the approval, and

(b) an approved fee may not be charged for such an inspection before the approval is granted, and

(c) an approved fee may not be charged for the inspection of any thing for which the council relies on a certificate under section 93 that the thing has been done in compliance with the approval.

(7) An approved fee charged for inspecting premises must be repaid to the person who paid it if the inspection is not carried out.

(8) An approved fee charged in connection with a service provided at an airport established and maintained by the council may be recovered from the holder of the certificate of registration issued under the Civil Aviation Regulations of the Commonwealth for the aircraft in respect of which the service was provided. This subsection applies whether or not the holder is the person to whom the service is actually provided.

58. Sections 125 and 126 of the *Roads Act* 1993 state:

Part 9 – Regulation of works, structures and activities

Division 1 – Footway restaurants

125 Approval to use footway for restaurant purposes

(1) A council may grant an approval that allows a person who conducts a restaurant adjacent to a footway of a public road (being a public road that is vested in fee simple in the council) to use part of the footway for the purposes of the restaurant.

(2) An approval may be granted on such conditions (including conditions as to payments in the nature of rent) as the council determines.

(3) An approval may not be granted in respect of a footway of a classified road except with the concurrence of RMS.

- (4) The term of an approval is to be such period (not exceeding 7 years) as is specified in the approval.
- (5) An approval lapses at the end of its term or, if the part of the footway the subject of the approval ceases to be used for the purposes of a restaurant, when that use ceases.

126 Authority to erect structures

- (1) A council:
 - (a) may authorise the holder of an approval to erect and maintain structures in, on or over any part of the footway the subject of the approval, or
 - (b) may, at the request and cost of the holder of the approval, erect and maintain any such structure.
- (2) The council may erect and maintain structures in, on or over any part of the footway the subject of an approval for the protection of public health and safety.

Appendix 3 – Detailed contents list

59. 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:

- Division 81 – Payment of taxes, fees and charges

- GST

- Government entities

- GST consideration

- GST regulations

Legislative references:

- ANTS (GST)A99 7-1(1)

- ANTS (GST)A99 9-5

- ANTS (GST)A99 9-17(3)

- ANTS (GST)A99 9-17(4)

- ANTS (GST)A99 9-39

- ANTS (GST)A99 Div 81

- ANTS (GST)A99 81-5

- ANTS (GST)A99 81-10

- ANTS (GST)A99 81-10(4)

- ANTS (GST)A99 81-10(5)

- ANTS (GST)A99 81-15

- ANTS(GST)A99 195-1

- ANTS(GST)R99 81-10.01

- ANTS(GST)R99 81-10.01(1)

- ANTS(GST)R99 81-10.01(1)(c)

- ANTS(GST)R99 81-10.01(1)(g)

- ANTS(GST)R99 81-10(2)

- ANTS(GST)R99 81-15.01

- ANTS(GST)R99 81-15.01(1)

- ANTS(GST)R99 81-15.01(1)(c)

- ANTS(GST)R99 81-15.01(1)(e)

- ANTS(GST)R99 81-15.01(1)(f)

- ANTS(GST)R99 81-15.01(2)

- ANTS(GST)R99 81-15.02(2)

- ITAA 1997 995-1

- TAA 1953

- Copyright Act 1968

- Library Act 1939 (NSW)

- Local Government Act 1993 (NSW)

- Roads Act 1993 (NSW)

- Library Regulation 2010 (NSW)

Case references:

- Air Caledonie International v. Commonwealth (1988) 165 CLR 462

- Matthews v. Chicory Marketing Board (Vict) (1938) 60 CLR 263

- Roy Morgan Research Pty Ltd v. CMR of Taxation [2011] HCA 35

Other references:

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

ATO references

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