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# ATO Interpretative Decision

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## ATO ID 2005/337

### Goods and Services Tax

#### **GST and a local government as an associate of State Government departments**

FOI status: may be released

Status of this decision: Decision Current

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## Issue

For the purposes of Division 72 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) is the entity, a local government body, an associate of Government Departments of the State in which they reside?

## Decision

No, for the purposes of Division 72 of the GST Act, the entity is not an associate of Government Departments of the State in which they reside.

## Facts

The entity is a local government body, which is a body corporate, and is registered for goods and services tax (GST).

The entity was formed as a local governing body under an Act of Parliament of a State, to make local laws for and otherwise ensure the good rule and government of the territory within its jurisdiction. The local government has autonomy of administration and only in extreme situations would the Minister interfere with the management and administration of matters in the local government body

## Reasons for Decision

Division 72 of the GST Act sets out special rules that apply to supplies and acquisitions made between associates for inadequate or no consideration. An entity will be an 'associate' of another entity for the purposes of Division 72 of the GST Act if it meets:

- . the definition of associate in section 195-1 of the GST Act, or
- . the requirements of one of the provisions in Subdivision 72-D of the GST Act which treats certain entities as associates.

An 'associate' is defined in section 195-1 of the GST Act as having the meaning given by section 318 of the *Income Tax Assessment Act 1936* (ITAA 1936). The entity is a body corporate and is therefore a company for income tax and GST purposes (section 995-1 of *Income Tax Assessment Act 1997* and section 195-1 of the GST Act). The relevant provision in section 318 of the ITAA 1936 is subsection 318(2) of the ITAA 1936 which sets out the associates of companies.

As Government Departments of States are not natural persons, partnerships, trusts or companies, they will only be associates of the entity, the local government body, if the requirements of paragraph 318(2)(d) of the ITAA 1936 are satisfied. Paragraph 318(2)(d) of the ITAA 1936 provides that an entity (controlling entity) will be an associate of a company where:

- . the company is sufficiently influenced by the controlling entity, alone, or together with associates of the controlling entity, or
- . the controlling entity, alone, or together with an associate of the controlling entity has a majority voting interest in the company.

The entity, the local government body, has autonomy of administration and only in extreme situations would the Minister interfere with the management and administration of matters in the local government body. The entity neither operates solely in the interests of the State nor is controlled by the State, but is an autonomous body, separate from the State. As such, the State and the Government Departments of the State are not associates of the entity under section 318 of the ITAA 1936 or section 195-1 of the GST Act.

In Subdivision 72-D of the GST Act, section 72-100 of the GST Act outlines who are associates of State or Territory Government entities. It provides that Division 72 of the GST Act applies to a government entity that is:

.  
a Department of State of a State or Territory, or

.  
an organisation, established by a State or Territory, of a kind referred to in paragraph (e) of the definition of government entity in section 41 of the A New Tax System (Australian Business Number) Act 1999 (ABN Act)

as if the government entity was an associate of:

.  
that State or Territory

.  
every other Department of State of that State or Territory, or organisation, established by that State or Territory, of a kind referred to in paragraph (e) of the definition in section 41 of the ABN Act, and

.  
any other associate of that State or Territory.

Therefore, for the entity, the local government body, to be treated as an associate of a Department of the State in which they reside, it must be an organisation, established by a State or Territory, of a kind referred to in paragraph (e) of the definition of 'government entity' in section 41 of the ABN Act.

One of the requirements in paragraph (e) of the definition of 'government entity' in section 41 of the ABN Act is that the organisation is not an entity. The entity, a local government body, as a body corporate is an 'entity' for GST purposes (paragraph 184-1(1)(b) of the GST Act). Therefore, it does not satisfy paragraph (e) of the definition of 'government entity' and section 72-100 of the GST Act does not apply.

For the purposes of Division 72 of the GST Act, the entity, a local government body, is not an associate of the Government Departments of the State in which they reside.

**Date of decision:** 24 February 2005

**Legislative References:**

*A New Tax System (Goods and Services Tax) Act 1999*

Division 72

Subdivision 72-D

section 72-100

paragraph 184-1(1)(b).

section 195-1

*Income Tax Assessment Act 1936*

section 318

subsection 318(2).

paragraph 318(2)(d).

*Income Tax Assessment Act 1997*

995-1

*A New Tax System (Australian Business Number) Act 1999*

section 41

## **Keywords**

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