



Legal database

ATO Interpretative Decision

ATO ID 2012/87

Goods and Services Tax

GST and Division 81 of the A New Tax System (Goods and Services Tax) Act 1999: whether payment of general rates imposed by a local government is an 'Australian tax' for Division 81 purposes

FOI status: may be released

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Issue

Does the payment of general rates to the entity, a local government, constitute the payment of an 'Australian tax', for the purposes of subsection 81-5(1) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act)?

Decision

Yes, the payment of general rates to the entity constitutes the payment of an 'Australian tax', for the purposes of subsection 81-5(1) of the GST Act. As a consequence, the payment is not consideration and general rates are not subject to goods and services tax (GST).

Facts

The entity is a local government in a State (including a territory) of Australia.

The way in which the entity is constituted and the nature and extent of its powers and responsibilities is governed by a legislative act of State Parliament (the local government act).

The local government act empowers, and requires, the entity to levy general rates (or ordinary rates) on rateable land within the entity's local government area. The general rates levied and received by the entity form part of the entity's general revenue which is held in the entity's consolidated fund. This fund is available to be expended by the entity for any purpose related to local government operations.

The local government act also empowers the entity to levy other charges in addition to general rates, for example, charges for water supply, sewerage, or drainage. These are separate charges which, in accordance with the local government act, do not fall within the description of general rates.

Land owners are liable to pay general rates to the entity solely as a consequence of their land ownership within the entity's local government areas. The amount of general rates charged is calculated according to a formula contingent upon the rateable value of the land.

The entity may undertake enforcement action to recover unpaid general rates. A land owner has a right of appeal regarding the extent to which land is rateable.

The entity is registered for GST.

Reasons for Decision

Australian tax

Subsection 81-5(1) of the GST Act states that a payment, or the discharging of a liability to make a payment, is not the provision of consideration to the extent that the payment is an 'Australian tax'.

For GST purposes, an 'Australian tax' is a tax (however described) imposed under an 'Australian law'.

Australian law

The GST Act defines an Australian law in section 195-1 by reference to the dictionary in the *Income Tax Assessment Act 1997* at section 995-1 which in turn refers to the definitions in that Act of 'Commonwealth law', 'State law' and 'Territory law'.

When the above definitions are read together, 'an Australian law' means:

- . a law of the Commonwealth;
- . a law of a State; or
- .

a law of a Territory.

The term 'Australian law' encompasses Acts and laws made under law making powers which are delegated by Parliaments, such as regulations, legislative instruments, by-laws, proclamations and orders made under Acts.

Tax

In *The Municipal Council of Sydney v. The Commonwealth* (1904) 1 CLR 208 (*Municipal Council of Sydney*), all three judges of the High Court agreed that the municipal rates which had been imposed were taxes within the meaning of section 114 of the Constitution. Chief Justice Griffith noted at 233:

...I am of the opinion that the rates sought to be recovered in this action are taxes within the meaning of sec. 114 of the Constitution...

He also noted at 230:

The Statute operates as a delegation of the taxing power of the State, coupled with a direction when and how to use it. The assessment of land and the striking of a rate together operate as municipal legislation in exercise of the power. It is clear, therefore, that under this [Sydney Corporation] Act the imposition of a rate is the act of the corporation, and not of the State, and that the tax is imposed from time to time when the rate for the year is made.

Municipal Council of Sydney was cited with authority by the High Court in *Roy Morgan Research Pty Ltd v. Federal Commissioner of Taxation* [2011] HCA 35 (*Roy Morgan*), and as noted at paragraph 23 of the High Court's decision in *Roy Morgan*, the Municipal Council of Sydney was established and continued by state legislation that empowered the Council to levy rates in respect of land situated in the City of Sydney. Further, as referred to at paragraph 25 of the decision in *Roy Morgan*, the rates levied by the Municipal Council of Sydney were raised 'for the general expenditure of the city' and were paid 'into the office of the city treasurer'. *Municipal Council of Sydney* is authority for the view that general rates levied and received by the entity, under State legislation, are a 'tax'.

The municipal rates levied by the Municipal Council of Sydney, that were found by the High Court in *Municipal Council of Sydney* to be in the nature of a 'tax', are levied and received on an almost identical basis, and raised for the same purpose, as the general rates that are raised by the entity, pursuant to State legislation, in this case.

Furthermore, the general rates levied by the entity pursuant to state legislation satisfy the following usual description of a tax, as cited in *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 ...

Consequently, the general rates levied by the entity are levied by a public authority; a local government. Legislation empowers the entity to levy general rates and to enforce their payment and, as opposed to being payment for services rendered, the general rates are levied on all land owners because of their ownership of land in a local government area, and are applied for the general expenditure of the local government area. That is, for public purposes.

Conclusion

It is considered that the payment of general rates to the entity, is the payment of an 'Australian tax' for the purposes of subsection 81-5(1) of the GST Act.

This view is consistent with paragraph 4.22 of the Explanatory Memorandum to the Tax Laws Amendment (2011 Measures No. 2) Bill 2011 which lists general rates as an example of an 'Australian tax' for the purposes of the amended Division 81 of the GST Act. Paragraph 4.22 states:

4.22 Examples of Australian taxes imposed under an Australian law include: income tax, stamp duty, fringe benefits tax, payroll tax, the Medicare Levy, local government general rates and various industry levies (emphasis added).

Consequently the payment of general rates is not consideration for a supply and therefore is not subject to GST.

Date of decision: 12 October 2012

Year of income: Year ended 30 June 2001

Legislative References:

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

subsection 81-5(1).

section 195-1

Income Tax Assessment Act 1997

section 995-1

Case References:

Matthews v Chicory Marketing Board (Victoria)

(1938) 60 CLR 263

Roy Morgan Research Pty Ltd v. CMR of Taxation

[2011] HCA 35

2011 ATC 20-282

80 ATR 1

244 CLR 97

The Municipal Council of Sydney v The Commonwealth

(1904) 1 CLR 208

(1904) 10 ALR (CN) 29

[1904] HCA 50

Other References:

Explanatory Memorandum to the Tax Laws Amendment (2011 Measures No. 2) Bill 2011

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