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15 November 2013

**Class ruling – publication details
For your information**

Dear Sir

Client name

WASTE CONTRACTORS & RECYCLERS ASSN OF
NSW

Australian business number

72 805 135 472

We refer to your request for a class ruling dated 14 December 2012.

In finalisation of this request, please find enclosed a copy of Class Ruling CR 2013/84 Goods and services tax: the amount of input tax credits for creditable acquisitions made by members of the Waste Contractors & Recyclers Association of NSW in respect of supplies from landfill waste disposal facility managers who are liable to pay a waste levy under section 88 of the *Protection of the Environment Operations Act 1997* (NSW). This was published on our website on 13 November 2013, and can be located using the Tax Office website at www.ato.gov.au by selecting Legal database>Public rulings, determinations & bulletins>Go to Public rulings, determinations & bulletins>ATO rulings & determinations>By type>Rulings>Class>2013.

A notice of this class ruling can also be found in the Commonwealth of Australia Gazette dated 13 November 2013.

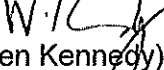
More information

If you have any questions, please phone 13 28 69 between 8.00am and 5.00pm, Monday to Friday, and ask for Warren Kennedy on extension 36034 or phone him direct on (07) 3213 6034.

When you phone us, please have the reference number 1012552704582 ready so we can quickly access your case details.

Yours faithfully,

James O'Halloran
Deputy Commissioner of Taxation

Per 
(Warren Kennedy)



Class Ruling

Goods and services tax: the amount of input tax credits for creditable acquisitions made by members of the Waste Contractors & Recyclers Association of NSW in respect of supplies from landfill waste disposal facility managers who are liable to pay a waste levy under section 88 of the *Protection of the Environment Operations Act 1997 (NSW)*

| Contents | Para |
|-------------------------------------|------|
| LEGALLY BINDING SECTION: | |
| What this Ruling is about | 1 |
| Date of effect | 8 |
| Scheme | 9 |
| Ruling | 18 |
| NOT LEGALLY BINDING SECTION: | |
| Appendix 1: | |
| <i>Explanation</i> | 22 |
| Appendix 2: | |
| Detailed contents list | 39 |

• 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 provisions identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provisions

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)*,
 - section 11-5 of the GST Act, and

- section 11-25 of the GST Act.

All subsequent legislative references in the Ruling are to the GST Act unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies consists of all waste and recycling organisations that are full members of the Waste Contractors & Recyclers Association of NSW (WCRA).
4. Within this Ruling the class of entities are collectively referred to as members.

Qualifications

5. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.
6. 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 9 to 17 of this Ruling.
7. 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
 - this Ruling may be withdrawn or modified.

Date of effect

8. This Ruling applies to tax periods commencing on or after 1 July 2010. However, this Ruling does 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

9. The following description of the scheme is based on information provided by the applicant.
10. Members consist of waste and recycling entities.
11. Members are registered for goods and services tax (GST) in respect of carrying on waste and recycling activities as enterprises.

12. In carrying on their enterprises, members dispose of waste or recycling material at a landfill waste disposal facility (facility).
13. The facility manager is registered for GST. The facility manager makes a taxable supply under section 9-5 of waste management services to members when allowing members to dispose of waste or recycling material at the facility.
14. Members make a creditable acquisition under section 11-5 from the facility manager of waste management services when disposing of waste or recycling material at the facility.
15. The facility is a landfill to which section 88 of the *Protection of the Environment Operations Act 1997* (NSW) (POEO Act) applies, which requires the facility manager as the 'occupier' of the facility to pay a contribution to the New South Wales Environment Protection Authority (EPA). The contribution is known as the waste and environment levy (waste levy).
16. The facility manager issues a tax invoice to members showing the fees charged for waste management services. The amounts shown on the tax invoice are expressed as amounts of money, and members make payment in money only.
17. The tax invoice may separately show an amount in relation to the waste levy, denoted by descriptions such as 'waste Levy', 'EPA levy', 'EPA', or 'Levy'.

Ruling

18. The fee charged for waste management services, including on-charging of the waste levy, is subject to GST.
19. The amount of input tax credits under section 11-25 is an amount equal to the GST payable on the taxable supply of waste management services made by the facility manager.¹
20. The payment of the waste levy by facility managers to the EPA is exempt² from GST. The EPA is not liable to pay GST in respect of these amounts.

¹ However, the amount of the input tax credits is reduced if the acquisition is only partly creditable under section 11-30.

² Under Division 81, certain payments of taxes, fees and charges are treated as not being the provision of consideration, with the effect that supplies to which they relate are not subject to GST. In this Ruling, we refer to such payments as being 'exempt' from GST.

21. However, if facility managers recover these costs from members they are not exempt from GST, even if the amount is identified separately in invoices issued to members. Facility managers are not imposing the waste levy on members under the authority of the relevant law. Rather, they are passing on the costs that have been, or will be, imposed on them. These amounts form part of the total charge to members for waste management services, and facility managers are liable to pay GST in respect of these amounts.

Commissioner of Taxation
13 November 2013

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.*

Division 11 – creditable acquisitions

22. Under section 11-20 an entity is entitled to the input tax credit for any creditable acquisition it makes.
23. Section 11-30 provides that the amount of the input tax credit for a creditable acquisition is an amount equal to the GST payable on the supply of the thing acquired. However, the amount of the input tax credit is reduced if the acquisition is only partly creditable.
24. The note to section 11-30 explains, in so far as is relevant, that the basic rule for working out the GST payable on the supply is in Subdivision 9-C.

Subdivision 9C – GST payable on taxable supplies

25. Section 9-70 provides that the amount of GST on a taxable supply is 10% of the value of the taxable supply.
26. Subsection 9-75(1) sets out a formula for working out the value of a taxable supply. The formula provides that the value is as follows:

$$\text{Price} \times \frac{10}{11}$$

where:

price is the sum of:

- (a) so far as the *consideration for the supply is consideration expressed as an amount of *money - the amount (without any discount for the amount of GST (if any) payable on the supply); and
- (b) so far as the consideration is not consideration expressed as an amount of money - the *GST inclusive market value of that consideration

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

Consideration

27. The term 'consideration' is defined in section 195-1 as having the meaning given in sections 9-15 and 9-17. Section 9-15 provides that consideration includes any payment.
28. In transactions involving money only, the consideration is the amount of the payment (without any discount for the amount of GST (if any) payable on the supply).

29. However, in some circumstances, the GST Act may apply to treat a payment as not being the provision of consideration.

Section 88 of the POEO Act

30. Section 88 of the POEO Act requires the 'occupier' of a waste facility to pay a contribution to the EPA. The term 'occupier' is defined in the Dictionary in the POEO Act and relates to the person who has the management and control of the waste facility. For the purposes of this Ruling, the 'occupier' is referred to as the facility manager.

Division 81 and payment of the waste levy to the EPA

31. Division 81 applies to the payment (or the discharging of the liability to make a payment) of Australian taxes or Australian fees or charges, to an Australian government agency by an entity which is liable for the tax, fee or charge under the provisions of the applicable Australian law. The payment of fees or charges to which Division 81 applies is not subject to GST.

32. The waste levy payable under section 88 of the POEO Act is imposed on the facility manager who is required to pay it to the EPA (an Australian government agency).

33. When the facility manager pays the waste levy to the EPA, Division 81 applies to the payments and these payments are exempt from GST. This is because these amounts are Australian fees or charges imposed on the manager under an Australian law that are payable to an Australian government agency, and the manager is the entity that is liable to pay for these amounts under the POEO Act.

Payment of fees charged by the facility manager

34. The tax invoice issued to members by the facility manager may show that the fees charged for waste management services include an amount in relation to the waste levy, denoted by descriptions such as 'waste Levy', 'EPA levy', 'EPA', or 'Levy'.

35. A facility manager calculates the fees charged on a commercial basis. Generally, the calculation of such fees can be affected by many factors and typically reflect the costs of providing the services. This may include, for example, costs of Australian taxes, fees and charges for which the facility manager is liable and which the manager may seek to recover. A facility manager may identify a separate amount in relation to the waste levy in the tax invoice issued to members to indicate that some, or all, of this cost is being recovered in the total amount charged for the services.

36. Accordingly, Division 81 does not apply to amounts in relation to the waste levy, included in the total amount charged for disposing of waste at the facility.³ Such amounts form part of the consideration for the supply of the services.

37. Therefore, the amount charged by the facility manager is the consideration for the supply of waste management services to members, even if the amounts are identified separately in tax invoices issued to members.

38. Under section 9-40, the facility manager is liable for GST on the taxable supply of waste management services made to members. The amount of GST payable can be worked out by the manager using the formula set out in subsection 9-75(1) for working out the value of a taxable supply.

***Note:** Subsection 81-10(2) provides that an Australian fee or charge may be prescribed by the regulations as being a fee or charge that constitutes consideration. Fees for the use of a waste disposal facility are covered by paragraph 81-10.01(1)(d) of the A New Tax System (Goods and Services Tax) Regulations. This means that payment of the total amount charged to members, including an amount in relation to the waste levy which may be shown on the tax invoice issued by the facility manager, is specifically treated as consideration for a supply.*

³ This view is consistent with the view expressed at paragraphs 8 and 9 of Goods and Services Tax Determination GSTD 2000/10 *Goods and services tax: are outgoings payable by a tenant under a commercial property lease part of the consideration for the supply of the premises?*

Appendix 2 – Detailed contents list

39. The following is a detailed contents list for this Ruling:

| | Paragraph |
|---|------------------|
| What this Ruling is about | 1 |
| Relevant provisions | 2 |
| Class of entities | 3 |
| Qualifications | 5 |
| Date of effect | 8 |
| Scheme | 9 |
| Ruling | 18 |
| Appendix 1 – Explanation | 22 |
| Division 11 – creditable acquisitions | 22 |
| Subdivision 9C – GST payable on taxable supplies | 25 |
| Consideration | 27 |
| <i>Section 88 of the POEO Act</i> | 30 |
| <i>Division 81 and payment of the waste levy to the EPA</i> | 31 |
| <i>Payment of fees charged by the facility manager</i> | 34 |
| Appendix 2 – Detailed contents list | 39 |

References

| | |
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| <i>Previous draft:</i> | - ANTS(GST)A 1999 9-17 |
| Not previously issued as a draft | - ANTS(GST)A 1999 9-40 |
| | - ANTS(GST)A 1999 9-70 |
| <i>Related Rulings/Determinations:</i> | - ANTS(GST)A 1999 9-75(1) |
| TR 2006/10; GSTD 2000/10 | - ANTS(GST)A 1999 11-5 |
| | - ANTS(GST)A 1999 11-20 |
| | - ANTS(GST)A 1999 11-25 |
| <i>Subject references:</i> | - ANTS(GST)A 1999 11-30 |
| - creditable acquisition | - ANTS(GST)A 1999 Div 81 |
| - Goods and services tax | - ANTS(GST)A 1999 81-10(2) |
| - GST consideration | - ANTS(GST)A 1999 195-1 |
| - input tax credit | - ANTS(GST)R 1999 81- |
| - tax invoice | 10.01(1)(d) . |
| - taxable supply | - Protection of the Environment Operations Act 1997 (NSW) |
| <i>Legislative references:</i> | - POEOA 1997 88 |
| - ANTS(GST)A 1999 9-5 | - TAA 1953 |
| - ANTS(GST)A 1999 9-15 | |

ATO references

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