




ATO Interpretative Decision


ATO ID 2001/650

Goods and Services Tax GST and a special levy charged by a body corporate

 This ATO ID has been amended to improve clarity

FOI status: may be released

Status of this decision: Decision Current

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Issue

Is the entity, a body corporate for a residential unit complex, making a taxable supply under section 9-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), when it charges a special levy to its members?

Decision

Yes, the entity is making a taxable supply under section 9-5 of the GST Act when it charges a special levy to its members.

Facts

The entity is a body corporate that administers, manages and controls the common property and assets of a residential unit complex in Australia for the benefit of its members. The entity is obliged to make a variety of supplies in the course of administering the common property and assets (that is, maintenance and servicing) of the residential unit complex. The members contribute to an administration and/or sinking fund in order for the entity to perform its obligations and to carry out the activities. These supplies by the entity to its members satisfy the requirements of a taxable supply under section 9-5 of the GST Act (see also the decision of BJ McCabe SM in *Re Body Corporate, Villa Edgewater CTS 23092 and Federal Commissioner of Taxation* 2004 ATC 2056; (2004) 55 ATR 1162; [2004] AATA 425).

The members contribute to an administration and sinking fund so the entity can perform its obligations. These supplies by the entity to its members are taxable supplies under section 9-5 of the GST Act (see also the decision of BJ McCabe SM in *Re Body Corporate, Villa Edgewater CTS 23092 and Federal Commissioner of Taxation* 2004 ATC 2056; (2004) 55 ATR 1162; [2004] AATA 425).

A public liability judgment was issued against the entity, which cannot be recovered from any insurance company. In order to pay this judgment debt, the entity charges each member a special levy in addition to its ordinary administration or sinking fund charges.

The entity is registered for goods and services tax (GST).

Reasons for Decision

In determining whether a transaction is a taxable supply, it is necessary to determine whether the transaction falls within the meaning of 'supply' set out in section 9-10 of the GST Act.

Paragraph 9-10(2)(b) of the GST Act provides that the expression 'supply' includes 'a supply of services' and paragraph 9-10(2)(g) of the GST Act provides that 'supply' includes 'an entry into... an obligation... to do anything'.

A body corporate is obliged to perform a variety of activities in the course of administering the common property and assets of a complex for the benefit of its members. These activities are 'services' within the meaning of 'supply'.

Although the term 'services' is undefined, it clearly comprehends the performance of obligations imposed on the entity to manage the affairs of the residential unit complex, including affairs in relation to a public liability judgment.

The special levy is an additional amount of consideration paid by members for the services provided by the entity, even though the additional consideration is applied to the fulfilment of the entity's obligation in relation to the public liability judgment. A judgment payment is not generally subject to GST, but it is the body corporate, not the members, paying under the judgment. When the body corporate offsets the payment with a special levy on members, the levy does not have the characteristics of a judgment payment. The body corporate members are providing consideration for the body corporate's supply to them. They are not providing consideration for the public liability judgment.

The entity is registered for GST and the supply satisfies the other positive limbs of section 9-5 of the GST Act. Furthermore, the supply is neither GST-free under Division 38 of the GST Act nor input taxed under Division 40 of the GST Act. Therefore, the entity is making a taxable supply under section 9-5 of the GST Act when it charges a special levy to its members.

Date of decision: 7 June 2001

Legislative References:

A New Tax System (Goods and Services Tax) Act 1999
section 9-5
section 9-10
paragraph 9-10(2)(b)
subparagraph 9-10(2)(g)(i)
Division 38
Division 40

Case References:

Re Body Corporate, Villa Edgewater CTS 23092 and Federal Commissioner of Taxation
2004 ATC 2056
(2004) 55 ATR 1162
[2004] AATA 425

Keywords

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GST property and construction
GST body corporates
GST supplies and acquisitions
GST supply
Taxable supply

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