

GST TREATMENT OF DEVELOPER CONTRIBUTIONS

What is the GST treatment of Developer Contributions?

- The GST implications of developer contributions will depend on the facts of each case.
- A contributed asset by a developer will not be subject to GST if it is listed in the Treasurer's *A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2000 (No. 2)*.
 - If a developer transfers assets to a local council or State/Territory government agency, the transfer will not be subject to GST if it is covered by the Treasurer's Determination.
 - A developer's contribution listed in the Treasurer's Determination will not be subject to GST, regardless of whether the payment is 'in kind', monetary or a combination of the two.
 - If a transfer of assets or a monetary contribution by a developer to a local council or other government agency is not listed in the Treasurer's Determination, it will be subject to the normal GST rules (ie. a taxable supply by the developer).
- A number of States and Territories have included 'in kind' developer contributions in the Treasurer's Determination, however, it is possible that others have not.
- Whether or not a developer contribution should be included in the Treasurer's Determination is not a matter for the ATO. In the first instance, agencies or local councils will need to approach their relevant State/Territory Department of Treasury and Finance to include an unlisted developer contribution in the Determination.

Background

With respect to the supply of contributed assets (rather than money) by a registered developer or a developer required to be registered for GST, the developer is making a taxable supply. This is provided all of the other requirements for a taxable supply are present: that is, the supply is for consideration, in the course of furtherance of an enterprise and connected with Australia.

Consideration includes any payment, act or forbearance, in connection with a supply of anything and does not necessarily have to be in monetary form. A forbearance is refraining from something and includes refraining from collecting outstanding debts from an entity. The provision of land or the carrying out of works is a supply by the registered developer. The satisfaction of a debt by a government agency is a forbearance by the government agency. Therefore, the developer has made a taxable supply in return for consideration by the government agency.

With that said, a tax, fee or charge levied under an Australian law is consideration for a supply and subject to GST unless it is listed in the Treasurer's determination under Division 81 of the GST Act. The payment of a tax, fee or charge listed in the determination is not consideration for a supply. A payment of a tax, fee or charge can be in the form of money or contributed assets.

On 29 June, the *A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2000 (No. 2)* was gazetted by the Acting Treasurer Mr John Fahey. This Determination, which lists those taxes, fees and other Government charges that will **not** be

subject to GST, repeals and replaces the previous Division 81 Determination gazetted by the Treasurer on 1 March 2000.

The Determination can be accessed from the Treasury website at www.treasury.gov.au. The Determination has been made under Division 81 of the *A New Tax System (Goods and Services Tax) Act 1999*. All of the States and Territories have agreed to the making of this Determination.