

## 1.1 GST administration

### 1.1.1 Are bodies corporate required to register for GST?

For source of ATO view, refer to:

- paragraphs 222 to 232 of [MT 2006/1](#) - The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian business number
- general application of the principles in [GSTR 2001/7](#) - Goods and Services Tax: meaning of GST turnover, including the effect of section 188-25 on projected GST turnover.

### ATO position

The GST Act requires that an entity be registered if its turnover meets or exceeds the registration turnover thresholds of \$75,000, or \$150,000 for non-profit bodies. A body corporate is an entity for GST purposes.

Division 188 GST Act requires that both current GST turnover and projected GST turnover be considered in determining the registration threshold but supplies that are input taxed, not for consideration or not carried on in connection with an enterprise, are not included in the calculation. Turnover includes GST-free supplies and levies on unit owners.

### 1.1.2 Are the supplies made by a body corporate in connection with an enterprise?

For source of ATO view, refer to paragraphs 222 to 232 of [MT 2006/1](#) - The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian business number.

Section 9-20 of the GST Act and section 38 of the ABN Act state that an enterprise is:

'an activity, or series of activities, done: (a) in the form of a business; or (b) in the form of an adventure or concern in the nature of trade: ...' A business is defined in section 195-1 of the GST Act as including 'any profession, trade, employment, vocation or calling ...'

The activities of a body corporate would be considered to fall within paragraphs 9-20(1)(a) and/or 9-20(1)(b) of the GST Act.

The fact that activities of a body corporate are limited to making supplies to its members does not prevent those activities being in the form of a business or in the form of an adventure or concern in the nature of trade (subsection 9-20(3) of the GST Act).

### 1.1.3 Do bodies corporate make taxable supplies?

For source of ATO view, refer to the principles in [GSTR 2006/9](#) - Goods and services tax: supplies

Section 9-5 of the GST Act states that if a supply is

- (a) for consideration,
- (b) in the course or furtherance of an enterprise,
- (c) connected with Australia, and
- (d) the entity is registered or required to be registered, the supply is a taxable supply. Input taxed supplies and GST-free supplies are not taxable supplies.

The supply a body corporate makes to its members is the entry into an obligation to maintain and manage the complex in a sound condition. This comes within the definition of supply contained in the GST Act. The supplies do not qualify as either GST-free or input taxed supplies under the provisions of the GST Act.

The fact that the supplier is an entity of which the recipient of the supply is a member, or that the supplier is an entity that only makes supplies to its members, does not prevent the payment made by the recipient from being consideration. Therefore, a payment from an owner to a body corporate can be consideration for a supply made by the body corporate to the owner.

In summary, a body corporate is considered to be an entity that is carrying on an enterprise which makes supplies for consideration. The entity is required to be registered when it meets the registration turnover threshold, but may elect to be registered if under the threshold.

#### 1.1.4 Consequences of registration or non-registration and members' possible entitlement to input tax credits

For source of ATO view, refer to the principles in:

- [GSTR 2000/17](#) - Goods and services tax: tax invoices,
- [GSTR 2006/4](#) - Goods and services tax: determining the extent of creditable purpose for claiming input tax credits and for making adjustments for changes in extent of creditable purpose, and
- [GSTR 2006/9](#) - Goods and services tax: supplies.

A registered body corporate will be required to include GST in any taxable supplies it makes, and pay the GST to the ATO. This includes amounts levied on proprietors, including sinking fund levies.

Provided a body corporate acquires goods and services for a creditable purpose and holds a tax invoice for acquisitions over \$82.50 (GST inclusive), it will be entitled to claim an input tax credit for the GST included in the cost of goods and services acquired. For example, input tax credits may be claimed for the GST included in acquisitions of electricity, management, cleaning, and repair and maintenance services. The credits will reduce the amount of GST that needs to be paid to the ATO on the business activity statement (BAS).

If the body corporate is not registered, or required to be registered, it cannot claim input tax credits, does not charge GST, does not issue tax invoices and is not required to lodge a BAS.

Generally, no input tax credits would be claimed on GST in the price of the levies imposed upon the members, as the members would not be likely to be the recipient of a creditable acquisition in relation to these payments. However, the members may be entitled to an input tax credit if they are registered and their unit in the body corporate was utilised for their enterprise. For instance, if there were business premises in a commercial complex.

#### 1.1.5 Are bodies corporate non-profit bodies for the purpose of the registration turnover threshold as provided for in section 23-15 of the GST Act?

For source of ATO view, refer to paragraphs 50 to 56 of [GSTR 2000/11](#) - Goods and services tax: grants of financial assistance

The meaning of 'non-profit body' for GST purposes is discussed at paragraphs 50-56 of [GSTR 2000/11](#). In particular, paragraph 52 of GSTR 2000/11 states that 'We consider that a non-profit body is a body which is not carried on for the purpose of profit or gain to its individual members.'

Paragraph 53 of GSTR 2000/11 provides that a body **is** a non-profit body where, by its constituent documents or by operation of law (for example, a statute governing the body's activities), it is prevented from distributing its profits or assets amongst its members while the body is functional and on its winding-up. The body's actions must be consistent with the prohibition.

Paragraph 54 of GSTR 2000/11 provides that where the law or the constituent documents do not prohibit distributions, it is a question of fact in each case as to whether the body is not carried on for purposes of profit or gain to the individual proprietors. Factors that we consider relevant include whether distributions have been made, whether there is a stated or demonstrated policy to make or not to make such distributions and whether winding-up is contemplated. Where it is clear from the objects, policy statements, history, activities and proposed future directions of the body that there will be no distributions to individual proprietors, we accept that the non-profit test has been satisfied.

Bodies corporate are permitted by their governing state or territory legislation to make distributions to proprietors in certain circumstances. Such legislative provisions cannot be excluded by a by-law of the body corporate (see IT 2505 and Taxation Determination [TD 93/73](#) Income tax: will a strata title body corporate be taxed as a non-profit company if it includes non-profit clauses in its by-laws?).

We consider that the circumstances in which profits will be available for distribution by a body corporate to its proprietors will be limited. In some states or territories, the body corporate does not own the common property. In the other states or territories, it holds the common property on trust or as agent for the members. In most cases the only assets that a body corporate will hold in its own capacity will be limited to the balance of the sinking fund and administration fund and any personal property such as washing machines, driers and lawn mowers etc. which are necessary for the basic purposes of the strata scheme.

A return of the members' own funds will not amount to a distribution of profits but a return of capital. The sinking fund and administration fund may include interest income or other income such as income from the rental of common property. The existence of interest income or income from rental or other activities in the various funds held by the body corporate will not preclude the body corporate from being a non-profit body for the purposes of the GST Act. However, an intention to distribute the interest income or profits from rental or other activities, either while the body corporate is functional or upon its winding up, would disqualify the body corporate from being a non-profit body for the purposes of the GST Act.

A non-profit body will be required to register for GST where its GST turnover of taxable supplies and GST-free supplies meets or exceeds \$150,000. The making of input taxed supplies (for example, residential rent) is not included in the calculation of the GST turnover for a non-profit body corporate.

The treatment for GST should be contrasted with the treatment for income tax. In subsection 3(1) of the *Income Tax Rates Act 1986*, non-profit company means:

- (a) a company that is not carried on for the purpose of profit or gain to its individual members and is, by the terms of the company's constituent document, prohibited from making any distribution, whether in money, property or otherwise, to its members, or
- (b) a friendly society dispensary.

In TD 93/73 it is said that this definition excludes bodies corporate. This is because, as stated earlier, the relevant state and territory legislation provides that a body corporate can make distributions to its proprietors in certain circumstances (for example, on winding up). This power can not be excluded by a by-law of the body corporate. Accordingly, for income tax purposes, a strata title body corporate fails the statutory test of prohibition on distribution to members set out in paragraph (a) of the definition and is not a non-profit company.

#### 1.1.6 How does a body corporate calculate the GST on taxable supplies?

Non-Interpretative - straight application of the law.

Where a body corporate is registered or required to be registered, it must pay to the ATO the GST on any taxable supplies that the entity makes. This includes levies charged to members. The amount of GST is equal to 10% of the value of the supply. The value of the supply is 10/11 of the price. GST to be paid to the ATO is 1/11 of the price.

#### 1.1.7 Is registration mandatory where there is a mixed strata title scheme (commercial and residential)?

For source of ATO view, refer to paragraph 14 of [GSTR 2001/7](#) - Goods and services tax: meaning of GST turnover, including the effect of section 188-25 on projected GST turnover.

### **ATO position**

Registration is mandatory where a body corporate's GST turnover of taxable supplies and GST-free supplies meets or exceeds \$150,000 where the body corporate is a non-profit body. The making of input taxed supplies, for example residential rent, does not contribute to this threshold.

## **1.2 Transitional issues**

### 1.2.1 What is the GST treatment of body corporate levies with respect to administration and sinking funds over the transition period?

For source of ATO view, refer to:

- paragraphs 25 to 30 of [GSTR 2000/7](#) - Goods and services tax: transitional arrangements - supplies, including supplies of rights, made before 1 July 2000 and the extent to which such supplies are taken to be made on or after 1 July 2000
- the general principles in [GSTD 2000/3](#) - Goods and services tax: transitional arrangements: to what extent is the supply of services made on or after 1 July 2000, where the supply spans that date?

### **ATO position**

Under section 7 of the Transition Act, GST is payable on a supply to the extent that it is made on or after 1 July 2000. Section 6 of the Transition Act sets out the general time of supply rule for determining when a supply or acquisition is made for the purposes of that Act. Specifically, section 6(4) provides that a supply or acquisition of services is made when the services are performed.

However, this general rule is modified when the supply is made over a specified period. Under section 12 of the Transition Act, where a supply, under an agreement or enactment, is made for a period or progressively over a period that begins before 1 July 2000 and ends on or after 1 July 2000, the supply is taken to be made continuously and uniformly throughout that period. This is whether the supply is made at regular intervals or not.

The payment of a body corporate levy is consideration for the supply or acquisition of that service.

Where there is a supply for a period that starts before 1 July 2000 and ends on or after 1 July 2000, the supply is considered to have been made continuously and uniformly over that period. As body corporate levies in respect of administration and sinking funds are regarded as being consideration for the supply of services for a period, it will be necessary to apportion the supply over the period covered by the levy.

### **For example:**

A levy is paid for the three month period 1 May 2000 - 31 July 2000. GST will be payable only on that portion of the levy which relates to the supply made for the period 1 - 31 July 2000.

### **1.2.2 How are levy arrears attributable to a period ending before 1 July 2000 treated?**

For source of ATO view, refer to paragraph 26 of [GSTR 2000/7](#) - Goods and services tax: transitional arrangements - supplies, including supplies of rights, made before 1 July 2000 and the extent to which such supplies are taken to be made on or after 1 July 2000.

### **ATO position**

Levy arrears that are attributable to a period ending before 1 July 2000 will attract no GST liability, even though actual payment occurs on or after 1 July 2000.

### **1.3 Australian business number (ABN)**

Issues 1.3.1 to 1.3.4 have been withdrawn. For information about the Australian business number, refer to the ATO website at [ABN essentials](#).

### **1.4 Business activity statements (BASs)**

Issues 1.4.1 to 1.4.3 have been withdrawn. For information about business activity statements, refer to the ATO website at [Activity statements - home](#).

### **1.5 Tax invoices**

Issues 1.5.1 to 1.5.4 have been withdrawn. For information about tax invoices, see [GSTR 2000/17](#).

### **1.6 Record keeping**

Issue 1.6.1 has been withdrawn. For information about record keeping requirements, refer to the ATO web site at [Record keeping essentials](#).

### **1.7 Pay as you go (PAYG) issues**

Issues 1.7.1 to 1.7.6 have been withdrawn. For information about the PAYG withholding requirements, refer to the ATO website at [No ABN withholding - questions and answers](#).

## **1.8 Miscellaneous**

1.8.1 Is it the manager's responsibility to claim input tax credits on behalf of the body corporate or do the owners claim their own?

For source of ATO view, refer to paragraphs 30 to 34 and 222 to 232 of [MT 2006/1 - The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian business number](#)

### **ATO position**

A body corporate is considered to be a separate entity acting on behalf of its members. Where the body corporate makes a creditable acquisition, the right to claim a credit on that acquisition accrues to the entity (that is the body corporate) making the acquisition. It will be the manager's responsibility to claim the credit which is creditable to the body corporate.

1.8.2 What is the GST position when a body corporate pays an honorarium to an office holder?

For source of ATO view, refer to the general principles of [GSTR 2000/11](#) - Goods and services tax: grants of financial assistance.

### **ATO position**

An office holder is performing services for the body corporate and generally will not be an employee. The office holder will be making a taxable supply if he or she makes the supply for consideration in the course of carrying on an enterprise, the supply is connected with Australia and he or she is registered or required to be registered for GST purposes. If the body corporate is registered or required to be registered for GST purposes and the acquisition is a creditable acquisition, the body corporate may claim an input tax credit in respect of that acquisition.

For more information, refer to [GSTA TPP 015 - Goods and services tax: Is a monetary honorarium consideration for a taxable supply?](#)

1.8.3 What are the GST implications if an owner of a strata unit is reimbursed for purchases made on behalf of the body corporate, and GST was included in the price of the purchases?

For source of ATO view, refer to paragraphs 48 to 54 of [GSTR 2000/37](#) - Goods and services tax: agency relationships and the application of the law

### **ATO position**

The unit owner is not liable for GST on the reimbursement it receives from the body corporate. This is because the reimbursement is not consideration for a supply made by the unit owner. The purchases made by the unit owner on behalf of the body corporate (that is, the unit owner acting as agent for the body corporate) are considered to be the body corporate's own purchases. Therefore, if the purchases are creditable acquisitions for the body corporate, it would be entitled to claim input tax credits for the GST included in the price of those purchases.

1.8.4 Is a nominal amount (for example, \$2 per week for car parking) charged by a body corporate subject to the GST?

For source of ATO view, refer to paragraphs 80 to 99 of [GSTR 2001/4](#) - Goods and services tax: GST consequences of court orders and out-of-court settlements

### **ATO position**

Yes, if the nominal amount is consideration for a taxable supply. A supply of car parking for \$2 will be a taxable supply under section 9-5 of the GST Act if:

- the supply is made in the course or furtherance of an enterprise that the body corporate carries on
- the supply is connected with Australia

- the body corporate is registered, or required to be registered.

1.8.5 What is the GST impact on a key security deposit payment?

Non-Interpretative - straight application of the law

**ATO position**

For an explanation on how GST applies to security deposit payments, see [GSTR 2006/2](#).

1.8.6 Is a body corporate liable for GST on the provision of inspection and certification services pursuant to the Strata Schemes Management Act 1996 (NSW) or comparable state or territory legislation?

For source of ATO view, refer to:

- paragraphs 222 to 232 of [MT 2006/1](#) - The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian business number
- the general principles in Part 2 of [GSTR 2006/9](#) - Goods and services tax: supplies

**ATO position**

Yes, if the body corporate is registered or required to be registered for GST. The provision of these services by a registered body corporate is a taxable supply. The body corporate would be required to pay to the ATO, 1/11 of the fees charged for the services, and to issue a tax invoice to the recipient of the services, if requested to do so.

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