1. **Statement**  
This Standard provides assistance in determining tax codes for fees or charges under Division 81.

2. **Scope**  
Compliance with this standard is mandatory.  
This standard shall apply to all employees, contractors and consultants within the Department of Health divisions and commercialised business units as well as Hospital and Health Services.

3. **Requirements**

   **Introduction**

   The Commonwealth Government intends that GST should apply to all provisions of goods and services, whether by government or by private sector entities. The GST legislation defines goods and services very broadly, including the creation, grant or transfer of any right and the provision of advice or information.

   Because of this broad definition, certain compulsory charges of a regulatory nature might be subject to GST e.g. the payment of a fee to be registered as a medical practitioner in Queensland could be construed as granting a right: the right to practice medicine in Queensland. It would therefore be taxable under the general provisions of the GST legislation. However, it is not the Commonwealth’s intention to tax compulsory charges of a regulatory nature and so Division 81 was included in the legislation.

   **The Principles**

   Under the Intergovernmental Agreement on Federal Financial Relations (IGA) the Parties agreed that Division 81 of the GST Act will exempt Australian taxes, fees and charges from GST in accordance with the following principles:

   - taxes that are in the nature of a compulsory impost for general purposes and compulsory charges by the way of fines or penalties will be exempt from GST;
   - regulatory charges that do not relate to particular goods or services will be exempt from GST, including:
     - fees and charges levied on specific industries and used to finance particular regulatory or other activities in the government sector; and
     - licences, permits and certifications that are required by government prior to undertaking a general activity.

   Commercial activities of government will not meet the requirements of exclusion under Division 81.
Inclusions

Included as a fee or charge under Division 81 are those that relate to an application for the provision, retention, or amendment, under an Australian law, of a permission, exemption, authority or licence.

In general, fees or charges relating to an agency doing any of the following will be excluded from GST:

(a) recording information;
(b) copying information;
(c) modifying information;
(d) allowing access to information;
(e) receiving information;
(f) processing information;
(g) searching for information.

GST regulations also specifically exclude a number of fees and charges

(a) a fee or charge for:
   (i) the kerbside collection of waste; or
   (ii) the supply, exchange or removal of bins or crates used in connection with kerbside collection of waste;
(b) royalties charged in relation to natural resources;
(c) a fee or charge imposed on an industry to finance regulatory or other government activities connected with the industry;
(d) a fee or charge to compensate an Australian government agency for costs incurred by the agency in undertaking regulatory activities;
(e) a fee or charge imposed in relation to a court, tribunal, commission of inquiry or Sheriff’s office;
(f) a fee or charge for a supply of a regulatory nature made by an Australian government agency;
(g) a fee or charge for entry to a national park;
(h) any other fee or charge:
   (i) specified in the A New Tax System (Goods and Services Tax)(Exempt Taxes, Fees and Charges) Determination 2011 (No. 1), as in force immediately before the commencement of Schedule 4 to the Tax Laws Amendment (2011 Measures No. 2) Act 2011; and
   (ii) imposed before 1 July 2013.
Exclusions

GST regulations also specifically exclude a number of fees and charges. These are:

1) a fee for parking a motor vehicle in a ticketed or metered parking space;
2) a toll for driving a motor vehicle on a road;
3) a fee for hire, use of, or entry to a facility, except for an entry fee to a national park;
4) a fee for the use of a waste disposal facility;
5) a fee for pre lodgement advice if:
   a) the advice relates to an application to which subsection 81 10(4) of the Act applies; and
   b) it is not compulsory to seek the advice;
6) a fee or charge for the provision of information by an Australian government agency if the
   provision of the information is of a non-regulatory nature;
7) a fee or charge for a supply of a non-regulatory nature;
8) a fee or charge for a supply by an Australian government agency, where the supply may
   also be made by a supplier that is not an Australian government agency.

The payment of these fees will be included as “consideration” no matter who levies them.

To assist in determining if fees and charges are subject to Division 81 or not, a diagram from draft
PSLA 3618 can be found at Appendix 1.

The Process

Prior to 1 July 2011, Division 81 of the GST legislation allowed the Commonwealth Treasurer to
issue a written determination exempting specified government fees and charges from GST.

From 1 July 2011, the legislation was amended to move from this prescriptive set of fees and
charges to a principles based set of self-assessment rules. As a result, the Commonwealth
Treasurer will not be issuing any further Division 81 Determinations. The government charges
listed in the current determination will continue to be exempt from GST until 1 July 2012.

Queensland Health’s Revenue Strategy & Support Unit (RSSU) publishes a register of all
departmental Fees and Charges, which includes the relevant Tax Codes. RSSU will include the
applicability of Division 81 to these fees when they are periodically reviewed. Any new charges,
currently not on the list will be reviewed by RSSU and the Tax Unit for GST applicability when
created. SOSRU’s Fees and Charges Register listing of all fees and charges issued by
Queensland Health is available on QHEPS.

Hospital and Health Services looking to introduce new charges are to refer these to the GST Team
for review prior to implementation.

Summary of Tax Codes

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<td>Purchase made of an item that falls under Division 81</td>
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<td>Sale made of an item that falls under Division 81</td>
<td>S9</td>
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<tr>
<td>Division 81 item is on-charged</td>
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General Information

Where QH is paying for fees or charges under Division 81, including rates, vehicle registrations, coroners’ fees and transcript fees, there will be no GST in the price and the correct tax code to use is P5. These purchases are to be included in our Business Activity Statement (BAS).

Where QH directly charges for fees or charges under Division 81, e.g. medical and health related licences, these fees or charges are considered to be Out of Scope, S9. These sales are not included in our BAS.

Where QH is on-charging fees or charges under Division 81 to another person or entity, they lose their Division 81 status and become taxable. See example below:

Example of on-charging:

- QH owns a commercial property that it is sharing with another department
- QH charges the other department a lease fee plus half of the rates fee
- QH pays the rates to the local government, using Tax Code P5 as this is a Division 81 fee belonging to the Department of Local Government.
- QH seeks reimbursement of the rates from the other department.
- QH raises a “Grossed Up” tax invoice for this reimbursement plus GST using tax code S0 as this is no longer rates but rent (only local governments can charge rates).
Appendix 1: Diagram of the law and regulations

This diagram from draft PSLA 3618 shows how Division 81 of the A New Tax System (Goods and Services Tax) Act 1999 and regulations 81-10.01, 81-15.01 and 81-15.02 of the A New Tax System (Goods and Services Tax) Regulations 1999 determines whether a supply by a government agency is subject to GST.

*Please note*: The operation of subsection 81-5(2) has not been inserted into this diagram.

Subsection 81-5(2) enables a regulation to be made that would make an Australian tax subject to GST where subsection 81-5(1) otherwise applies to make the Australian tax exempt. At the time of preparing this practice statement there are no regulations made under subsection 81-5(2), so the provision does not apply at this stage and hence it has not been included in the diagram.
4. Related legislation and documents

- A New Tax System (Goods and Services Tax) Act 1999
- A New Tax System (Goods and Service Tax) Amendment Regulations 2011 (No 2)
- Goods and Services Tax - How to complete your activity statement (NAT 7392)
- CAC Levy On-charged : ATO Private Ruling Register (28), Volume 3
- Practice Statement PSLA 2013/2 (GA) GST Treatment of Australian taxes, fees and charges under Division 81 of the A New Tax System (Goods and Services Tax ) Act 1999

5. Definitions

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