

Edited version of specific private ruling

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Question:

Will goods and services tax (GST) be payable on your supplies of electricity to the electricity company in return for the payments?

Answer:

No, GST will not be payable on your supplies of electricity to the electricity company in return for the payments.

Relevant facts and circumstances

Your ruling is based on the following facts.

- You are not registered for GST.
- You are retired and you state that you are not carrying on any enterprise.
- You have entered into an arrangement (the arrangement) under which you will sell electricity to an electricity company. Under this arrangement:
 - you installed solar panels onto the roof of your house, which is located in Australia;
 - you feed electricity produced by the solar panels into the electricity grid in return for the electricity company paying you amounts (payments)
- You invested a certain amount of money for the solar panel installation. You will recover a part of this cost from the government and receive another amount by selling your associated things.
- You entered into a payment agreement, which is for a period of so many years.
- You forecasted that you will be entitled to payments totalling about a certain amount of money per year. The payment amounts will be applied as discounts to your electricity bills.
- It is expected that you will be better off overall financially as a result of the agreement. The total of payment amounts you are to receive is expected to eventually exceed your net cost of installing the solar panels. However, the amount you receive in payments in a year will be less than the total of your electricity bill amounts per year.

- Your reason behind entering into this arrangement was to do something to benefit the environment and to reduce your overall electricity costs (by receiving the payments). You were enticed into the arrangement by the offer of the payments as well as the government rebate on installing the solar panels.

Reasons for decision

Summary of reasons for decision

As you are not registered or required to be registered for GST, you will not make taxable supplies of electricity in return for the payments, and consequently, GST will not be payable on your supplies of the electricity.

Detailed reasons for decision

GST is payable where you make a taxable supply.

You make a taxable supply where you satisfy the requirements of section 9-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), which states:

You make a **taxable supply** if:

- (a) you make the supply for *consideration; and
- (b) the supply is made in the course or furtherance of an *enterprise that you *carry on; and
- (c) the supply is *connected with Australia; and
- (d) you are *registered, or *required to be registered.

However, the supply is not a *taxable supply to the extent that it is *GST-free or *input taxed.

(* Denotes a term that is defined in section 195-1 of the GST Act).

Issue 1.1 of Electricity & Gas Industry Partnership – Issues Register (Issue 1.1) discusses the GST implications of electricity being fed from solar power generation equipment into an electricity grid. It states:

1.1 Are there any GST implications for an owner of grid-connected solar power generation equipment (solar owner) in respect of electricity supplied via the network?

Yes, if the solar owner is registered for GST.

The supply of solar generated electricity from a solar owner to an electricity retailer is a supply for GST purposes. If the solar owner is registered for GST and the supply is made in the course or furtherance of their enterprise, it is a taxable supply under section 9-5 of the GST Act.

The supply of solar generated electricity from a solar owner via the network is a separate supply from the supply of electricity by an electricity retailer to the solar owner. Therefore, the electricity supplies by the solar owner and the electricity retailer should be accounted for separately.

In your case, you will supply electricity from your solar panels by feeding it into an electricity grid. Hence, in accordance with Issue 1.1, you will make a supply for GST purposes (a supply of electricity).

You will supply the electricity to the electricity company in return for consideration (the payments). Hence, you will satisfy the requirement of paragraph 9-5(a) of the GST Act.

These supplies will be connected with Australia. Hence, the condition at paragraph 9-5(c) of the GST Act will be satisfied.

There are no provisions in the GST Act or any other Act under which your supplies of the electricity would be GST-free or input taxed.

You are not registered for GST.

Therefore, what remains to be determined is whether you will supply the electricity in the course or furtherance of an enterprise that you carry on and whether you are required to be registered for GST.

Enterprise

In accordance with paragraph 9-20(a) of the GST Act, an enterprise includes an activity or series of activities done in the form of a business.

Miscellaneous Taxation Ruling MT 2006/1 provides guidelines on the meaning of the term 'enterprise' for ABN purposes.

Paragraph 1 of Good and Services Tax Determination GSTD 2006/6 provides that the guidelines in MT 2006/1 are considered to apply equally to the term 'enterprise' as used in the GST Act and can be relied upon for GST purposes.

Paragraphs 177 to 179 of MT 2006/1 provide guidance on the meaning of business. They state:

177. To determine whether an activity, or series of activities, amounts to a business, the activity needs to be considered against the indicators of a business established by case law.

178. TR 97/11 discusses the main indicators of carrying on a business. Based on that discussion some indicators are:

- a significant commercial activity;
- a purpose and intention of the taxpayer to engage in commercial activity;
- an intention to make a profit from the activity;
- the activity is or will be profitable;
- the recurrent or regular nature of the activity;
- the activity is carried on in a similar manner to that of other businesses in the same or similar trade;
- activity is systematic, organised and carried on in a businesslike manner and records are kept;
- the activities are of a reasonable size and scale;
- a business plan exists;
- commercial sales of product; and
- the entity has relevant knowledge or skill.

179. There is no single test to determine whether a business is being carried on. Paragraph 12 of TR 97/11 states that 'whilst each case might turn on its own particular facts, the determination of the question is generally the result of a process of weighing all the relevant indicators'. TR 97/11 can be referred to for a fuller discussion on whether a particular activity constitutes the carrying on of a business.

You will carry on an activity of selling electricity to the electricity company. This will be a small scale activity. Paragraphs 180 to 183 and 186 to 190 of MT 2006/1 provide examples of small scale activities. They state:

Small scale activities

180. An enterprise can be conducted in a small way. The size or scale of the activities, although important, is not the sole test of whether they amount to an enterprise. The larger the scale of the activities the more likely it is that they are an enterprise. However, if the activities are carried on in a small way, other indicators become more important in determining whether they amount to an enterprise.

181. It is important to note that activities are excluded from the definition of enterprise if they are carried on by an individual or a partnership (all or most of the members of which are individuals) without a reasonable expectation of profit or gain. Further, activities are also excluded if they are done as a private recreational pursuit or hobby. For a further discussion of the exclusions, see paragraphs 329 to 408 of this Ruling.

Example 18 - regular activities done on a small scale that amount to an enterprise

182. *Omar is a self-funded retiree. To keep active he has agreed to clean windows on a regular basis at some local shops. He has purchased his own window cleaning equipment. Over the course of a year he expects to earn approximately \$3,500 and incur \$800 in expenses. The shopkeepers have requested an ABN from Omar as he is not an employee.*

183. *Omar is entitled to an ABN. Although his activities are on a small scale, he has an expectation of making a profit and the activities are regular and repetitive. Further, the window cleaning activities are not a private recreational pursuit or hobby.*

Activities done on a small scale that do not amount to an enterprise

186. There are a range of activities that are of such a small scale that they do not amount to an enterprise. As explained in paragraph 180 of this Ruling, where activities are conducted on a small scale other indicators become more important in deciding whether they amount to an enterprise. While it is always a question of fact and degree in each particular case, it would be difficult to conclude that activities are an enterprise where they are of a very small size and scale, are carried on in an ad hoc manner, and there is little repetition or regularity.

Example 20 - ad hoc small scale activities that do not amount to an enterprise

187. *Helena lives on a disability pension. As she is fluent in Polish she occasionally translates at a local area health service, for which she receives a small payment. She only performs this service occasionally, as required. Her payments total no more than \$300 in any one year.*

188. *Helena is not entitled to an ABN. The scale and nature of her activities are not sufficient to be an enterprise. They are carried on in a very small way and in an ad hoc manner.*

Example 21 - regular small scale activities that do not amount to an enterprise

189. Geoffrey is a retired electrician who receives the Age Pension. He lives close to the local community hall. Geoffrey enjoys gardening and in summer he volunteers to help out the hall committee by mowing the grounds of the hall and doing light gardening. The hall committee gives Geoffrey approximately \$650 per year to help cover his out of pocket expenses.

190. Geoffrey is not entitled to an ABN. Even though there is some regularity to his activities they are carried on in a very small way. The nature and scale of his activities do not amount to an enterprise. Further, he does not have a reasonable expectation of profit or gain. See paragraphs 378 to 405 of this Ruling for further information on this requirement.

The amount of income you will earn per year from your activity will be of a similar magnitude to income in example 21 in MT 2006/1. However, despite the small scale of your activity, it will be in the form of a business, because of the following factors when considered together:

- you will make commercial sales of electricity;
- you will carry on your activity of selling electricity on a regular and recurrent basis;
- your intention will be to engage in a commercial activity to make a profit (as you will sell to a commercial buyer and you intend to be better off financially as a result of the arrangement);
- you will make an overall profit from the activity (the payment amounts will eventually exceed your net cost of installing the solar panels);
- you have a plan for how you will make a profit from the activity; and
- the activity will not be a private recreational pursuit or hobby (as you will be doing the activity for financial reasons; not for pleasure/entertainment).

Your activity is similar to example 18 in MT 2006/1, as although your activity will be small scale:

- you have an expectation of making a profit (in contrast to example 21 in MT 2006/1);
- your activity will be regular and repetitive (and much more so than in example 21 in MT 2006/1); and
- your activity will not be a private recreational pursuit or hobby (in contrast to example 21 in MT 2006/1).

Hence, your activity of selling electricity will be an enterprise.

Consequently, you will supply the electricity in the course or furtherance of an enterprise that you carry on. Hence, you will satisfy the condition at paragraph 9-5(b) of the GST Act.

GST registration

You are not registered for GST.

In accordance with section 23-5 of the GST Act, an entity is required to be registered for GST where:

- (a) it is carrying on an enterprise, and
- (b) its GST turnover meets the registration turnover threshold

In accordance with paragraph 23-15(1)(b) of the GST Act and subregulation 23-15.01 of the A New Tax System (Goods and Services Tax) Regulations 1999, the relevant registration turnover threshold in your case is \$75,000.

In accordance with Division 188 of the GST Act, GST turnover is essentially turnover from enterprise activities (with some exclusions).

Your GST turnover will be a certain amount per year (the total of payments you are to receive in a year). Hence, you do not satisfy the requirement of paragraph 23-5(b) of the GST Act, because your GST turnover is below the \$75,000 registration turnover threshold.

As you do not satisfy all of the requirements of section 23-5 of the GST Act, you are not required to be registered for GST.

Hence, you do not satisfy the requirement of paragraph 9-5(d) of the GST Act.

As you do not satisfy all of the requirements of section 9-5 of the GST Act, you will not make taxable supplies in return for the payments, and consequently, GST will not be payable on your supplies of the electricity.

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