

APPLICATION OF THE GST TO NEM TRANSACTIONS

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Approved for distribution and use by:

APPROVED BY: Peter Geers
TITLE: Chief Strategy and Markets Officer – Strategy & Markets

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IMPORTANT NOTICE to AEMO and by AEMO to Market Participants on a principal to principal basis.

1.1. Related documents

Title/Reference	Description/Location
GST Information Note for Applicants	https://www.aemo.com.au/-/media/Files/PDF/0520-0001-pdf.pdf
AEMO Statement Layouts	http://www.aemo.com.au/electricityops/0500-0004.zip
AEMO Security Deposit Arrangements	https://www.aemo.com.au/-/media/Files/PDF/0530-0023-pdf.pdf

1.2. Outline

A "GST Checklist" has been prepared including practical points for Market Participants to consider, in section 2. Section 3, 4 and the appendices provide additional information regarding:

- Principles underpinning GST administration in the NEM.
- GST Treatment of NEM transactions and explanatory notes.
- Records of Private Rulings and advice issued by the ATO to AEMO.

Two developments subsequent to GST implementation in July 2000 were:

- Receipt of Private Ruling confirming AEMO treatment of negatively priced energy; and
- Change in GST Treatment of all Transmission Network Service Provider transactions from taxable supplies to "no supplies" effective 1 July 2001.

Other ATO GST Private Rulings have also been received since July 2000. These are noted in Appendix A.

2. CHECKLIST

- All Market Participants must enter a Written Agreement permitting AEMO to issue Recipient Created Tax Invoices (RCTI)

GST legislation requires that a written agreement be in place between the parties to any transaction before an RCTI can be issued for that transaction. For this reason intending Market Participants must enter into a written agreement with AEMO, permitting AEMO to issue Recipient Created Tax Invoices on their behalf. This requirement applies to all categories of Market Participant, including Market Customers, as they may in future make taxable supplies to AEMO.

- Separate Tax documents will be issued by AEMO

AEMO does not combine the detailed and summary settlement statement formats with tax document formats. Instead AEMO issues separate:

- Tax Invoices/Recipient Created Tax Invoices; and
- Adjustment Notes/Recipient Created Adjustment Notes.

Statement totals of tax documents reconcile with the statement totals of the corresponding settlement statement. The above tax documents are compliant with GST Law and have been geared to the Business Activity Statement format.

- Linking settlement statement types to tax documents

Tax documents are issued at the same time as settlement statements. The table below indicates the type of tax document that could be extracted when settlement statements are issued:

Interim Statement	⇒	No tax document
Preliminary Statement	⇒	No tax document
Final Statement	⇒	Tax Invoice/Recipient Created Tax Invoice
Revision Statement 1	⇒	Adjustment Note/Recipient Created Adjustment Note
Revision Statement 2	⇒	Adjustment Note/Recipient Created Adjustment Note

Conditions for receiving a Tax Invoice, or RCTI

The conditions for receiving a tax document when a Final settlement statement has been issued are:

- A Recipient Created Tax Invoice will be issued where a Market Participant provides a taxable supply to AEMO. This would typically be applicable for a Market Participant who is registered as a Generator.
- A Tax Invoice will be issued where a Market Participant does not provide any taxable supply to AEMO, but AEMO provides a taxable supply to the Market Participant. This would typically be applicable for a Market Participant who is registered as a Customer.
- No tax document will be issued where taxable supplies are neither provided to or by AEMO. This would typically be applicable for a Participant who trades Settlement Residue Auction Units and is not registered as a Generator or Customer.

Conditions for receiving an Adjustment Note, or Recipient Created Adjustment Note

Firstly there must be a change in taxable supply amounts between the revised settlement statement and the previous final or revised settlement statement for the same weekly billing period. Without a change there is no adjustment event and therefore no adjustment tax document will be issued. Where an adjustment event has occurred:

- A Recipient Created Adjustment Note will be issued if an adjustment event has occurred and a Recipient Created Tax Invoice had been previously issued for that Week.
- An Adjustment Note will be issued if an adjustment event has occurred and a Tax Invoice had been previously issued for that Week.

GST and AEMO's market systems.

The tax documents are delivered electronically through AEMO's market systems in a similar manner to the summary and detailed settlement statements and can be found by Market Participants in AEMO confidential directories on the participant fileserver:

Import\Reports\PDFTAXINVOICE	⇒	Tax Invoice
Import\Reports\PDFRCTXINVOICE	⇒	RC Tax Invoice
Import\Reports\PDFADJNOTE	⇒	Adjustment Note
Import\Reports\PDFRCADJNOTE	⇒	RC Adjustment Note

As with other NEM transactions GST details can also be downloaded electronically from confidential database tables via the MMS Data Model or CSV file. The relevant tables are:

BILLING_GST_DETAIL	⇒	BAS classifications amounts disaggregated to transaction type
BILLING_GST_SUMMARY	⇒	BAS classifications amounts - "BAS entries at a glance."

3. PRINCIPLES UNDERPINNING GST ADMINISTRATION IN THE NEM

3.1. Spot price published exclusive of GST

Publishing of prices exclusive of GST had been unanimously supported by Market Participants and also some other interested parties – mainly financial institutions. Confirmation was also received from the Australian Consumer and Competition Commission, accepting the publishing of spot prices exclusive of GST, providing that any publication clearly states that GST exclusive pricing is being used.

As prices are published without GST, the spot price is increased by 10% at the time of invoicing. All other NEM transactions, such as ancillary services, that are deemed taxable supplies are also treated in a consistent manner and initially calculated on a GST exclusive basis and increased by 10% at the time of invoicing.

3.2. National Electricity Rules (Rules) change authorising AEMO to apply the GST

Rules clause 3.15.10A “Goods and Services Tax” was drafted to recognise GST transactions in the NEM.

3.3. AEMO issues all NEM tax documents as principal

Given that prices, volumes and trading amounts are determined by AEMO’s market systems, it has been deemed most practical for AEMO to issue all tax documents associated with NEM transactions as principal.

The same approach also applies to a Market Participant providing taxable supplies to AEMO. Normally the provider of taxable supplies would issue the Tax Invoice. However, for NEM transactions AEMO will issue a Recipient Created Tax Invoice (RCTI) on behalf of these Market Participants. Where AEMO provides taxable supplies to the same Market Participant, a set-off will be introduced within the invoice to represent this supply.

3.4. Attribution of GST in the NEM

AEMO received a Private Ruling, refer Appendix A, to confirm Final Statements constitute an invoice for GST purposes as per section 29-5 of A New Tax System (Goods and Service Tax) Act 1999. On this basis Market Participants will receive either a RCTI or Tax Invoice for each Final Statement issued. The Private Ruling deemed the Preliminary Statement a draft and not a document notifying an obligation to make payment.

Where an adjustment event has occurred AEMO will issue an Adjustment Note or Recipient Created Adjustment Note for the applicable Revision Statement issued.

4. GST TREATMENT OF NEM TRANSACTIONS AND EXPLANATORY NOTES

Headings are listed according to the Business Activity Statement⁷ (BAS) format:

Supplies you have made	Acquisitions you have made
Taxable supplies	Creditable acquisitions
GST free supplies	Acquisitions with no GST in the price
Input taxed supplies	

AEMO is registered for GST, and processes NEM transactions crossing the classifications of:

- Taxable Supplies

- Financial supplies
- GST free supplies
- No supplies

The following table groups NEM transactions to BAS headings. An additional heading of “Not Subject to GST” is used for NEM transactions that do not fit any of the BAS classifications.

Transaction Type	Taxable Supplies	Creditable Acquisitions
	Pay by AEMO	Pay to AEMO
REF-A Electricity Supply (Negatively priced energy will be netted against Energy sales and purchases respectively)	√	√
Ancillary Services	√	√
REF-B Complete AEMO Pool Fees (including Establishment Fees) prior to 1 July 2018	-	√
Complete EUA (ECA from 2015) Pool Fees prior to 1 July 2018	-	√
Reserve Trading Contract Amounts	√	√
System Security Direction Compensation	√	√
Settlement Dispute Adjustments - Interest	√	√
REF- C SRA - Purchase of Units	-	√
- Auction fees	-	√

Transaction Type	Not Subject to GST
REF-B Complete AEMO Pool Fees (including Establishment Fees) after 1 July 2018 Complete EUA (ECA from 2015) Pool Fees after 1 July 2018	AEMO participant fees and charges are not consideration for a taxable supply.

Transaction Type	Not Subject to GST
REF-C Residue Distribution to Auction participants and Minimum \$10 Payment	No supply is made in connection with the receipt of these payments. Consequently the transaction is neither a financial or taxable supply.
REF-D Intra Regional Residue	TNSPs do not make a supply. As a result TNSPs are not liable to account for GST in respect of the listed transactions.
REF-D Inter Regional Residue distribution to Transmission Network Service Providers(TNSPs) arising from derogation amounts and unpurchased Auction Unit Amounts	
REF-E Reallocation Transfers	For GST purposes deemed to be after all GST calculations
REF-F Provision and Application of Security Deposits (SDAs)	Division 99 of the GST Act will apply.

Explanatory Notes to the table

- REF - A
The classification of negatively priced energy complies with GST Private Ruling – Recipient Created Tax Invoices, dated 25 October 2000 (see Appendix A).
- REF - B
Prior to 1 July 2018, Complete AEMO and EUA (ECA from 2015) Pool Fees (commonly referred to as participant fees) will be classified as Taxable Supplies made by AEMO and AEMC (for EUA prior to 2015). Transitional relief is provided for under section 13 of the A New Tax System (Goods and Service Tax Transition) Act 1999. The fact that establishment costs were incurred prior to the GST coming into effect does not, in itself give rise to transitional relief in respect of this component. Qualification for transitional relief requires a written agreement specifically identifying a supply and the consideration in money (or a way of working out the consideration in money), which agreement was made before the relevant date (2 December 1998). From 1 July 2018, AEMO does not charge GST on participant fees charged to Registered Participants including fees to recover the ECA costs. This change was made based on GST Private Ruling – Application of GST to Fees, dated 4 December 2017 (see Appendix A).
- REF- C
The classification complies with GST Private Ruling – AEMO – GST and Settlement Residue Auction and Distribution, dated 29 June 2000 (see Appendix A). Essentially the ATO focused on the similarities between the SRD transactions and derivative instruments to conclude there would be no GST associated with these transactions.
- REF- D
Prior to 1 July 2001 the Transmission Network Service Provider (TNSP) transactions below were treated as taxable supplies:
 - Proceeds from the sale of Auction Unit;
 - Settlement residue distribution allocated in accordance with Rule derogations under Chapter 9; and
 - Settlement residue distribution associated with unpurchased Auction Units.

However subsequent Commissioner's advice (see Appendix B) indicated that these transactions constituted no supply. Following this decision AEMO formed the view that intra-regional residues should be treated consistently with that advice.

AEMO implemented the GST Treatment change on 1 July 2001 in agreement with TNSP and ATO staff.

ATO supplementary advice was received by AEMO regarding the documentation for the period July 2000 to June 2001. After considering the significant amount of work and the revenue neutral result, the ATO stated that it was not necessary to process BAS adjustments, that may have arisen from the advice in respect of these transactions.

- REF- E

The Rules Glossary under Chapter 10 defines reallocation as:

A process under which two Market Participants request AEMO to make matching debits and credits to the position of those Market Participants with AEMO.

The reallocation will not impact on AEMO's GST liability. This treatment may not be the same for those Participants who enter into the reallocation transaction.

- REF- F

The classification complies with GST Private Ruling – Security Deposits, Authorisation Number 6969, dated 1 October 2001 (see Appendix A).

5. REFERENCES

- ATO (Australian Tax Office) 2000, Business Activity Statement (BAS) Instructions (Nat 3030), Commonwealth of Australia, Canberra
<http://www.taxreform.ato.gov.au/busihome/>
- ATO (Australian Tax Office) 2001, Register of Private Binding Rulings, Commonwealth of Australia, Canberra
<http://ato.gov.au/rba/>
- ATO (Australian Tax Office) 2000, ATO Legal Database, Rulings, Commonwealth of Australia, Canberra
<http://law.ato.gov.au/atolaw/>

APPENDIX A: PRIVATE RULES PROVIDED BY THE ATO TO AEMO

1. GST Private Ruling: Attribution of GST to a Tax Period, dated 03 April 2000

The relevant excerpt on page 2 of the ATO ruling is provided below:

The invoice that is issued 18 days after the end of the billing period, notifying an obligation to make a payment, constitutes an invoice for the purposes of Division 195 and section 29-5 of the GST Act.

2. GST Private Ruling: AEMO, GST and Settlement Residue Auction and Distribution Payments, dated 29 June 2000

The three issues are presented below:

1. Is the transaction associated with the supply of an interest in a Settlement Residue Distribution agreement (SRD agreement) subject to GST?

There will be no GST as the associated supply is a Financial supply. This conclusion was arrived at after a consideration of the similarities between the SRD transactions and derivative instruments.

2. Is the transaction associated with the distribution of settlement residue in accordance with a SRD agreement subject to GST?

There will be no GST. The relevant excerpt from page 7 of the ATO ruling is provided below:

With reference to both the Rule and the Settlement Residue Auction Rules, it is found that, the distribution of settlement residue funds (including the default payment of \$10.00 per unit) to a successful auction participant arises from a right conferred under the term of the SRD Agreement.

As such, the successful auction participant does not make a supply in connection with the receipt of the payments. Consequently, the transaction is neither a financial or taxable supply.

3. Is the transaction associated with the recovery of Auction Expenses from settlement residue distributed to SRD agreement holders subject to GST?

There will be no GST. The Auction Fee supply is directly connected with the supply of an interest in the SRD agreement. Accordingly, the supply in relation to the payment of Auction Expense Fees is an incidental supply, and for that matter a financial supply.

3. GST Private Ruling: Recipient Created Tax Invoices, dated 25 October 2000
Can negatively priced energy be offset against positively priced energy amounts?

The relevant excerpt on page 2 of the ATO ruling is provided below:

A Recipient Created Tax Invoice for issued by AEMO for supply of electricity by a generator needs to show, among other things, the total amount payable. There is no need to show the consideration of each supply.

4. GST Private Ruling: Security Deposits, Authorisation Number 6969, dated 01 October 2001
 An extract from the edited version of the private ruling published by the ATO on its website is below:

1. "The deposits you received from wholesales purchasers, is(sic) security deposits pursuant to Division 99 of the GST Act."
2. "The payment of a security deposit by a wholesale purchaser will not trigger attribution of the GST payable on the supply under section 29-5 of the GST Act."
3. "GST will be attributable to the tax period in which the invoice is issued."
4. "Input tax credits will be attributable to the tax period in which the invoice is issued."
5. "Division 165 of the GST Act will not apply to the receipt of security deposits by you."

5. GST Private Ruling: GST treatment of AEMO fees and charges, dated 4 December 2017
 A summary of the ATO ruling is provided below:

1. The payment of fees or charges to which Division 81 applies is treated as not being the provision of consideration and is not subject to GST.
2. In particular, under subsection 81-10(1) an Australian fee or charge is not the provision of consideration if it is a fee or charge covered by subsection 81-10(4).
3. Further, section 81-15 states that the GST Regulations may provide that the payment of a prescribed Australian fee or charge, or of an Australian fee or charge of a prescribed kind, or the discharging of a liability to make such a payment, is not the provision of consideration.

4. Australian fee or charge is defined in section 195-1 to mean a fee or charge (however described), other than an Australian tax, imposed under an Australian law and payable to an Australian government agency.
5. The fees and charges are imposed under the NEL and the NGL. Therefore, they are fees and charges imposed under an Australian law.
6. AEMO is considered an 'authority of the Commonwealth, a State or a Territory' and are an Australian government agency for the purposes of Division 81.

APPENDIX B: ADVICE PROVIDED BY THE ATO TO AEMO

GST Treatment of "Settlement Residue" Payments, dated 11 May 2001

The Commissioner viewed the below Transmission Network Service Provider transactions as no supply.

- i. Distribution of Quarterly Settlement Residue Auction Proceeds.
- ii. Distribution of "Settlements Residue" attributable to unpurchased "Settlement Residue Auction Units".
- iii. Distribution of Weekly Derogation Amounts.

A decision on the nature of adjustments that may arise from the advice was being reviewed.

Supplementary advice: GST Treatment of "Settlement Residue" Payments, dated 10 December 2001

After considering:

- The significant amount of work required by AEMO and Transmission Network Service Providers to process adjustments arising from the advice; coupled with,
- A zero net financial result for the parties (TNSPs, AEMO and the ATO)

No retrospective action would be taken by the ATO in relation to amounts incorrectly overcharged by the TNSPs and input tax credits claimed by AEMO prior to 01 July 2001.