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Is the GST unconstitutional? Some s 55 problems revisited – *Steven Spadijer*

Section 55 of the Australian Constitution requires that laws imposing taxation, except duties of customs or of excise, shall deal with one subject of taxation only. Yet, in substance, the Goods and Services Tax (GST) itself is a duty of excise, a customs duty, a services tax, a tax on a tax, a land transfer tax, and much more. In order to arrive at this conclusion, however, this article makes three key points. First, it argues that, based on general conceptions and ordinary understanding, neither "final private consumption" nor "supply" can possibly constitute the subject of taxation of the GST Act. Secondly, the article examines the political backdrop that led to the passage of the GST. It reveals that not only did 29 Senators expressly reject the characterisation that the GST Act dealt with a single subject of taxation, but argues the GST was a textbook example of "tacking", that is, combining a number of controversial, possibly unpopular, tax proposals – such as an indirect tax on services and indirect tax on State imposts – with other more anodyne or innocuous, possibly popular, tax measures. Finally, the article presents a number of hypothetical scenarios in order to demonstrate the absurdities that would result if "supplies" is treated as a single subject of taxation. The article concludes by asking whether the Australian Treasury has actually discovered a clever drafting technique to successfully evade the constraints found within s 55, or whether the drafters of the GST were simply hoping the High Court would refuse to place any practical limit on the federal taxation power – even if it meant rendering s 55 unable to fulfil its intended purpose of protecting the people of the States from financial aggression on the part of the Commonwealth. 204

Are returns received by householders from electricity generated by solar panels assessable income? – *John Passant*, *John McLaren* and *Parulian Silaen*

More than one million households in Australia are generating electricity from solar photovoltaic panels installed on their homes and they receive a credit or payment, namely a return in some form for the electricity generated. The focus of this article is on domestic households and the returns they receive from solar panels installed on their roofs. This article contends that such returns in the form of a credit or actual payment to households for electricity generated from solar panels is ordinary income from property and should be treated as assessable income. Where the electricity generated is fed back into the household it will not be assessable income, but in all those cases where the electricity is fed into the grid and a payment or credit is given, then that return is income according to ordinary concepts and assessable as such. If the government wants to encourage investment in solar energy by householders in Australia then it should clarify this issue by passing legislation exempting the returns from assessable income. Alternatively the Australian Taxation Office (ATO) could release a public ruling on the issue. This at least would provide greater certainty for households who now tentatively rely on private rulings

given to taxpayers by the ATO that consider credits and payments not to be assessable income on the basis that the householder is not conducting a business or that the arrangement is of a private or domestic nature. 263

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