

GSTD 2000/D5 - Goods and Services Tax : is the provision of labour hire services a taxable supply in terms of section 9 -5 of the A New Tax System (Goods and Services Tax) Act 1999 ?

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This document has been finalised.



Draft Goods and Services Tax Determination

Goods and Services Tax: is the provision of labour hire services a taxable supply in terms of section 9-5 of the *A New Tax System (Goods and Services Tax) Act 1999*?

Preamble

Draft Goods and Services Tax Determinations (DGSTDs) present the preliminary, though considered, views of the Australian Taxation Office. DGSTDs should not be relied on; only final Goods and Services Tax Determinations represent authoritative statements by the Australian Taxation Office.

1. The typical labour hire arrangement between a labour hire firm (the firm) and the end consumer (the user) of the firm's service is a taxable supply of that service.
2. The firm is a labour market intermediary. Typically, the firm enters into a contract with a worker who agrees to provide labour. The firm also contracts to supply a service of a worker's labour to the user of the service.
3. The firm, with respect to the worker:
 - advertises, screens, and selects;
 - coordinates appointments with the user of the service;
 - pays salary and other costs;
 - withholds Pay As You Go (PAYG) withholding amounts and sends those amounts to the Australian Taxation Office (ATO); and
 - is the party to whom the user seeks a remedy if the worker does not perform as required.
4. The firm, with respect to the user:
 - is the party to whom the worker is contracted¹;
 - is the party with whom the user contracts; and
 - invoices the user for the time the worker is appointed. The fee to the user is based on the wages and related costs of the worker and the firm's service charges.

¹ Taxation Ruling TR 1999/13 discusses the parties service relationship.

5. Under section 9-5 of the *A New Tax System (Goods and Services Tax) Act 1999* ('GST Act') an entity makes a taxable supply if:
- the entity makes the supply for consideration;
 - the supply is made in the course or furtherance of an enterprise the entity carries on;
 - the supply is connected with Australia; and
 - the entity is registered, or required to be registered.
6. The service provided by the firm to the user is a taxable supply where the conditions of section 9-5 are satisfied:
- a supply of services is made by the firm to the user;
 - consideration is given by the user for the supply;
 - the supply is made in the course of the firm's enterprise;
 - the supply is connected with Australia; and
 - the firm is registered, or required to be registered.
7. Pursuant to subsection 7-1(1) of the GST Act, GST is payable on the taxable supply between the firm and the user.
8. Pursuant to subsection 9-20(2) the definition of 'enterprise' does not include activities done by an employee or in connection with earning certain withholding payments. Withholding payments covered include a payment subject to withholding under section 12-60 of Schedule 1, Part 2-5 of the *Taxation Administration Act 1953* ('TAA 1953') – that is, a payment under a labour hire arrangement. A payment received by an individual under a labour hire arrangement as specified in section 12-60 does not satisfy the requirements of a taxable supply and is not subject to GST.
9. Under a labour hire arrangement the entity paying the worker is the firm and the payments to the workers will be subject to withholding under the PAYG withholding system.

Example

10. *Staffprovider Ltd is registered for GST purposes, and keeps a database of skilled persons who are willing for their services to be provided to third parties. Staffprovider arranges with Corporate Pty Ltd, which is registered for GST purposes, to provide to it the services of a computer programmer in return for payment. Staffprovider arranges with Jane for her to do computer programming for Corporate. Staffprovider must withhold PAYG amounts from payments it makes to Jane under the arrangement with her. GST is payable by Staffprovider on the service fee charged to Corporate.*

11. Alternatively, the firm may contract with the user to provide a recruitment service only. In such a case, the firm provides the service of introducing suitably qualified personnel to the user. The user then contracts directly with the recruited worker for their labour. Provided the conditions set out in paragraph 6 above are satisfied, GST is payable by the firm on the service fee charged to the user.

12. Where the firm is only providing a recruitment service and the recruited worker contracts directly with the user, the user will be paying the worker. These payments may be subject to withholding under the PAYG withholding system depending upon the contractual arrangements that have been entered into. Refer to PAYG Bulletin Number 3 - PAYG Withholding and Labour Hire Firms.

Example

13. *Staffprovider Ltd is registered for GST purposes, and provides a recruitment and tendering service for third parties. Corporate Pty Ltd which is registered for GST purposes, contracts with Staffprovider for Staffprovider to recruit an additional staff member for its finance division. Staffprovider conducts a selection process and puts forward Diane as the most meritorious applicant. Corporate agrees and employs Diane under a contract of service (i.e., as an employee). GST is payable by Staffprovider on the recruitment fee charged to Corporate.*

14. Where the firm recruits an independent contractor for the user, the independent contractor, if registered or required to be registered, will be responsible to pay the GST on the taxable supply to the user.

Example

15. *Staffprovider Ltd is registered for GST purposes, and provides a recruitment and tendering service for third parties. Corporate Pty Ltd which is registered for GST purposes, contracts with Staffprovider for Staffprovider to conduct a tendering process for an independent contractor to build a new factory on Corporate's premises. Staffprovider conducts a tender process and puts forward Linda's Building Services as the most competitive tenderer. Corporate agrees and enters a contract for service with Linda's Building Services, which is registered for GST purposes. GST is payable by Staffprovider on the tendering fee charged to Corporate. GST is also payable by Linda's Building Services on the fee for services charged to Corporate.*

Your comments

16. We invite you to comment on this Draft GST Determination. We are allowing 2 weeks for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.

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Commissioner of Taxation

4 October 2000

Related Rulings:

TR 1997/13

Subject references:

- goods & services tax
- GST supply
- taxable supply
- enterprise

GSTD 2000/D5

Legislative references:

- ANTS(GST)A99 7-1(1)
- ANTS(GST)A99 9-5
- ANTS(GST)A99 9-20(2)
- TAA 1953 Schedule 1, Part 2-5, Section 12-35

ATO references:

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