



GSTA TPP 042 - Goods and services tax: Is a payment to a lawyer by a client to reimburse the lawyer for a payment of a tax, fee, or charge (tax) that is excluded from the GST by a determination of the Treasurer consideration for a taxable supply by the lawyer if the lawyer paid the tax in their own right?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *31 October 2012*



Goods and Services Tax Advice

Goods and services tax: is a payment to a lawyer by a client to reimburse the lawyer for a payment of a tax, fee, or charge (tax) that is excluded from the GST by a determination of the Treasurer consideration for a taxable supply by the lawyer if the lawyer paid the tax in their own right?

Preamble

*This document was published prior to 1 July 2010 and was a public ruling for the purposes of former section 37 of the **Taxation Administration Act 1953** and former section 105-60 of Schedule 1 to the **Taxation Administration Act 1953**.*

*From 1 July 2010, this document is taken to be a public ruling under Division 358 of Schedule 1 to the **Taxation Administration Act 1953**.*

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

[Note: *This is a consolidated version of this document. Refer to the Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]*

Answer

Yes. The client's payment to the lawyer forms part of the consideration for the lawyer's taxable supply of services to the client.

Background

A lawyer pays an Australian tax, fee or charge ('tax') in the course of acting for a client. The lawyer incurs the tax in their own right and not in the capacity as agent for the client. The tax is listed in the *A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2004 (No. 2)* (Treasurer's Determination). The lawyer's supply of services to the client is a taxable supply.

Explanation

Under subsection 81-5(1) of the GST Act the payment of any Australian tax, fee or charge (other than GST) is treated as the provision of consideration for a supply.

However, under subsection 81-5(2) of the GST Act, that payment which is specified in a written determination of the Treasurer is not the provision of consideration. Such payments are excluded from the GST and no GST is payable on this payment by the entity receiving the payment.

As the lawyer incurs the tax in their own capacity, the payment of the tax is a business cost of the lawyer for supplying their professional services to the client. When the tax is on-charged by the lawyer, either as part of their overall supply or as a separate reimbursement, it is part of the taxable supply of services the lawyer makes to the client. and is subject to GST.

Note: Similar considerations apply to expenses and sundries that are subject to GST. In the absence of an agency relationship directing liability to the client, the client's reimbursement to a lawyer of an expense forms part of the consideration for the lawyer's taxable supply of services. Conversely, where there is an agency relationship directing liability to the client, the expense does not form part of the consideration for the lawyer's taxable supply of services. Any expense incurred by the lawyer as an agent of the client is an expense of the client. In this circumstance, the payment by the client to reimburse the lawyer is not subject to GST and the client is entitled to claim the input tax credits for the expense if it is for a creditable acquisition. Further, if an Australian tax, fee or charge that is not subject to GST is paid by the lawyer as an agent for the client, the reimbursement by the client is not subject to GST

Application of this GST Advice

This Advice applies [to tax periods commencing] both before and after its date of issue. However, this Advice will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Advice (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Commissioner of Taxation

14 June 2005

Related Rulings/Determinations/GST Advice:

TR 2006/10; GSTA TPP 043

Subject references:

agency
reimbursement
Division 81
exempt
consideration
tax
fee
charge
legal fees

Legislative references:

A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2004 (No. 2)
ANTS(GST)A 1999 Div 81
ANTS(GST)A 1999 Subdiv 153-A
TAA 1953 Sch 1 Div 358

Other references:

Legal fees and charges – fact sheet

ATO references

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