


GSTA TPP 043 - Goods and services tax: Is a client's reimbursement to a lawyer for a payment of a tax, fee, or charge (tax) that is not subject to GST consideration for a taxable supply by the lawyer if the lawyer paid the tax as an agent for the client?

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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 client's reimbursement to a lawyer for a payment of a tax, fee, or charge (tax) that is not subject to GST consideration for a taxable supply by the lawyer if the lawyer paid the tax as an agent for the client?

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

No. As the lawyer paid the tax as an agent of the client, it is the client's expense. The client's reimbursement to the lawyer is not subject to GST as it is not consideration for the lawyer's taxable supply of services to the client.

Background

A lawyer provides services to a client and charges the client for the provision of services. The lawyer pays an Australian tax, fee or charge (tax) 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 includes the amount paid for the tax in the total amount they charge the client for their services. The lawyer's supply of services to the client is a taxable supply.

Explanation

As the lawyer pays the tax as agent for the client, the general law of agency applies. That is, a thing done by an agent is a thing done by the principal. In these circumstances, the tax is not a business cost to the lawyer. The reimbursement of this expense by the client, either as part of their payment for the lawyer's overall charge or as a separate reimbursement, is not consideration for that lawyer's taxable supply of their services to the client. The lawyer is not liable to pay GST on the client's reimbursement. The basic GST rules apply to the payment for the supply of legal services.

In these circumstances, the lawyer should retain documentation supporting the agency arrangement (for example an arrangement under the terms of engagement or a cost agreement detailing the agency relationship).

Note: GSTR 2000/37 discusses the 'Factors that indicate an agency relationship' at paragraphs 28 and 29 and 'Agency relationship and disbursements' at paragraphs 48 to 54.

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 042

Subject references:

agency
re-imbursement
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 81-5
TAA 1953 Sch 1 Div 358

Other references:

Legal fees and charges – fact sheet

ATO references

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