



***GSTA TPP 064 - Goods and services tax: Are
conduct moneys paid to a recipient of a subpoena for
the production of documents or evidence in an
Australian court subject to GST?***

 This cover sheet is provided for information only. It does not form part of *GSTA TPP 064 - Goods and services tax: Are conduct moneys paid to a recipient of a subpoena for the production of documents or evidence in an Australian court subject to GST?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *14 June 2005*



Goods and Services Tax Advice

Goods and services tax: Are conduct moneys paid to a recipient of a subpoena for the production of documents or evidence in an Australian court subject to GST?

Preamble

*This document is a ruling for the purposes of section 37 of the Taxation Administration Act 1953. It illustrates the principles contained in **Miscellaneous Taxation Ruling MT 2000/1 on the meaning of an entity carrying on an enterprise for the purposes of entitlement to an ABN**. You can rely on the information presented in this document, which provides advice on the operation of the GST system.*

Answer

Whether or not conduct money is consideration for a taxable supply that is subject to GST depends on the circumstances of the person who receives the subpoena (the 'evidence provider'). The supply by an evidence provider of their services as a witness in exchange for the payment of conduct money is a taxable supply only if it satisfies the requirements of section 9-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

Explanation

To satisfy the requirements of section 9-5 of the GST Act, in addition to being paid consideration in the form of the conduct money, the evidence provider must:

- be registered or required to be registered for GST,
- produce the evidence or documents *in the course or furtherance of an enterprise* that it is carrying on, and
- the production of the documents must be *connected with Australia*.

If any of these requirements is not satisfied, the conduct money paid to the evidence provider is not subject to GST.

The production of the documents or the giving of evidence in response to a subpoena from an Australian court is *connected with Australia*.

Examples of circumstances when the conduct money is taxable because the documents or evidence are in the course or furtherance of an evidence provider's enterprise are:

- A self-employed professional or expert witness provides evidence on matters relevant to their profession or area of expertise.
- An insurance company provides evidence, reports, or documents relevant to the insurance company's enterprise.
- A registered doctor provides evidence about details of an injury and the treatment of an injured person who was a patient of the doctor's medical practice.
- A registered doctor is contracted to provide a medical report after examining a person for that purpose.
- An employer provides evidence about an employee or about its business practices. The employees are part of the employer's enterprise and providing information about employees forms part of the employer's enterprise.

An exception occurs if the evidence provider is an Australian government agency as defined in section 195-1 of the GST Act. The Treasurer's determination made pursuant to Division 81 of the GST Act provides that payments to an Australian government agency in relation to a subpoena are not consideration.

Examples of circumstances when conduct money is not taxable are:

- A person provides evidence in relation to an industrial accident they witnessed as a customer in another's business premises.
- A witness to a motor vehicle accident provides evidence in relation to the accident.
- A manager or an employee of an Australian government hospital provides evidence

about matters relevant to the operations of the hospital.

Application of this GST Advice

This Advice is based on MT 2000/1. It explains our view of the law as it applied from 1 July 2000. You can rely on this Advice on and from its date of issue for the purposes of section 37 of the *Taxation Administration Act 1953*. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and our view of when you can rely on our interpretation of the law in GST public and private rulings.

If this Advice conflicts with a previous private ruling that you have obtained, this public ruling prevails. However, if you have relied on a private ruling, you are protected in respect of what you have done up to the date of issue of this public ruling. This means that if you have underpaid an amount of GST, you are not liable for the shortfall prior to the date of issue of this later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

Commissioner of Taxation

Date

Subject references:

subpoena
conduct moneys
evidence
enterprise
Australian government agency
connected with Australia

Legislative references:

A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2004 (No. 2)
ANTS(GST)A 1999 195-1
ANTS(GST)A 1999 81-5
ANTS(GST)A 1999 9-5
TAA 1953 37

ATO references

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