


# ***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 *31 October 2012*



## 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 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**

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.

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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 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).

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#### **Commissioner of Taxation**

14 June 2005

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#### ***Related Rulings/Determinations/GST Advice:***

TR 2006/10

#### ***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 Sch 1 Div 358

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#### **ATO references**