



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?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *20 May 2015*



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 they are carrying on, and
- the production of the documents must be *connected with* the indirect tax zone.¹

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

Examples of circumstances where the supply of evidence services is provided in the course or furtherance of an evidence provider's enterprise include the following:

- A self-employed professional or expert witness provides evidence on matters relevant to their profession or area of expertise.²
- 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.

¹ This phrase formerly read '*connected with Australia*'. With effect from 1 July 2015, the term 'Australia' is replaced in nearly all instances within the GST, Luxury Car Tax and Wine Equalisation Tax legislation with the term 'indirect tax zone' by the *Treasury Legislation Amendment (Repeal Day) Act 2015*. The scope of the new term, however, remains the same as the repealed definition of 'Australia' used in those Acts.

² See Miscellaneous Tax Ruling MT 2006/1 in relation to whether an entity is carrying on an enterprise for the purposes of section 9-5.

- 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.

Examples of circumstances where the supply of evidence services is not provided in the course or furtherance of an evidence provider's enterprise include the following:

- A person provides evidence in relation to an industrial accident they witnessed as a customer in business premises.
- A casual 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.

Fees and charges covered by Division 81 of the GST Act

There is a special rule that applies in relation to fees and charges covered by Division 81 of the GST Act. Under Division 81 of the GST Act, a payment is not the provision of consideration to the extent that the payment is an Australian fee or charge that is of a kind covered by subsections 81-10(4) or 81-10(5).³

The fees and charges included under subsection 81-10(5) of the GST Act include a fee or charge paid to an Australian government agency if the fee or charge relates to the agency doing of any of the following:

- recording information
- copying information
- modifying information
- allowing access to information
- receiving information
- processing information
- searching for information.

The provision of documents or evidence in response to a subpoena would fall within the activities listed in subsection 81-10(5) of the GST Act. As a result, there will be no taxable supply if conduct money is paid to an Australian government agency that receives a subpoena to provide evidence or documents in court. This is because the payment will not be consideration and therefore the requirements for a taxable supply under section 9-5 of the GST Act will not be met.

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; MT 2006/1

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 9-5
ANTS(GST)A 1999 Div 81
ANTS(GST)A 1999 81-10
Treasury Legislation Amendment (Repeal Day) Act 2015
TAA 1953 Sch 1 Div 358

ATO references

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³ Subsection 81-10(1) of the GST Act.