

# ***GSTD 2000/12 - Goods and services tax: is the provision of labour hire services a taxable supply in terms of section 9-5 of the A New Tax System(Goods and Services Tax) Act 1999 ?***

! This cover sheet is provided for information only. It does not form part of *GSTD 2000/12 - Goods and services tax: is the provision of labour hire services a taxable supply in terms of section 9-5 of the A New Tax System(Goods and Services Tax) Act 1999 ?*

! 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 The scope of the new term, however, remains the same as the now repealed definition of 'Australia' used in those Acts. This change was made for consistency of terminology across the tax legislation, with no change in policy or legal effect. For readability and other reasons, where the term 'Australia' is used in this document, it is referring to the 'indirect tax zone' as defined in subsection 195-1 of the GST Act.

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



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# Goods and Services Tax Determination

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**Goods and services tax: is the provision of labour hire services a taxable supply in terms of section 9-5 of the *A New Tax System (Goods and Services Tax) Act 1999*?**

## ***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.]*

## ***Date of Effect***

*This Determination applies [to tax periods commencing] both before and after its date of issue. However, this Determination 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 Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).*

1. The labour hire service provided by a labour hire firm (the firm) to the end consumer (the user) of the firm's service is a taxable supply.
2. The firm is a labour market intermediary. Typically, the firm enters into a contract with a worker who agrees to provide labour. The firm also contracts to supply a service of a worker's labour to the user of the service.

3. The firm, with respect to the worker:
  - advertises, screens, and selects;
  - coordinates appointments with the user of the service;
  - pays salary and other costs;
  - withholds Pay As You Go (PAYG) withholding amounts and sends those amounts to the Australian Taxation Office (ATO); and
  - is the party to whom the user seeks a remedy if the worker does not perform as required.
4. The firm, with respect to the user:
  - is the party to whom the worker is contracted<sup>1</sup>;
  - is the party with whom the user contracts; and
  - invoices the user for the time the worker is appointed. The service fee is based on the wages and related costs of the worker borne by the firm.
5. Under section 9-5 of the *A New Tax System (Goods and Services Tax) Act 1999* ('GST Act') an entity makes a taxable supply if:
  - the entity makes the supply for consideration;
  - the supply is made in the course or furtherance of an enterprise the entity carries on;
  - the supply is connected with Australia; and
  - the entity is registered, or required to be registered.
6. The service provided by the firm to the user is a taxable supply where the conditions of section 9-5 are satisfied:
  - a supply of services is made by the firm to the user;
  - consideration is given by the user for the supply;
  - the supply is made in the course of the firm's enterprise;
  - the supply is connected with Australia; and
  - the firm is registered, or required to be registered.
7. Pursuant to subsection 7-1(1) of the GST Act, GST is payable on the taxable supply between the firm and the user.
8. Pursuant to subsection 9-20(2) of the GST Act, the definition of 'enterprise' does not include activities done by an employee or in connection with earning certain withholding payments. Withholding payments covered include a payment subject to withholding under section 12-60 of Schedule 1, Part 2-5 of the *Taxation Administration Act 1953* – that is, a payment under a labour hire arrangement. A payment received by an individual under a labour hire arrangement as specified in section 12-60 does not satisfy the requirements of a taxable supply and is not subject to GST.
9. Under a labour hire arrangement the entity paying the worker is the firm and the payments to the workers will be subject to withholding under the PAYG withholding system.

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<sup>1</sup> Taxation Ruling TR 1999/13 discusses the parties' service relationship.

## *Example*

10. *Staffprovider Ltd is registered for GST purposes, and keeps a database of skilled persons who are willing for their services to be provided to third parties. Staffprovider arranges with Corporate Pty Ltd, which is registered for GST purposes, to provide to it the services of a computer programmer in return for payment of \$2,200 per month. Staffprovider arranges with Jane for her to do computer programming, for \$1,001 per month for Corporate. Staffprovider must withhold PAYG amounts of \$87 per month from payments it makes to Jane under the arrangement with her. GST of \$200 is payable by Staffprovider on the monthly service fee of \$2,200, (which is calculated in relation to wages and other costs) charged for the service provided to Corporate.*

11. Alternatively, the firm may contract with the user to provide a placement service only. In such a case, the firm provides the service of introducing suitably qualified personnel to the user. The user then contracts directly with the placed worker for their labour. Provided the conditions set out in paragraph 6 above are satisfied, GST is payable by the firm on the service fee charged to the user.

12. Where the firm is only providing a placement service and the placed worker contracts directly with the user, the user will be paying the worker. These payments may be subject to withholding under the PAYG withholding system depending upon the contractual arrangements that have been entered into. Refer to PAYG Bulletin Number 3 - PAYG Withholding and Labour Hire Firms.

## *Example*

13. *Staffprovider Ltd is registered for GST purposes, and provides a placement and tendering service for third parties. Corporate Pty Ltd which is registered for GST purposes, contracts with Staffprovider for Staffprovider to place an additional staff member for its finance division. Staffprovider conducts a selection process and puts forward Diane as the most meritorious applicant. Corporate agrees and employs Diane under a contract of service (i.e., as an employee). GST of \$300 is payable by Staffprovider on the placement fee of \$3,300 charged for the service provided to Corporate.*

14. Where the firm recruits an independent contractor for the user, the independent contractor, if registered or required to be registered, will be required to pay the GST on the taxable supply to the user.

## *Example*

15. *Staffprovider Ltd is registered for GST purposes, and provides a placement and tendering service for third parties. Corporate Pty Ltd which is registered for GST purposes, contracts with Staffprovider for Staffprovider to conduct a tendering process for an independent contractor to build a new factory on Corporate's premises. Staffprovider conducts a tender process and puts forward Linda's Building Services as the most competitive tenderer. Corporate agrees and enters a contract for service with Linda's Building Services, which is registered for GST purposes. GST of \$200 is payable by Staffprovider on the tendering fee of \$2,200 charged to Corporate. GST of \$500 is also payable by Linda's Building Services on the fee for services of \$5,500 charged for the service provided to Corporate.*

# GSTD 2000/12

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Page status: **legally binding**

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*Previous draft:*

Previously issued as GSTD 2000/D5

- GST supply
- taxable supply

*Related Rulings:*

TR 1997/13; TR 2000/14; TR 2006/10

*Legislative references:*

*Subject references:*

- enterprise
- goods & services tax

- ANTS(GST)A99 7-1(1)
- ANTS(GST)A99 9-5
- ANTS(GST)A99 9-20(2)
- TAA 1953 Schedule 1, Part 2-5, Section 12-60
- TAA 1953 Schedule 1 Division 358

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ATO references:

NO

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