GSTD 2000/3 - Goods and services tax: transitional arrangements: to what extent is the supply of services made on or after 1 July 2000, where the supply spans that date?

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Taxation Determination

GSTD 2000/3

Goods and Services Tax Determination

Goods and services tax: transitional arrangements: to what extent is the supply of services made on or after 1 July 2000, where the supply spans that date?

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. Where you make a supply of services that spans 1 July 2000, the extent to which the supply is made on or after that date will depend on whether or not you make the supply for a period. If you do not make the supply for a period, the supply is only subject to GST to the extent that you perform the services on or after 1 July 2000. Where you make the supply of services for a specific period under an agreement or an enactment, then the extent to which the supply is made on or after 1 July 2000 is determined by deeming the supply to be made on a continuous and uniform basis, rather than when you actually perform the services.

2. Under the *A New Tax System (Goods and Services Tax Transition) Act 1999* (the Transition Act) GST is only payable on a supply to the extent that it is made on or after 1 July 2000.[1] The Transition Act also provides that a supply of services is made when the services are performed[2] unless the supply is made under an agreement or an enactment for a period or progressively over a period.[3]

3. Therefore, where you make a supply of services that spans 1 July 2000 and the supply is for a task, rather than a supply for a specified period, it is necessary to determine the extent to which you perform the services on or after 1 July 2000. Where you have evidence that services were performed prior to 1 July 2000 they will not be subject to GST.

4. For the purposes of the Transition Act, we consider that services have been performed to the extent that:

(a) you are entitled to issue an account for your services and be paid in respect of your services (regardless of whether an account has actually been rendered or payment has been received); or

(b) you would be entitled to sue for the value of work performed, e.g. a claim for a *quantum meruit*.[4]

5. Measures which may assist in identifying when services are performed include time sheets and progress payments. Progress payments may, however, only be used where they accurately reflect the work done. Where you receive payments before 1 July 2000 for services performed after that date, the supply will be subject to GST.[5]

6. Where you make a supply for a period or progressively over a period that spans 1 July 2000 under an agreement or enactment, it will not be necessary to identify when you perform the services because the supply is treated as having been made continuously and uniformly over the period.[6] A supply is a progressive or periodic supply if it is made for a specific period (for example, a solicitor on a retainer for 12 months, or a repair company engaged under a 12 month maintenance agreement).

7. A supply will not be for a specific period merely because there is a stipulated completion date. This is because the agreement is for the undertaking of a task rather than a supply for a period. If the task is completed before the stipulated completion date then the service is completed. For example, a painter who contracts to paint a house by a specified date is not agreeing to provide his services until that date. Instead he is agreeing to complete a task by that date, so he is not making a supply for a specific period.

Example 1 Subsection 6(4)

ALM Ltd is an accounting firm, which is registered for GST on 1 July 2000. At 1 January 2000 it had commenced an audit of a large corporation which it estimates will take two years to complete. ALM keeps records of services performed, and provides its client with interim reports. It also submits regular accounts to its client, the last account being for work performed during May. ALM calculates the amount of services performed until the end of May based on the accounts it has forwarded to the client for that period. It then determines the amount of work performed in June by reference to its time sheets. The services that ALM can identify as having been performed before that date are not subject to GST. Any services performed on or after 1 July 2000 are subject to GST.

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[1] Subsection 7(1) of *A New Tax System (Goods and Services Tax Transition) Act 1999.*
[2] Subsection 6(4) of *A New Tax System (Goods and Services Tax Transition) Act 1999.*
[3] Section 12 of *A New Tax System (Goods and Services Tax Transition) Act 1999.*
[4] *Quantum meruit* - so much money as the plaintiff reasonably deserves to have (see *Pavey & Matthews Pty Ltd v. Paul* (1987) 162 CLR 221).
[5] Section 10 of *A New Tax System (Goods and Services Tax Transition) Act 1999.*
[6] Section 12 of *A New Tax System (Goods and Services Tax Transition) Act 1999.*

Example 2 Subsection 6(4)

Kylie is a consulting architect who is registered for GST on 1 July 2000. On 15 June 2000 she enters an agreement to draw up architectural plans for Michael's house. The fee for the drawings is $8,000 plus any GST. Kylie also agrees to provide to her client the additional service of supervising the construction. The fee for the additional service is $2,000 plus any GST. The plans are completed on 15 July 2000, and the construction of the house commences. Kylie has kept timesheets showing the amount of work that she has done before 1 July 2000. Her time sheets indicate that 80% of the work in producing the drawings was performed before 1 July 2000. The GST payable on the whole supply is $360 (20% x $8,000 x 10% +$2,000 x 10%).

Example 3 Subsection 6(4)

Jack is a tax agent, who is registered for GST on 1 July 2000. His client has not lodged income tax returns for the last two years. Jack enters into an agreement to prepare the income tax returns by 31 August 2000. He commences to prepare the taxation returns on 1 May 2000 and the taxation returns are completed on 14 July 2000. The imposition of a date by which the supply should be completed, does not mean that the agreement is for a specified period. If Jack completes the work prior to 31 August 2000 he has fulfilled his obligations to his client. Jack uses his records of time spent on preparing the returns to determine the extent that the services are performed on or after 1 July 2000.

Example 4 Section 12

Joe Garden is a sole trader who has his own landscaping business. He is registered for GST on 1 July 2000. On 1 April 2000 he enters into a 12-month maintenance agreement with Springfield Shire Council to maintain the council's lawns and gardens. The agreement commences immediately. Joe's fee for his services is $6,000 plus any GST. This is a supply for a period to which section 12 applies. Consequently, the supply is taken to be made continuously and uniformly over the 12-month period, despite the fact that Joe mows the lawns more often during the summer months. GST of $450.41 is payable on this supply (274/365 x $6,000 x 10%).

Commissioner of Taxation
21 June 2000

Previous draft:
Not previously issued in draft form

Related Rulings/Determinations:
TR 2006/10

Subject references:
- Goods & services tax
- GST supply
- GST transitional stream
- progressive or periodic supplies
- supply of services

Legislative references:
- ANTS(GSTT)A 99 6(4)
- ANTS(GSTT)A 99 7(1)
- ANTS(GSTT)A 99 10
- ANTS(GSTT)A 99 12
- TAA 1953 Sch 1 Div 358

Cases references:
- Pavey & Matthews Pty Ltd v. Paul (1987) 162 CLR 221

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