GSTR 2000/37A - Addendum - Goods and services tax: agency relationships and the application of the law

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Australian Taxation Office

Addendum

Goods and Services Tax Ruling

Goods and services tax: agency relationships and the application of the law

The addendum expands on the explanations in Goods and Services Tax Ruling GSTR 2000/37 to explain how the principal and agent in a Subdivision 153-B arrangement account for GST for supplies that are not taxable supplies, acquisitions that are not creditable acquisitions and the supply of agency services that relate to making those supplies or acquisitions. The addendum also addresses an interpretation of Subdivision 153-B that would allow the otherwise taxable supply of agency services that relates to making those types of supplies and acquisitions to be treated as a supply that is not a taxable supply.

This addendum applies on and from 1 July 2000.

GSTR 2000/37 is amended as follows:

1. Paragraph 74

Omit the third sentence in paragraph 74 and substitute with:

> Further, nothing in this section prohibits supplies that are not taxable supplies and acquisitions that are not creditable acquisitions from being included in such an arrangement. This includes supplies and acquisitions that are GST-free, input taxed or subject to the determination of the Treasurer under Division 81.[32]

2. After paragraph 74

Insert:

> 74A. Even though supplies that are not taxable supplies may be included in a Subdivision 153-B arrangement, section 153-55, which is about the effect of these arrangements on supplies, only applies to the taxable supplies covered by the arrangement. Similarly, section 153-60, which is about the effect of these arrangements on acquisitions, only applies to

the creditable acquisitions covered by the arrangement. For supplies other than taxable supplies and acquisitions other than creditable acquisitions, the parties account for them as being from principal to principal for GST purposes. As sections 153-55 and 153-60 do not apply in this circumstance, the parties need to account for those supplies and/or acquisitions in the arrangement separately from the supply of agency services. These consequences are explained in this Ruling at paragraphs 83A to 83M for supplies and paragraphs 91A to 91L for acquisitions.

3. Paragraph 77

In the heading above paragraph 77 insert 'taxable' before 'supplies'.

4. After paragraph 83

Insert:

The effects of the arrangements on supplies that are not taxable supplies

83A. Where supplies that are not taxable supplies are the only things included in an arrangement under Subdivision 153-B, the effect is that the principal makes a supply to the agent that is not a taxable supply and the agent makes a supply to the third party that is not a taxable supply. The calculation in section 153-55, which reduces the payment the agent makes or is liable to make to the principal for taxable supplies, is not applicable. This section only applies to arrangements where the principal makes a taxable supply to a third party through an agent. As the supplies are not taxable supplies, the acquisitions by the agent and the third party are not creditable acquisitions.[43A]

83B. The agent makes a taxable supply of agency services to the principal if the requirements of section 9-5 are met. The agent is liable for the GST on its supply of agency services and the principal is entitled to an input tax credit for its creditable acquisition of agency services.

Example 11A

83C. Adam's Health Products (AHP) uses an agent, Lauren's of Korinda (LK), to sell its health equipment. LK, on behalf of AHP, supplies Helen with a wheelchair for $1,300, which is a GST-free supply.[43B] LK receives a GST inclusive commission of $143 for its agency services,. This GST

inclusive amount represents the amount AHP pays or is liable to pay LK for its agency services.

83D. AHP and LK have entered into a Subdivision 153-B arrangement. The parties have not applied subsection 38-45(3) to treat the supply of the wheelchair as a supply that is not GST-free.[43C]

83E. Under this arrangement, AHP makes a GST-free supply of the wheelchair to LK for $1,300. As section 153-55 is not applicable in this circumstance, the amount payable by LK to AHP is $1,300. LK makes an acquisition of the wheelchair that is not a creditable acquisition from AHP. LK makes a GST-free supply of the wheelchair to Helen for $1,300.

83F. LK also makes a separate taxable supply of agency services to AHP for $143. LK is liable to pay the GST of $13 (1/11 × $143) on its taxable supply of agency services and AHP is entitled to an input tax credit of $13 (1/11 × $143) for its creditable acquisition of the agency services.

The effects of the arrangements involving taxable supplies and supplies that are not taxable supplies

83G. Where taxable supplies and supplies that are not taxable supplies are included in a Subdivision 153-B arrangement, the agent's commission that relates to the taxable supplies needs to be determined for the purposes of the calculation in section 153-55. That is, to calculate the amount payable by the agent to the principal for the taxable supplies, only that part of the agent's commission which relates to the on-supply of the taxable supplies by the agent to third parties is included in the calculation. The amount payable by the agent to the principal for the taxable supplies is the amount charged and paid by the third party for those taxable supplies less the amount the agent is permitted to keep as a commission for making those taxable supplies (see paragraph 78).

83H. The commission that relates to making supplies that are not taxable supplies is treated separately as section 153-55 does not apply to these supplies. The agent is liable for the GST on its taxable supply of agency services that relates to making supplies that are not taxable supplies and the principal is entitled to an input tax credit on its corresponding creditable acquisition of agency services.

Example 11B

83I. Adam's Health Products (AHP) also sells household appliances through Lauren's of Korinda (LK). As well as the GST-free supply of the wheelchair for $1,300, LK supplies Helen with a number of AHP household appliances for $5,500. LK receives a GST inclusive commission of $693 for its agency services. This comprises $143 commission for the supply of the wheelchair and $550 commission for the supply of the household appliances.

83J. AHP and LK have entered into a Subdivision 153-B arrangement. The parties have not applied subsection 38-45(3) to treat the supply of the wheelchair as a supply that is not GST-free.

83K. Under this arrangement, the supply from AHP to LK comprises the taxable supply of household appliances and the GST-free supply of a wheelchair. The calculation in section 153-55 is only applicable to that part of the supply that is a taxable supply, which is the supply of the household appliances.

83L. The amount payable by LK to AHP for this taxable supply of $5,500 is $4,950. That is, the amount of $5,500 is reduced by LK's GST inclusive commission of $550. AHP is liable to pay the GST of $450 (1/11 × $4,950) on its taxable supply of household appliances to LK. LK is liable to pay the GST of $500 (1/11 × $5,500) on its taxable supply of the household appliances to Helen for $5,500 and is entitled to an input tax credit of $450 (1/11 × ($5,500 − $550)) for its creditable acquisition of the household appliances from AHP for $4,950 ($5,500 − $550).

83M. The effect of the arrangement on the GST-free supply of the wheelchair is that the principal and the agent need to account for this supply separately from the supply of agency services. That is, AHP accounts for the GST-free supply of the wheelchair to LK for $1,300 and the creditable acquisition of LK's agency services relating to the corresponding supply of the wheelchair to Helen for $143 for which it is entitled to an input tax credit of $13 (1/11 × $143). Since the supply of the wheelchair by LK to Helen is GST-free, LK is not liable for GST on that supply but is liable to pay GST of $13 (1/11 × $143) on its taxable supply of agency services related to making this GST-free supply on behalf of AHP.

5. After footnote 43

After footnote 43 add footnotes 43A, 43B and 43C:

43A. Section 11-5.

43B. GST-free under section 38-45, Schedule 3, item 105.

43C. Where the parties do not treat the supply of the wheelchair as a GST-free supply by applying subsection 38-45(3), the supply of the wheelchair is treated in the same way as the supply of the perfume in Example 11.

6. Paragraph 86

In the heading, insert 'creditable' before 'acquisitions'.

7. After paragraph 91

Insert:

The effects of the arrangements on acquisitions that are not creditable acquisitions

91A. Where acquisitions that are not creditable acquisitions are the only things that are included in a Subdivision 153-B arrangement, the effect is that the agent makes an acquisition that is not a creditable acquisition from the third party and makes a supply of that acquisition, which is not a taxable supply, to the principal. The calculation in section 153-60, which increases the payment the principal makes or is liable to make to the agent for its creditable acquisitions from the agent, is not applicable. This section only applies to arrangements where the principal makes a creditable acquisition from a third party through an agent.

91B. The agent makes a taxable supply of agency services to the principal if the requirements of section 9-5 are met. The agent is liable to pay the GST on its supply of agency services and the principal is entitled to an input tax credit for its creditable acquisition of agency services.

Example 12A

91C. Adam's Health Products (AHP) uses an agent, TT Services (TTS), to purchase health products from manufacturers. TTS, on behalf of AHP, acquires 40 wheelchairs for $10,000. The supply of the wheelchairs by

the manufacturer to TTS is a GST-free supply. TTS's commission for this acquisition is $1,100, which is inclusive of GST. This GST inclusive amount represents the amount AHP pays or is liable to pay TTS for its services.

91D. AHP and TTS have entered into a Subdivision 153-B arrangement. The parties have not applied subsection 38-45(3) to treat the supply of the wheelchairs as a supply that is not GST-free.

91E. Under this arrangement, TTS's acquisition of the wheelchairs for $10,000 is not a creditable acquisition because the supply of the wheelchairs to TTS by the manufacturer is a GST-free supply. Similarly, AHP's acquisition of the wheelchairs for $10,000 from TTS is not a creditable acquisition. As the calculation in section 153-60 is not applicable, because the acquisition is not a creditable acquisition, the payment AHP makes or is liable to make to TTS for its supply of the wheelchairs is $10,000.

91F. TTS also makes a separate taxable supply of agency services to AHP for $1,100. TTS is liable to pay the GST of $100 (1/11 × $1,100) on its taxable supply of agency services and AHP is entitled to an input tax credit of $100 (1/11 × $1,100) for its creditable acquisition of the agency services.

The effects of the arrangements involving creditable acquisitions and acquisitions that are not creditable acquisitions

91G. Where creditable acquisitions and acquisitions that are not creditable acquisitions are included in a Subdivision 153-B arrangement, the commission that relates to the creditable acquisitions needs to be determined for the purposes of the calculation in section 153-60. That is, to calculate the amount payable by the principal to the agent for the creditable acquisitions, only the commission related to making those creditable acquisitions by the agent is included in the calculation. The amount payable by the principal to the agent for the creditable acquisitions is the amount the third party charged for the taxable supply plus the amount the agent is permitted to charge as a commission for the agency services for making those creditable acquisitions (see paragraph 87).

91H. The commission that relates to making acquisitions that are not creditable acquisitions is treated separately as section 153-60 does not apply to these acquisitions. The agent is liable to pay the GST on its taxable supply of agency services that relates to acquisitions that are not creditable acquisitions and the principal is entitled to an input tax credit on its corresponding creditable acquisition of agency services.

Example 12B

91I. Adam's Health Products (AHP) also uses TT Services (TTS) to acquire household appliances from manufacturers and these are creditable acquisitions. As well as the acquisition of the wheelchairs for $10,000 (GST-free), TTS, on behalf of AHP, acquires 20 refrigerators for $8,800. TTS's commission for the acquisition of the wheelchairs is $1,100 and for the acquisition of the refrigerators is $880, resulting in a total commission payable of $1,980.

91J. AHP and TTS have entered into a Subdivision 153-B arrangement. The parties have not applied subsection 38-45(3) to treat the supply of the wheelchairs as a supply that is not GST-free.

91K. Under this arrangement, AHP makes a creditable acquisition of the refrigerators and an acquisition of the wheelchairs, the supply of which is GST-free. As the calculation in section 153-60 is applicable only to the creditable acquisition of the refrigerators, the commission of $880 that relates to this acquisition is included in the calculation. The amount payable by AHP to TTS for this creditable acquisition of $8,800 is $9,680. That is, the amount of $8,800 is increased by TTS's GST inclusive commission of $880. TTS is liable to pay the GST of $880 (1/11 × $9,680) on this supply and is entitled to an input tax credit of $800 (1/11 × $8,800) for its creditable acquisition of the refrigerators from the manufacturer. AHP is entitled to an input tax credit of $880 (1/11 × $9,680) for its creditable acquisition of the refrigerators.

91L. The effect of the arrangement for the acquisition of the wheelchairs is that the parties need to account for the taxable supply of the agency services separately from the GST-free part of the acquisition. That is, AHP pays TTS $10,000 for the GST-free supply of the wheelchairs and $1,100 for TTS's taxable supply of agency services. TTS is liable to pay the GST of $100 (1/11 × $1,100) on its taxable supply of agency services and AHP is entitled to an input tax credit of $100

(1/11 × $1,100) for its creditable acquisition of TTS's agency services.

8. Paragraph 135 (Detailed contents list)

(a) Omit:

The effects of the arrangements on supplies *77*

and replace with:

The effects of the arrangements on taxable supplies *77*

(b) Insert:

The effects of the arrangements on supplies that are not taxable supplies *83A*

Example 11A *83C*

The effects of the arrangements involving taxable supplies and supplies that are not taxable supplies *83G*

Example 11B *83I*

(c) Omit:

The effects of the arrangements on acquisitions *86*

and replace with:

The effects of the arrangements on creditable acquisitions *86*

(d) Insert:

The effects of the arrangements on acquisitions that are not creditable acquisitions *91A*

Example 12A *91C*

The effects of the arrangements involving creditable acquisitions and acquisitions that are not creditable acquisitions *91G*

Example 12B *91I*

9. Legislative References

After ANTS(GST) A99 31-15(2) insert:

- ANTS(GST) A99 38-45 Sch 3 item 105
- ANTS(GST) A99 38-45(3)

Commissioner of Taxation

26 March 2003

ATO References
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