

GSTA TPP 042 - Goods and services tax: Is a payment to a lawyer by a client to reimburse the lawyer for a payment of a tax, fee, or charge (tax) that is excluded from the GST by a determination of the Treasurer consideration for a taxable supply by the lawyer if the lawyer paid the tax in their own right?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *14 June 2005*



Goods and Services Tax Advice

Goods and services tax: Is a payment to a lawyer by a client to reimburse the lawyer for a payment of a tax, fee, or charge (tax) that is excluded from the GST by a determination of the Treasurer consideration for a taxable supply by the lawyer if the lawyer paid the tax in their own right?

Preamble

*This document is a ruling for the purposes of section 37 of the Taxation Administration Act 1953. It illustrates the principles contained in **Goods and Services Tax Ruling GSTR 2000/37 on agency**. You can rely on the information presented in this document, which provides advice on the operation of the GST system.*

Answer

Yes. The client's payment to the lawyer forms part of the consideration for the lawyer's taxable supply of services to the client.

Background

A lawyer pays an Australian tax, fee or charge ('tax') in the course of acting for a client. The lawyer incurs the tax in their own right and not in the capacity as agent for the client. The tax is listed in the *A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2004 (No. 2)* (Treasurer's Determination). The lawyer's supply of services to the client is a taxable supply.

Explanation

Under subsection 81-5(1) of the GST Act the payment of any Australian tax, fee or charge (other than GST) is treated as the provision of consideration for a supply.

However, under subsection 81-5(2) of the GST Act, that payment which is specified in a written determination of the Treasurer is not the provision of consideration. Such payments are excluded from the GST and no GST is payable on this payment by the entity receiving the payment.

As the lawyer incurs the tax in their own capacity, the payment of the tax is a business cost of the lawyer for supplying their professional services to

the client. When the tax is on-charged by the lawyer, either as part of their overall supply or as a separate reimbursement, it is part of the taxable supply of services the lawyer makes to the client and is subject to GST.

Note: Similar considerations apply to expenses and sundries that are subject to GST. In the absence of an agency relationship directing liability to the client, the client's reimbursement to a lawyer of an expense forms part of the consideration for the lawyer's taxable supply of services. Conversely, where there is an agency relationship directing liability to the client, the expense does not form part of the consideration for the lawyer's taxable supply of services. Any expense incurred by the lawyer as an agent of the client is an expense of the client. In this circumstance, the payment by the client to reimburse the lawyer is not subject to GST and the client is entitled to claim the input tax credits for the expense if it is for a creditable acquisition. Further, if an Australian tax, fee or charge that is not subject to GST is paid by the lawyer as an agent for the client, the reimbursement by the client is not subject to GST.

Application of this GST Advice

This Advice is based on GSTR 2000/37. It explains our view of the law as it applied from 1 July 2000. You can rely on this Advice on and from its date of issue for the purposes of section 37 of the *Taxation Administration Act 1953*. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and our view of when you can rely on our interpretation of the law in GST public and private rulings.

If this Advice conflicts with a previous private ruling that you have obtained, this public ruling prevails. However, if you have relied on a private ruling, you are protected in respect of what you have done up to the date of issue of this public ruling. This means that if you have underpaid an amount of GST, you are not liable for the shortfall prior to the date of issue of this later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

Commissioner of Taxation

Date

Related Rulings/Determinations/GST Advice:

GSTA TPP 043

Subject references:

agency
reimbursement
Division 81
exempt
consideration
tax
fee
charge
legal fees

Legislative references:

A New Tax System (Goods and Services Tax) (Exempt Taxes,
Fees and Charges) Determination 2004 (No. 2)
ANTS(GST)A 1999 Div 81
ANTS(GST)A 1999 Subdiv 153-A
TAA 1953 37

Other references:

Legal fees and charges – fact sheet

ATO references

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