

GSTA TPP 043 - Goods and services tax: Is a client's reimbursement to a lawyer for a payment of a tax, fee, or charge (tax) that is not subject to GST consideration for a taxable supply by the lawyer if the lawyer paid the tax as an agent for the client?

⚠ This cover sheet is provided for information only. It does not form part of *GSTA TPP 043 - Goods and services tax: Is a client's reimbursement to a lawyer for a payment of a tax, fee, or charge (tax) that is not subject to GST consideration for a taxable supply by the lawyer if the lawyer paid the tax as an agent for the client?*

⚠ 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 client's reimbursement to a lawyer for a payment of a tax, fee, or charge (tax) that is not subject to GST consideration for a taxable supply by the lawyer if the lawyer paid the tax as an agent for the client?

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

No. As the lawyer paid the tax as an agent of the client, it is the client's expense. The client's reimbursement to the lawyer is not subject to GST as it is not consideration for the lawyer's taxable supply of services to the client.

Background

A lawyer provides services to a client and charges the client for the provision of services. The lawyer pays an Australian tax, fee or charge (tax) 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 includes the amount paid for the tax in the total amount they charge the client for their services. The lawyer's supply of services to the client is a taxable supply.

Explanation

As the lawyer pays the tax as agent for the client, the general law of agency applies. That is, a thing done by an agent is a thing done by the principal. In these circumstances, the tax is not a business cost to the lawyer. The reimbursement of this expense by the client, either as part of their payment for the lawyer's overall charge or as a separate reimbursement, is not consideration for that lawyer's taxable supply of their services to the client. The lawyer is not liable to pay GST on the client's reimbursement. The basic GST rules apply to the payment for the supply of legal services.

In these circumstances, the lawyer should retain documentation supporting the agency arrangement (for example an arrangement under the terms of engagement or a cost agreement detailing the agency relationship).

Note: GSTR 2000/37 discusses the "Factors that indicate an agency relationship" at paragraphs 28 and 29 and "Agency relationship and disbursements" at paragraphs 48 to 54.

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 042

Subject references:

agency
re-imburement
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 81-5

TAA 1953 37

Other references:

Legal fees and charges – fact sheet

ATO references

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