


GSTA TPP 064A2 - Addendum - Goods and services tax: Are conduct moneys paid to a recipient of a subpoena for the production of documents or evidence in an Australian court subject to GST?

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Addendum

Goods and Services Tax Advice

Goods and services tax: are conduct moneys paid to a recipient of a subpoena for the production of documents or evidence in an Australian court subject to GST?

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Goods and Services Tax Advice GSTA TPP 064 to update the explanation concerning Division 81 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

An amendment is necessary as the explanation regarding the exception for Australian government agencies is out of date. This is because Division 81 of the GST Act was repealed and replaced with effect from 27 June 2011.

An amendment is also required to update the reference to 'connected with Australia' to 'connected with the indirect tax zone' to reflect the change introduced by the *Treasury Legislation Amendment (Repeal Day) Act 2015*.

In addition, some other minor changes have been made to improve the clarity of the advice.

GSTA TPP 064 is amended as follows:

1. Paragraph 1 of the Explanation

- (a) Omit from the second dot point 'it is'; substitute 'they are'.
- (b) Omit from the third dot point 'Australia.'; substitute 'the indirect tax zone.¹'.

2. Paragraph 2 of the Explanation

Omit the first occurrence of 'is'; substitute 'are'.

¹ This phrase formerly read '*connected with Australia*'. With effect 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 The scope of the new term, however, remains the same as the repealed definition of 'Australia' used in those Acts.

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3. Paragraph 3 of the Explanation

Omit the paragraph.

4. Paragraph 4 of the Explanation

(a) Omit the first sentence prior to the dot points; substitute:

Examples of circumstances where the supply of evidence services is provided in the course or furtherance of an evidence provider's enterprise include the following:

(b) Insert at the end of the first dot point:

² See Miscellaneous Tax Ruling MT 2006/1 in relation to whether an entity is carrying on an enterprise for the purposes of section 9-5.

5. Paragraph 5 and 6 of the Explanation

Omit the paragraphs (including dot points); substitute:

Examples of circumstances where the supply of evidence services is not provided in the course or furtherance of an evidence provider's enterprise include the following:

- A person provides evidence in relation to an industrial accident they witnessed as a customer in business premises.
- A casual witness to a motor vehicle accident provides evidence in relation to the accident.
- A manager or an employee of an Australian government hospital provides evidence about matters relevant to the operations of the hospital.

Fees and charges covered by Division 81 of the GST Act

There is a special rule that applies in relation to fees and charges covered by Division 81 of the GST Act. Under Division 81 of the GST Act, a payment is not the provision of consideration to the extent that the payment is an Australian fee or charge that is of a kind covered by subsections 81-10(4) or 81-10(5).³

The fees and charges included under subsection 81-10(5) of the GST Act include a fee or charge paid to an Australian government agency if the fee or charge relates to the agency doing of any of the following:

- recording information
- copying information

³ Subsection 81-10(1) of the GST Act.

- modifying information
- allowing access to information
- receiving information
- processing information
- searching for information.

The provision of documents or evidence in response to a subpoena would fall within the activities listed in subsection 81-10(5) of the GST Act. As a result, there will be no taxable supply if conduct money is paid to an Australian government agency that receives a subpoena to provide evidence or documents in court. This is because the payment will not be consideration and therefore the requirements for a taxable supply under section 9-5 of the GST Act will not be met.

6. Related Rulings/Determinations/GST Advice

Insert 'MT 2006/1'.

7. Legislative references

(a) Omit:

ANTS(GST)A 1999 81-5

ANTS(GST)A 1999 195-1

(b) Insert:

ANTS(GST)A 1999 Div 81

ANTS(GST)A 1999 81-10

Treasury Legislation Amendment (Repeal Day) Act 2015

This Addendum applies on and from 27 June 2011, except for the change in subparagraph 1(b) of this Addendum which applies on and after 1 July 2015.

Commissioner of Taxation

20 May 2015

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ATO references

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