



GSTA TPP 075 - Goods and services tax: Is an Australian insurance broker entitled to a Division 78 decreasing adjustment when it is acting as agent for a foreign insurance company?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *25 January 2006*



Goods and Services Tax Advice

Goods and services tax: Is an Australian insurance broker entitled to a Division 78 decreasing adjustment when it is acting as agent for a foreign insurance company?

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 Australian entity is entitled to a decreasing adjustment for GST paid in relation to clients who are not entitled to a full input tax credit.

Background

An Australian entity operates as an insurance broker and as an agent on behalf of a British insurance company, pursuant to a binder agreement. The Australian entity sells insurance policies on behalf of the British company.

The Australian entity handles all claims before referring the claims to the British company for settlement. The Australian entity liaises with an assessor and makes a settlement recommendation in each case.

The settlement amount (excluding GST) is paid by the British company to the Australian entity. If the insured is registered for GST and is entitled to full input tax credits, the Australian entity pays the settlement amount (not including GST) to the insured. If the insured is not registered for GST, or is registered but only entitled to partial input tax credits, then the Australian entity pays the insured the settlement amount plus the appropriate amount in respect of GST.

Explanation

Division 57 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) effectively makes resident agents who act for non-residents

responsible for the GST consequences of what the non-residents do through their resident agents. Section 57-15 treats any adjustment as if it were that of the agent rather than the non-resident.

An insurer is entitled to a decreasing adjustment under Division 78 of the GST Act if the requirements of section 78-10 are satisfied. A decreasing adjustment arises if:

- the insurer makes a payment of money, a supply, or both a payment of money and a supply;
- the supply of the insurance policy is a taxable supply;
- the insured is not entitled to or is only partially entitled to an input tax credit for the premium paid;
- the insurer settles the claim for a creditable purpose;
- the insurer is registered or required to be registered; and
- the settlement does not relate to one or more non-creditable insurance events.

In this scenario, the supply made by the non-resident insurer through the resident agent is the supply of insurance policies. Any adjustment that the non-resident insurer has relates to the supply of the insurance policy.

Consequently, where a decreasing adjustment arises under section 78-10, the Australian entity is entitled to claim the decreasing adjustment.

The quantum of the decreasing adjustment is determined using the method statement contained in section 78-15 of the GST Act.

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 ruling that you have obtained, this public ruling prevails. However, if you have relied on a previous 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:

GSTR 2000/36

Subject references:

insurance
agency
non-resident
decreasing adjustment
input tax credit

Legislative references:

ANTS(GST)A 1999 57-15
ANTS(GST)A 1999 78-10
ANTS(GST)A 1999 78-15
TAA 1953 37

ATO references

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