


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?

 This cover sheet is provided for information only. It does not form part of *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?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *31 October 2012*



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 was published prior to 1 July 2010 and was a public ruling for the purposes of former section 37 of the **Taxation Administration Act 1953** and former section 105-60 of Schedule 1 to the **Taxation Administration Act 1953**.*

*From 1 July 2010, this document is taken to be a public ruling under Division 358 of Schedule 1 to the **Taxation Administration Act 1953**.*

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

[Note: This is a consolidated version of this document. Refer to the Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

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 applies [to tax periods commencing] both before and after its date of issue. However, this Advice will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Advice (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Commissioner of Taxation

25 January 2006

Related Rulings/Determinations/GST Advice:

TR 2006/10; GSTR 2006/10

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 Sch 1 Div 358

ATO references

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