


# ***GSTR 2000/37A8 - Addendum - Goods and services tax: agency relationships and the application of the law***

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## Addendum

### Goods and Services Tax Ruling

#### Goods and services tax: agency relationships and the application of the law

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Goods and Services Tax Ruling GSTR 2000/37 to reflect amendments made to the *A New Tax System (Goods and Services Tax) Act 1999* by the *Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016* in respect to supplies made through electronic distribution platforms and supplies made by resident agents to Australian based business recipients.

Schedule 1 of this *Tax and Superannuation Laws Amendment (2016 Measures No.1) Act 2016* (about business to consumers supplies) applies from 1 July 2017 and Schedule 2 (generally about business to business supplies) applies from 1 October 2016.

#### **GSTR 2000/37 is amended as follows:**

##### **1. Throughout (excluding paragraph 74A)**

Where cross-references are being made to other paragraphs or examples contained in the Ruling, and where not already occurring, after the paragraph or example number, insert 'of this Ruling'.

##### **2. Paragraph 5**

(a) Omit the first sentence; substitute:

Thirdly, the Ruling explains the special rules in Division 57 that apply to resident agents acting for non-residents that make taxable supplies, taxable importations, creditable acquisitions or creditable importations in the indirect tax zone (Australia)<sup>A1</sup> (paragraphs 97 to 121 of this Ruling).

(b) After '(Australia)', insert footnote A1:

<sup>A1</sup> The indirect tax zone is defined in section 195-1 and is the area to which Australia's GST applies. In this Ruling the indirect tax zone is referred to as 'Australia'.

##### **3. Paragraph 9A**

Omit the paragraph (including footnote 1A).

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## 4. Paragraph 24

(a) After the last sentence, insert:

However, Subdivision 153-B is not available if the intermediary is an electronic distribution platform in relation to the supply.<sup>6A</sup>

(b) After the new sentence, insert footnote 6A:

<sup>6A</sup> Subsections 153-55(4A) and 153-60(3A).

## 5. Paragraph 25

Omit the word 'These'; substitute 'Subdivision 153-B'.

## 6. Paragraph 26

(a) After the paragraph, insert new paragraph 26A:

26A. Under Division 57, if a taxable supply is made through a resident agent any GST liabilities become liabilities of the resident agent. There are two key exceptions to this rule:

- Where the non-resident supplier makes the taxable supply through an enterprise that they carry on in Australia.<sup>6B</sup> In these circumstances, the non-resident supplier is still the liable entity.
- Where the supply is done in Australia and is only a taxable supply because of the reverse charge rules under section 84-5. The override to this exception is explained at paragraphs 98B and 98C of this Ruling.

(b) At the end of the first sentence of the first dot point in new paragraph 26A, insert footnote 6B:

<sup>6B</sup> Paragraph 57-5(3)(b).

## 7. Paragraph 47

Omit 'the Explanatory Memorandum to the GST Act'; substitute 'the Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998'.

## 8. Paragraph 52

Omit the paragraph; substitute:

52. The GST treatment of disbursements in paragraphs 48 to 51 of this Ruling is consistent with the income tax treatment of disbursements as explained in Taxation Ruling TR 97/6 *Income tax: tax treatment of solicitors' disbursements/recoupments*.

**9. Paragraph 73**

Omit the last sentence (excluding footnote 31); substitute:

If an agent for the recipient creates the recipient created tax invoice, the requirements for the information that must be contained in a recipient created tax invoice remain the same, including the requirement to contain enough information to clearly identify the recipient's identity or ABN.

**10. Paragraph 75**

(a) Omit the words 'the previous paragraph'; substitute 'paragraph 74 of this Ruling'.

(b) After the paragraph, insert new paragraph 75A:

75A. However, Subdivision 153-B is not available if the intermediary is an electronic distribution platform in relation to the supply.<sup>33A</sup>

(c) At the end of new paragraph 75A, insert footnote 33A:

<sup>33A</sup> Subsections 153-55(4A) and 153-60(3A). Refer to Law Companion Ruling LCR 2018/2 *GST on supplies made through electronic distribution platforms*.

**11. Paragraph 79**

Omit the words 'the previous paragraph'; substitute 'paragraph 78 of this Ruling'.

**12. Paragraph 88**

Omit the words 'the previous paragraph'; substitute 'paragraph 87 of this Ruling':.

**13. Paragraph 92**

(a) At the end of the paragraph, omit 'Subsection 153-65(2).'

(b) In the last sentence, insert a full stop between apply and footnote 51A.

**14. Paragraph 93**

Omit the wording in footnote 52; substitute:

<sup>52</sup> See *Goods and Services Tax: Application of Intermediary Arrangements to the Multi-Media Industry Determination (No. 33) 2015*.

**15. Paragraph 98**

(a) Omit the paragraph (excluding footnote 56); substitute:

98. Subject to the two exceptions discussed in paragraphs 98A, 98B and 98C of this Ruling, if you are a resident and an agent under the general law for a non-resident principal who is registered or required to be registered, and taxable supplies or taxable importations are made by your principal through you, then the GST payable on these transactions is payable by you and not by the non-resident principal.<sup>56</sup>

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98A. There are two exceptions where the resident agent is not liable for GST on taxable supplies by the non-resident principal made through a resident agent:

- the taxable supplies or taxable importations are made through an enterprise that the non-resident principal carries on in Australia (principal liable);<sup>56A</sup> and
- where the supply is done in Australia, where a section 57-7 agreement is not in place and the supply is only a taxable supply because of the application of the reverse charge rules under section 84-5 (recipient liable).<sup>56B</sup>

98B. Section 57-7 allows a principal and agent to agree in writing to 'opt-in' to the Division 57 agency rules to make the resident agent the liable entity where section 9-26 would make the supply not connected with Australia.<sup>56C</sup> This agreement must apply to all supplies made by the principal through the resident agent. In this event the reverse charge provisions in Division 84 do not apply. If the recipient of the supply is an Australian-based business recipient,<sup>56D</sup> the recipient must be given a notice in the approved form (usually a tax invoice) no later than seven days after the earlier of:

- the first day any consideration for the supply is provided; or
- the day on which an invoice for the supply is issued.<sup>56E</sup>

98C. Where a resident agent and non-resident principal have agreed in writing to terminate the agreement referred to in paragraph 98B of this Ruling ('the termination agreement'), it ceases to apply from:<sup>56F</sup>

- the time specified in the termination agreement (which cannot be earlier than the start of the day the termination agreement is made); or
- if otherwise, at the start of the day the termination agreement is made.

(b) After the words '(principal liable);' in the first dot point of new paragraph 98A, insert footnote 56A:

<sup>56A</sup> Subsection 57-5(3).

(c) After the last dot point in new paragraph 98A, insert footnote 56B:

<sup>56B</sup> See paragraph 57-5(3)(a) and subsection 84-10(1).

(d) After the first sentence in the new paragraph 98B, insert footnote 56C:

<sup>56C</sup> Section 57-7.

(e) After the words 'business recipient,' in new paragraph 98B, insert footnote 56D:

<sup>56D</sup> Subsection 9-26(2).

(f) After the last dot point in new paragraph 98B, insert footnote 56E:

<sup>56E</sup> Subsections 57-7(2) and (3).

(g) At the end of the introductory sentence in new paragraph 98C, insert footnote 56F:

<sup>56F</sup> Subsection 57-7(4).

**16. Paragraph 126**

Omit the word 'above'; substitute 'of this Ruling'.

**17. Related Rulings/Determinations**

At the end of the list, insert '; LCR 2018/2; TR 97/6'

**18. Subject references**

Omit all subject references including the heading.

**19. Legislative references**

Omit legislative references; substitute:

- ANTS(GST)A 1999 9-5
- ANTS(GST)A 1999 9-26
- ANTS(GST)A 1999 9-26(2)
- ANTS(GST)A 1999 9-40
- ANTS(GST)A 1999 Div 11
- ANTS(GST)A 1999 11-5
- ANTS(GST)A 1999 11-20
- ANTS(GST)A 1999 13-5
- ANTS(GST)A 1999 13-15
- ANTS(GST)A 1999 15-5
- ANTS(GST)A 1999 15-15
- ANTS(GST)A 1999 17-10
- ANTS(GST)A 1999 Div 23
- ANTS(GST)A 1999 23-5
- ANTS(GST)A 1999 25-1
- ANTS(GST)A 1999 25-50
- ANTS(GST)A 1999 25-55
- ANTS(GST)A 1999 Div 27
- ANTS(GST)A 1999 Div 29
- ANTS(GST)A 1999 29-5
- ANTS(GST)A 1999 29-10
- ANTS(GST)A 1999 29-20
- ANTS(GST)A 1999 29-25
- ANTS(GST)A 1999 29-70
- ANTS(GST)A 1999 29-70(1)
- ANTS(GST)A 1999 29-70(1)(a)
- ANTS(GST)A 1999 29-70(1)(b)
- ANTS(GST)A 1999 29-70(1)(c)
- ANTS(GST)A 1999 29-70(1)(c)(i)
- ANTS(GST)A 1999 29-70(1)(c)(ii)
- ANTS(GST)A 1999 29-70(1)(c)(iii)
- ANTS(GST)A 1999 29-70(1)(c)(iv)
- ANTS(GST)A 1999 29-70(1)(c)(v)
- ANTS(GST)A 1999 29-70(1)(c)(vi)
- ANTS(GST)A 1999 29-70(1)(c)(viii)
- ANTS(GST)A 1999 29-70(1)(d)
- ANTS(GST)A 1999 29-70(2)
- ANTS(GST)A 1999 29-70(3)
- ANTS(GST)A 1999 29-75
- ANTS(GST)A 1999 29-75(1)

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- ANTS(GST)A 1999 29-75(1)(a)
- ANTS(GST)A 1999 29-75(1)(b)
- ANTS(GST)A 1999 29-75(1)(c)
- ANTS(GST)A 1999 29-75(1)(d)
- ANTS(GST)A 1999 29-75(2)
- ANTS(GST)A 1999 31-15(2)
- ANTS(GST)A 1999 38-45
- ANTS(GST)A 1999 38-45(3)
- ANTS(GST)A 1999 Div 48
- ANTS(GST)A 1999 48-1
- ANTS(GST)A 1999 48-60
- ANTS(GST)A 1999 Div 57
- ANTS(GST)A 1999 57-5
- ANTS(GST)A 1999 57-5(3)
- ANTS(GST)A 1999 57-5(3)(a)
- ANTS(GST)A 1999 57-5(3)(b)
- ANTS(GST)A 1999 57-7
- ANTS(GST)A 1999 57-7(2)
- ANTS(GST)A 1999 57-7(3)
- ANTS(GST)A 1999 57-7(4)
- ANTS(GST)A 1999 57-10
- ANTS(GST)A 1999 57-15
- ANTS(GST)A 1999 57-15(2)
- ANTS(GST)A 1999 57-20
- ANTS(GST)A 1999 57-20(2)
- ANTS(GST)A 1999 57-25
- ANTS(GST)A 1999 57-30
- ANTS(GST)A 1999 57-35(1)
- ANTS(GST)A 1999 57-35(2)
- ANTS(GST)A 1999 57-40
- ANTS(GST)A 1999 57-45
- ANTS(GST)A 1999 57-50
- ANTS(GST)A 1999 Div 81
- ANTS(GST)A 1999 Div 83
- ANTS(GST)A 1999 83-5(2)(b)
- ANTS(GST)A 1999 Div 84
- ANTS(GST)A 1999 84-5
- ANTS(GST)A 1999 84-10(1)
- ANTS(GST)A 1999 Div 111
- ANTS(GST)A 1999 111-5
- ANTS(GST)A 1999 111-5(1)
- ANTS(GST)A 1999 111-5(3)
- ANTS(GST)A 1999 111-10
- ANTS(GST)A 1999 111-15
- ANTS(GST)A 1999 Div 153
- ANTS(GST)A 1999 Subdiv 153-A
- ANTS(GST)A 1999 Subdiv 153-B
- ANTS(GST)A 1999 153-5
- ANTS(GST)A 1999 153-10
- ANTS(GST)A 1999 153-15
- ANTS(GST)A 1999 153-15(1)
- ANTS(GST)A 1999 153-20
- ANTS(GST)A 1999 153-20(1)
- ANTS(GST)A 1999 153-25
- ANTS(GST)A 1999 153-50
- ANTS(GST)A 1999 153-50(a)
- ANTS(GST)A 1999 153-50(b)

- ANTS(GST)A 1999 153-50(c)
- ANTS(GST)A 1999 153-50(c)(ii)
- ANTS(GST)A 1999 153-50(d)
- ANTS(GST)A 1999 153-50(e)
- ANTS(GST)A 1999 153-55
- ANTS(GST)A 1999 153-55(1)
- ANTS(GST)A 1999 153-55(2)
- ANTS(GST)A 1999 153-55(2)(b)
- ANTS(GST)A 1999 153-55(3)
- ANTS(GST)A 1999 153-50(3)(b)
- ANTS(GST)A 1999 153-55(4A)
- ANTS(GST)A 1999 153-60
- ANTS(GST)A 1999 153-60(1)
- ANTS(GST)A 1999 153-60(2)
- ANTS(GST)A 1999 153-60(2)(b)
- ANTS(GST)A 1999 153-60(3)
- ANTS(GST)A 1999 153-60(3)(b)
- ANTS(GST)A 1999 153-60(3A)
- ANTS(GST)A 1999 153-65(1)
- ANTS(GST)A 1999 153-65(2)
- ANTS(GST)A 1999 188-15(1)
- ANTS(GST)A 1999 188-24
- ANTS(GST)A 1999 195-1
- ANTS(GST)A 1999 Sch 3
- TAA 1953
- TAA 1953 Sch 1 288-40
- TAA 1953 Sch 1 288-50
- TAA 1953 Sch 1 Div 358
- TAA 1953 Sch 1 382-5(5)
- TAA 1953 Sch 1 382-5(6)
- TAA 1953 Sch 1 388-50
- Insurance Contracts Act 1984
- Insurance Contracts Act 1984 11
- Income Tax Assessment Act 1936
- Fringe Benefits Assessment Act 1986

## **20. Other references**

Omit other references; substitute:

- A New Tax System (Goods and Services Tax) Adjustment Note Information Requirements Determination 2012
- A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions Under an Agency Relationship) Legislative Instrument 2013
- Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998
- Explanatory Memorandum to the Tax and Superannuation Laws Amendment (2016 Measures No. 1) Bill 2016
- Goods and Services Tax: Application of Intermediary Arrangements to the Multi-Media Industry Determination (No. 33) 2015



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This Addendum applies before and after the date of issue of this Addendum. Changes with specific dates of effect are as follows:

| Addendum item change | Paragraph in Ruling    | Change applies:            |
|----------------------|------------------------|----------------------------|
| 6, 15,               | 26A, 98, 98A, 98B, 98C | on and from 1 October 2016 |
| 4, 5, 10             | 24, 25, 75A,           | on and from 1 July 2017    |

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## Commissioner of Taxation

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### ATO references

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