

GSTR 2001/4A - Addendum - Goods and services tax: GST consequences of court orders and out-of-court settlements

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Addendum

Goods and Services Tax Ruling

Goods and services tax: GST consequences of court orders and out-of-court settlements

This Addendum amends Goods and Services Tax Ruling GSTR 2001/4 to reflect the decisions made by the courts in *Merringtons Pty Ltd v. Luxottica Retail Australia Pty Ltd* (2006) Unreported Supreme Court of Victoria (per Judge Wood M, 16 June 2006) and *Hennessey Glass and Aluminium Pty Ltd v. Watpac Australia Pty Ltd* [2007] QDC 57 per McGill DCJ regarding the GST treatment of court awarded costs and out-of-court settlements.

These decisions considered the recovery of legal costs and the GST component of those costs. It was held that the amounts for professional fees as fixed by a scale of costs cannot be reduced to take into account a party's registration for GST and entitlement to input tax credits for the GST component of the expenses.

GSTR 2001/4 is amended as follows:

1. Preamble

Omit 'section 37 of'; substitute 'section 105-60 of Schedule 1 to'.

2. Footnote 1

Omit text; substitute:

See Goods and Services Tax Ruling GSTR 2006/10 – Insurance settlements and entitlements to input tax credits.

3. Paragraph 6

Omit the paragraph; substitute:

6. This Ruling explains the Commissioner's view of the law as it applies both before and after its date of issue. You can rely upon this Ruling on and from its date of issue for the purposes of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953*. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and the Commissioner's view of when you can rely on this interpretation of the law in GST public and private rulings.

6A. Changes made to this Ruling by the Addendum that issued on 12 November 2008 have been incorporated into this version of the Ruling.^{2A} You can rely on the changes made to the Ruling by this Addendum for the purposes of section 105-60 of Schedule 1 to the TAA from the date of issue of the Addendum. If the Addendum conflicts with a previous private ruling that you have obtained or a previous public ruling, the Addendum prevails.

6B. If you have relied on a previous ruling (including the public ruling that the Addendum amends), you are protected in respect of what you have done up to the date of issue of the Addendum or, if there is a change to the legislation, you are protected in respect of what you have done up to the date the legislative change takes effect. This means that if you have relied on the previous ruling and have underpaid an amount of GST, you are not liable for the shortfall prior to either the issue date of the Addendum or the date the legislative change takes effect, as appropriate. Similarly, if you have relied on the previous ruling you are not liable to repay an amount overpaid by the Commissioner as a refund.

4. Footnote 25

Omit 'Paragraph 35'; substitute 'Paragraph 36'.

5. Paragraph 149

Omit the paragraph; substitute:

149. Accordingly, the payment of court ordered costs or costs negotiated in a settlement in the circumstances described will not be consideration for an earlier or current supply. It does not matter that the payment of the costs order or settled amount is made by an entity other than the unsuccessful party.^{71A}

6. Paragraph 154

Omit the last two sentences of the paragraph; substitute:

The actual cost to ABC Co is a GST exclusive amount.^{73A}

^{2A} Refer to the Addendum to see how it amends this Ruling.

^{71A} For further information see Law Administration Practice Statement PS LA 2008/16 for the goods and services tax (GST) implications in the recovery of legal costs (professional fees and disbursements) awarded by courts or settled by agreement with the parties.

^{73A} See PS LA 2008/16 for further information in relation to factors that ABC Co and the major retailer should take into account in negotiating the amount that will be paid in respect of costs.

7. Legislative references

Insert:

- TAA 1953 Sch 1 105-60

8. Related Rulings/Determinations

Omit 'GSTR 2000/36'; substitute 'GSTR 2006/10'.

9. Case references

Insert after the case references:

Other references:

- PS LA 2008/16

This Addendum explains our view of the law as it applies from 1 July 2000. You can rely upon this Addendum on and from its date of issue for the purpose of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953*. If this Addendum conflicts with a previous private ruling that you have obtained or a previous public ruling, this Addendum prevails. However, if you have relied on a previous ruling (including the public ruling that the Addendum amends), you are protected in respect of what you have done up to the date of issue of this Addendum or, if there is a change to the legislation, you are protected in respect of what you have done up to the date the legislative change takes effect. This means that if you have relied on the earlier ruling and have underpaid an amount of GST, you are not liable for the shortfall prior to either the issue date of this Addendum or the date the legislative change takes effect, as appropriate. Similarly, if you have relied on the earlier ruling you are not liable to repay an amount overpaid by the Commissioner as a refund.

Commissioner of Taxation

12 November 2008

ATO references

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