



GST TREATMENT OF DEPARTMENTAL STAFF SECONDED TO OTHER AGENCIES

This circular provides advice on the GST treatment of payments for staff seconded from one government agency to another. The Australian Taxation Office (ATO) has provided a private ruling that may assist agencies understand whether a GST liability exists.

Summary:

The secondment of staff from one government agency to another may give rise to a GST liability. The secondment of staff is a 'taxable supply' when the supply is for consideration (including when payment for salaries and on-costs is made by the receiving agency) and is made in the normal course of business. The supply must also be connected with Australia and be made by an entity that is registered or is required to be registered for GST. Agencies should review their secondment arrangements and supporting documentation to ensure the correct GST treatment and compliance with the GST legislation.

As advised in Treasury Circular NSWTC 06/04, agencies affected by the Government's employment restructure from 17 March 2006 should, where possible, form a GST Group with agencies to which they supply staff. GST Grouping removes the need for the seconding agency to remit GST and the receiving agency to claim Input Tax Credits (ITC). Where the formation of a GST Group is not practicable or possible then GST must be paid on the remuneration and on-costs of secondment arrangements (this is regardless of which agency is actually making the salary payments).

During the implementation of the employment restructure, it came to NSW Treasury's attention that a number of secondment arrangements had been in place for lengthy periods – many commencing prior to the implementation of the GST. As this has implications across the government sector, Treasury sought a private ruling from the ATO to clarify the circumstances in which a GST liability might arise.

The attached private ruling from the ATO sets out the circumstances where the secondment of staff is considered a taxable supply for GST purposes. The ATO has noted in the private ruling that "where there are insufficient facts to determine whether or not there is a supply for GST purposes then prima facie there can be no taxable supply".

All agencies with secondment arrangements should read the private ruling and determine whether the private ruling has application to their circumstances. Where there is any doubt agencies should consult their own tax advisers and if necessary seek a separate private ruling from the ATO based on the agencies' specific facts.

Agencies that supply staff to entities that are either input taxed or unregistered for GST should remit one eleventh of the consideration to the ATO. Affected agencies may also be required to amend Business Activity Statements for the previous four years where applicable.

John Pierce
Secretary

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21 December 2006

Dear

Subject: GST and secondments of staff

You wrote to us on 30 October 2006 asking:

Under what conditions would secondment of staff from one entity to another be a taxable supply? I apologise for the delay in replying.

You advised us of the following information:

On 17 March 2006 the NSW Government removed the right of certain statutory corporations to employ their own staff. The former staff of these corporations were incorporated into Divisions within the NSW Government and these Divisions will now supply the statutory corporations with staff.

As part of this transfer you discovered that some departments has seconded staff to NSW Government statutory corporations, boards and trusts but there were no records which set out the arrangements which appear to have been put in place.

Many of these arrangements had been in place for a substantial period of time, most prior to the introduction of GST. The statutory corporation, board or trust was treating these staff as their own by paying them from their own bank accounts, registering and remitting PAYG liabilities, issuing payment summaries and accounting for staff services as "employee costs".

We advise:

Whether or not a supply of secondment services is a taxable supply will depend upon the facts pertaining to that arrangement.

The following information is provided to assist you:

For something to be a taxable supply for the purposes of section 9-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) the following tests must be satisfied:

- There is a supply for consideration;
- the supply is made in the course or furtherance of an enterprise that is carried on by the supplier;
- the supply is connected with Australia; and
- the entity making the supply is registered or is required to be registered for GST.
- however, a supply will not be a taxable supply to the extent that it is GST-free or input taxed.

The starting point in determining whether or not there is a supply of a secondment of government employees is to consider the nature of the supply, if any.

'Supply' under section 9-10 of the GST Act includes a supply of goods and/or services. The secondment of an employee from one entity to another would be a supply of services.

When one entity arranges a secondment to another this is usually evidenced by an agreement. The agreement would include such things as the amounts paid as salary, costs for annual and long service leave, superannuation, workers compensation as well as allowances covering such items as mobile telephones and vehicles.

Where parties to a transaction have expressed their understanding of an arrangement in writing this is the starting point in determining a supply or supplies that may exist. In the absence of an agreement the question arises of whether or not there is a supply of the secondment of staff from one entity to another or any other supply. In this case it is the totality of the facts which is important.

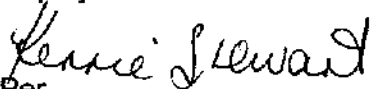
Where there are insufficient facts to determine whether or not there is a supply for GST purposes then prima facie there can be no taxable supply. Only when such facts were available could such a determination be carried out.

This general advice is a private ruling. We have attached explanatory notes on the effect, duration of this advice and your review rights.

If you wish to discuss this case please phone Kerrie Stewart on (03) 9215 3709 and quote reference number 5527756.

Yours faithfully

Mark Jackson
Deputy Commissioner of Taxation


Per
(Kerrie Stewart)

Encl.

Explanatory Notes

Effect

This general advice is based upon a previously published Tax Office view about the operation of the GST law that may apply to your circumstances. This advice is a private ruling for the purposes of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953* (TAA) and to the extent that this general view of the law applies to your circumstances, the Commissioner will be bound by that advice.

If you require specific advice dealing with your individual circumstances you should apply for a further private ruling using the *Application for GST Private Ruling* form available at www.ato.gov.au or by phoning **13 28 66**.

Should a public ruling subsequently issue that conflicts with this advice, the public ruling will prevail. However, if you have relied on this advice, you will be protected in respect of what you have done up to the date of the change unless you have misstated or suppressed a material fact. This means that if you have underpaid an amount of GST, you will not be liable for the shortfall prior to the later ruling. Similarly, you will not be liable to repay an amount overpaid by the Commissioner as a refund.

Duration

You may rely on this advice until it is withdrawn, overridden by a public ruling or there is a change in the legislation affecting the treatment of the subject matter of this ruling for GST purposes.

Review Rights

You have a right to have this advice informally reviewed under the taxpayers' charter. If you want to do this, you should contact the person handling your case or the Tax Office where the decision was made. The review is normally conducted by a tax officer who was not involved in making the original decision.

This advice cannot, however, be reviewed under the TAA, as it is not a reviewable decision under subsection 110-50(2) of Schedule 1 to the TAA. Also this advice cannot be reviewed under the *Administrative Decisions (Judicial Review) Act 1977*.

However, should you undertake your proposed transaction and it results in a net amount for a tax period, you can, under section 105-10 of Schedule 1 to the TAA, request us to make an assessment under section 105-5 of Schedule 1 to that Act of your net amount for that tax period. Under subsection 105-40(2) of Schedule 1 to the TAA, you may then object to the making of that assessment in the manner set out in Part IVC of that Act.

Freedom of Information

The *Freedom of Information Act 1982* (FOI Act) gives you a legal right to access certain documents relating to this decision held by the Tax Office.

Requests for access under this Act must:

- be in writing
- describe the document you want in enough detail to identify the document
- give an address in Australia for reply
- include the \$30.00 application fee and
- be posted or delivered to the Tax Office.

The Tax Office may refuse you access to some documents, or portions of documents, that are subject to exemption provisions. There are right of review should you disagree with this decision.

For further information about access to documents under the FOI Act or to obtain a Freedom of Information request form please refer to the contact numbers listed below.

Contact Numbers

If you need help you can:

- phone **13 28 69**, or
- visit our website at **www.ato.gov.au**

If you do not speak English and need help from the Tax Office, phone the Translating and Interpreting Services on **13 14 50**.

People with a hearing or speech impairment with access to appropriate TTY or modem equipment should phone **13 36 77**.