

QUESTIONS WE'VE BEEN ASKED | PĀTAI KUA UIA MAI

GST: Directors and board members providing their services through a personal services company

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QB 23/07

This Question We've Been Asked considers the GST treatment of a director or board member who provides their services through a personal services company.

All legislative references are to the Goods and Services Tax Act 1985.

Key provisions | Whakaratonga tāpua

Goods and Services Tax Act 1985 – section 6.

Question | Pātai

If a director¹ provides their services through a personal services company (PSC) will the PSC be able to register for GST when the director would not be able to register if they were providing their services in their capacity as a natural person?

Answer | Whakautu

Yes. If the PSC contracts with the company requiring a director and supplies the services of the director under that contract, those supplies of directorship services are not excluded from the definition of “taxable activity” by section 6(3)(b) (or section 6(3)(c)(iii) for board members). This is because the supply by a PSC of a person to provide directorship services is distinct from the supply of those directorship services by an individual. As long as the PSC’s level of activity is sufficient to be a taxable activity (as defined in section 6(1)) the PSC can register for GST.

Key terms | Kīanga tau tāpua

Director, in this item, includes “board members” (meaning people covered by section 6(3)(c)(iii)).

Personal services company (PSC) means a company a person has set up to provide services to clients. The person is often the only employee, shareholder, and director of the company.

Explanation | Whakamāramatanga

1. On 22 February 2023, the Commissioner issued three public rulings relating to the GST treatment of directors’ fees and board members’ fees: [BR Pub 23/01](#), [BR Pub 23/02](#) and [BR Pub 23/03](#).
2. One of the Commissioner’s conclusions in the commentary to those rulings was that a professional director or board member (a person holding multiple directorships or board memberships) without any other associated taxable activity (such as a legal, accounting, or consulting practice) does not carry on a taxable activity just by virtue of holding multiple offices ([Commentary on Public Rulings BR Pub 23/01–03](#)). Each office

¹ This item uses the term “directors” to also mean board members, because the treatment of the two groups is the same. Therefore, “directors” is used as an umbrella term for people covered by section 6(3)(c)(iii).

is excluded from the definition of “taxable activity” by section 6(3)(b) or section 6(3)(c)(iii).

3. If the director or board member had an associated taxable activity they would be able to register for GST because of the effect of section 6(5). For a fuller explanation of these provisions, see Commentary on Public Rulings BR Pub 23/01–03, at [21] to [24] and Examples 1 and 2.
4. We have been asked what happens where a director provides their services through a PSC.

PSC contracts to provide a director’s services

5. The situation the Commissioner considers has the most certain outcome is where the PSC contracts with the company that requires a director (the Company) for the provision of the director’s services. In this situation, the services the PSC provides are not excluded by section 6(3)(b) because the PSC is not engaged as a director;² instead, it is supplying the services of a person to the Company to fulfil the director role.
6. As long as the PSC’s supply of services is part of an activity that is carried on continuously and regularly involving the supply of goods and services, then the PSC is carrying on a taxable activity (as defined in section 6(1)), and the PSC can register for GST. This is consistent with the analysis in Commentary on Public Rulings BR Pub 23/01–03, at [33] to [36] and Example 5.

Director contracts to provide their services to companies but is obliged to account for their fees to their PSC

7. A factual variation where the Commissioner considers the outcome less certain is where the director contracts directly with the Company to be a director but in circumstances where the director is obliged to account for the directorship fees to the PSC because the PSC is the employer of the director. In this situation, where the director enters the contracts directly with companies, section 6(3)(b) applies to exclude each office from the definition of “taxable activity” such that the director does not have a taxable activity relating to their services as a director.
8. Assuming the director is an employee of their PSC and is obliged to account to their employer PSC for fees received from the directorships, then section 6(4) applies. This provision means the accounting of fees to the employer is treated as consideration for

² Indeed, they cannot be because a director must be a natural person.

a supply of services by the employer to the Company that made the payment to the director. This is consistent with Commentary on Public Rulings BR Pub 23/01–03, at [37] to [41] and Example 7.

9. Section 6(4) treats the employee's payment to the PSC as consideration for a supply of services by the PSC to the Company. It is not clear that when section 6(4) was enacted it was intended to allow an entity like a PSC to register for GST when it did not have a taxable activity independent of the deemed supplies under section 6(4). There are different views as to whether a court would find that section 6(4) applied in such a way that an entity without an independent taxable activity had a taxable activity solely on the basis of section 6(4) deemed supplies. This is because section 6(4) was intended to remove the previous asymmetry whereby a company paying fees directly to a director could not take a GST input tax deduction (because the director could not be a registered person and charge GST), but the employer of a director who received the fees had to pay GST output tax (see [Taxation \(Annual Rates, Employee Allowances, and Remedial Matters\) Bill: Commentary on the Bill](#), at 123–124).
10. In such circumstances, it is unclear whether a court would apply section 6(4) in such a way that a PSC would have a taxable activity just on the basis of the deemed supplies under section 6(4). The alternative approach would be that the PSC would simply not charge GST and the company would still not take an input tax deduction.
11. However, in circumstances where the director is employed by the PSC and is required to account to the PSC for directors' fees earned (due to the fiduciary obligations on them as an employee), the arrangement likely involves the PSC allowing their employee to act as a director. In effect, the PSC is supplying the services of the director but without the formal contractual relationship that was discussed at [5]. Provided the supply of services by the PSC is part of an activity that is carried on continuously and regularly involving the supply of goods and services, then the Commissioner is on balance satisfied that the PSC will be carrying on a taxable activity (as defined in section 6(1)) and the PSC can register for GST.
12. As discussed above, the GST treatment is more certain in cases where the PSC itself enters into contracts with a company for the provision of a director. This is illustrated in the Example | Tauira.

Example | Tauira: PSC contracts directly with company

Rupert Barre is an independent director of Nutwood Forest Limited (NFL), a position that was entered into through his PSC, Rupert Barre Limited (RBL).

Rupert Barre is a well-respected public figure and proves to be an excellent director. Subsequently, RBL receives numerous requests for Rupert to join the boards of other companies. RBL enters into contracts with several other companies to provide Rupert Barre as a director.

NFL and the other companies agree to pay RBL for the provision of directorship services on the issue of an invoice by RBL.

Rupert now sits on the board of several companies, and those companies have board meetings at least every two months. RBL has been regularly entering into contracts with companies, invoicing for Rupert's services, dealing with enquiries from other companies interested in appointing Rupert as a director, paying Rupert a monthly salary, and dealing with all tax and other regulatory matters.

RBL's activity would be sufficient to amount to a taxable activity, so RBL can register for GST (and if RBL's level of supplies is over \$60,000 per annum it must register for GST). Section 6(3)(b) does not exclude RBL's activity from being a taxable activity; it applies to exclude only the activity of Rupert Barre himself from the definition of "taxable activity".

References | Tohutoro

Legislative references | Tohutoro whakatureture

Goods and Services Tax Act 1985, section 6

Other references | Tohutoro anō

BR Pub 23/01: Goods and services tax – directors' fees *Tax Information Bulletin* vol 35, no 3 (April 2023): 15

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About this document | Mō tēnei tuhinga

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