 This is a reissue of BR Pub 05/13. For more information about earlier publications of this Public Ruling see the Commentary to this Ruling.

GOODS AND SERVICES TAX – DIRECTORS’ FEES

PUBLIC RULING - BR Pub 15/10

This is a Public Ruling made under s 91D of the Tax Administration Act 1994.

Taxation Laws

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

This Ruling applies in respect of ss 6(3)(b), 6(4), 6(5), 8, 20 and 57(2)(b).

The Arrangement to which this Ruling applies

The Arrangement is the engagement, occupation or employment of a person as a director (the Director) of a company (the Company). The engagement may be by direct contract between the Director and the Company. Alternatively, the Director may be engaged as a director of the Company under an agreement between the Company and:

- a third party (the Third Party);
- the Director’s employer (the Employer); or
- a partnership of which the Director is a partner (the Partnership).

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

The Director contracts directly with the Company

If the Director has not accepted the office in carrying on the Director’s taxable activity:

- The engagement is excluded from the term “taxable activity” under s 6(3)(b). Section 6(5) does not apply because the Director did not accept the office in carrying on the Director’s taxable activity.
- The Company cannot claim an input tax deduction for any directors’ fees paid to the Director because GST will not be charged on the supply of the Director’s services to the Company.

If the Director has accepted the office in carrying on the Director’s taxable activity:

- Section 6(5) will apply and the services will be deemed to be supplied in the course or furtherance of that taxable activity. If the Director is registered, or liable to be registered, for GST, the Director will be required to account for GST on the fees received for the supply of the directorship services.
- If the Company is carrying on a taxable activity and is registered for GST, the Company may claim a deduction for input tax under s 20(3) for any GST charged on the supply of the directorship services by the Director, provided that the other requirements in the Act, such as s 20(2), are satisfied.

The Director's services are contracted by the Third Party to the Company

If the Third Party contracts with the Company to provide the Director's services as a director of the Company and the Director has accepted the office, but not as part of carrying on a taxable activity:

- The Director's engagement as director of the Company is excluded from the term "taxable activity" under s 6(3)(b). Section 6(5) does not apply because the Director did not accept the office in carrying on the Director's taxable activity.
- Section 6(3)(b) does not apply to the Third Party's provision of the Director's services to the Company because the Third Party is not engaged as a director of the Company. If the Third Party is registered, or liable to be registered, for GST, the Third Party will be required to account for GST charged under s 8 on the supply of the Director's services.
- If the Company is carrying on a taxable activity and is registered for GST, the Company may claim a deduction for input tax under s 20(3) for any GST charged on the supply of the Director's services by the Third Party, provided that the other requirements in the Act, such as s 20(2), are satisfied.

If the Third Party contracts with the Company to provide the Director's services to the Company and the Director accepts the office in carrying on the Director's taxable activity:

- Because the Director accepted the office in carrying on their taxable activity, under s 6(5) any directorship services provided by the Director are deemed to be supplied in the course or furtherance of the Director's taxable activity.
- In this situation, there are two relevant supplies for GST purposes. The **first supply** is the Director providing their services to the Third Party. The **second supply** is the Third Party providing the Director's services to the Company.
- For the first supply:
 - The Director is required to account for GST charged under s 8 on the supply of their services to the Third Party.
 - If the Third Party is carrying on a taxable activity and is registered for GST, the Third Party may claim a deduction for input tax under s 20(3) for the GST charged on the supply of the Director's services by the Director, provided that the other requirements in the Act, such as s 20(2), are satisfied.
- For the second supply:
 - Section 6(3)(b) does not apply to the Third Party's supply of the Director's services to the Company because the Third Party is not engaged as a director of the Company. If the Third Party is registered, or liable to be registered, for GST, the Third Party is required to account for GST charged under s 8 on the supply of the Director's services.
 - If the Company is carrying on a taxable activity and is registered for GST, the Company may claim a deduction for input tax under s 20(3) for any GST charged on the supply of the Director's services by the

Third Party, provided that the other requirements in the Act, such as s 20(2), are satisfied.

The Director's services (as employee) are contracted by the Employer to the Company

If the Director, as part of their employment, is engaged as a director of the Company under a contract between the Employer and the Company:

- The Director's engagement as director of the Company is excluded from the term "taxable activity" under s 6(3)(b). Section 6(5) does not apply because the Director did not accept the office in carrying on the Director's taxable activity. The office was accepted as part of the Director's employment with the Employer.
- Section 6(3)(b) does not apply to the Employer's supply of the Director's services to the Company because the Employer is not engaged as a director of the Company. If the Employer is registered, or liable to be registered, for GST, the Employer will be required to account for GST charged under s 8 on the supply of the Director's services to the Company.
- If the Company is carrying on a taxable activity and is registered for GST, the Company may claim a deduction for input tax under s 20(3) for any GST charged on the supply of the Director's services by the Employer, provided that the other requirements in the Act, such as s 20(2), are satisfied.

The Director's services (as employee) are contracted directly to the Company and the Director is obliged to account to their Employer for the director's fees received

The Director (employee) may be engaged by the Company to be a director of that company, where:

- the Director is required to account to their Employer for the director's fees received;
- there is no contract between the Company and the Employer; and
- the Director has not accepted the office in carrying on their own taxable activity.

In this situation:

- The Director's engagement as director of the Company is excluded from the term "taxable activity" under s 6(3)(b). Section 6(5) does not apply because the Director did not accept the office in carrying on the Director's taxable activity.
- Under s 6(4), any fees paid by the Company to the Director are treated as consideration for a supply of services by the Employer to the Company. If the Employer is registered, or liable to be registered, for GST, the Employer will be required to account for GST charged under s 8 on the supply of the Director's services.
- If the Company is carrying on a taxable activity and is registered for GST, the Company may claim a deduction for input tax under s 20(3) for any GST charged on the supply of the Director's services by the Employer, provided that the other requirements in the Act, such as s 20(2), are satisfied.

The Director's services (as a partner in a partnership) are contracted to the Company and the Director is obliged to account to the Partnership for the director's fees received

If the Director (as a partner in a partnership) accepts an office as a director of the Company as part of the Partnership's business:

- The Director's engagement as director of the Company is excluded from the term "taxable activity" under s 6(3)(b). Section 6(5) does not apply because, although the Director may be carrying on the taxable activity of the partnership, the services are deemed to be supplied by the partnership under s 57(2)(b).
- Section s 6(3)(b) does not apply to the Partnership's provision of the Director's services to the Company because the Partnership is not engaged as a director of the Company. If the Partnership is registered, or liable to be registered, for GST, the Partnership will be required to account for GST charged under s 8 on the supply of the Director's services.
- If the Company is carrying on a taxable activity and is registered for GST, the Company may claim a deduction for input tax under s 20(3) for any GST charged on the supply of the Director's services by the Partnership, provided that the other requirements in the Act, such as s 20(2), are satisfied.

The period or tax year for which this Ruling applies

This Ruling will apply for an indefinite period beginning on 30 June 2014.

This Ruling is signed by me on 29 June 2015.

Susan Price

Director, Public Rulings

COMMENTARY ON PUBLIC RULING BR PUB 15/10

This Commentary is not a legally binding statement. The Commentary is intended to help readers understand and apply the conclusions reached in Public Ruling BR Pub 15/10 (“the Ruling”).

Legislative references are to the Goods and Services Tax Act 1985 unless otherwise stated. Relevant legislative provisions are reproduced in Appendix 2 to this Commentary.

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Summary

1. This Ruling and Commentary explains whether directors’ fees are subject to GST. The Ruling and Commentary also consider whether a company engaging a director is entitled to claim input tax deductions for fees paid to that director.
2. This Ruling and Commentary sets out the GST treatment for fees paid to a director in two broad situations. The first is where the director contracts either directly with a company or through a third party. The second is where a director is either an employee of a third party or a partner in a partnership.
3. A director must charge GST on their supply of services when the following requirements are satisfied:
 - the director is registered or liable to be registered in respect of a taxable activity that they undertake; and
 - the director accepts the office in carrying on that taxable activity.
4. A director is not required to charge GST on their supply of services as a director where:
 - they are engaged as a director in their capacity as an employee of a third party employer; or
 - they are engaged in their capacity as a partner in a partnership.

5. Essentially, if a registered person accepts an office as a director in carrying on their taxable activity, the fees that person receives for providing their services will be subject to GST.
6. A flowchart that illustrates the GST treatment of directors' fees from a director's perspective can be found in Appendix 1 to this Commentary.
7. Where the director has been engaged in their capacity as an employee, they may be required to account for their fees to their employer. In this situation, the employer is deemed to make the supply of services, rather than the director. If the employer is registered, or liable to be registered, for GST, the employer will be required to account for GST on the supply of the director's services to the company.
8. Where the director has been engaged in their capacity as a partner in a partnership, the partnership is deemed to make the supply of services, rather than the director. If the partnership is registered, or liable to be registered, for GST, the partnership will be required to account for GST on the supply of the director's services.
9. From the perspective of a company that engages a director, the company may claim an input tax deduction for the fees it pays, if:
 - the company is registered; and
 - GST was charged on the directors' fees and the company holds a tax invoice for those fees.
10. Other requirements of the Act may also need to be satisfied depending on individual circumstances.

Background

11. BR Pub 15/10 sets out the Commissioner's view on the GST treatment of directors' fees. The Commentary to this Ruling explains the reasoning adopted. The previous Ruling, BR Pub 05/13, was issued on 1 April 2005 for an indefinite period. However, s 6 of the Act was amended with effect from 30 June 2014 by s 187 of the Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Act 2014. BR Pub 05/13 was withdrawn from 30 June 2015.
12. Two amendments were made to s 6 that relate to the GST treatment of fees paid to directors. The first amendment moved the former proviso to s 6(3)(b) to a new s 6(5). Before the amendment, the proviso to s 6(3)(b) treated services performed by directors as being supplied in the course or furtherance of a taxable activity when the director accepted the office in carrying on that taxable activity.
13. The second amendment introduced a new s 6(4). Section 6(4) provides that when an employee is engaged by a company to be a director and the employee is required to account for any fees received to their employer, the employer will be treated as supplying the services to the company. The employer will therefore return GST output tax and the company will be able to claim input tax on the payment for these services. The Ruling has been updated to reflect the new structure of s 6 and to explain the effect of s 6(4).
14. The previous Ruling and Commentary (BR Pub 05/13) replaced BR Pub 00/11 from 1 April 2005 for an indefinite period (see *Tax Information Bulletin* Vol 17, No 7 (September 2005): 9). BR Pub 00/11 applied for the period 26 October 2000 to 31 March 2005 (see *Tax*

Information Bulletin Vol 12, No 11 (November 2000): 3). BR Pub 00/11 replaced BR Pub 00/09, which contained an application period that was seen to be retrospective. BR Pub 00/09 was published in *Tax Information Bulletin* Vol 12, No 9 (September 2000): 9, to replace the policy items on "GST on Directors' Fees" contained in *Public Information Bulletins* 164 and 175.

Summary of the Legislation

15. This part of the Commentary summarises the legislation relevant to two issues:
 - whether directors' fees are subject to GST; and
 - whether a company is entitled to claim input tax deductions for fees paid to a director who is also an employee of a third party employer.

Scheme of the GST Act

16. Section 8(1) provides that GST is charged on the supply (but not an exempt supply) in New Zealand of goods and services by a registered person in the course or furtherance of a taxable activity carried on by that person. GST is regarded as a transactions tax because it is imposed on supplies of goods and services. On this basis, it is the contractual relationship between the parties (founded on a genuine basis) that determines the GST treatment of the relevant transactions (*Wilson & Horton v CIR* (1995) 17 NZTC 12,325 (CA)).
17. GST is imposed on supplies made by registered persons. A "registered person" is a person that is registered, or liable to be registered, for GST. A person may be liable to be registered for GST if the value of their total supplies in New Zealand in a 12-month period exceeds the threshold amount in s 51. However, to be liable to account for GST, a registered person must carry on a "taxable activity".

Requirements of a "taxable activity"

18. Section 6 defines the term "taxable activity" for the purposes of the Act. Section 6(1) defines a "taxable activity" as an activity that is carried on continuously or regularly, and involves, or is intended to involve, the supply of goods and services to another person for a consideration. Therefore, a person conducts a taxable activity when all of the following characteristics are present:
 - There is some form of activity.
 - The activity is carried on continuously or regularly.
 - The activity involves, or is intended to involve, the supply of goods and services to another person for a consideration.
19. The section also includes within the term "taxable activity" the activities of any public or local authority.
20. Under s 6(2) anything done in connection with the commencement or termination of a taxable activity is deemed to be carried out in the course or furtherance of that taxable activity.
21. Section 6(3) provides certain exclusions from the term "taxable activity". Relevantly, for the purposes of this Ruling and Commentary, any

engagement, occupation or employment of a person as a director is excluded from the definition of “taxable activity”: s 6(3)(b).

22. However, in certain circumstances, a director can be deemed to provide their services as part of a taxable activity under s 6(5). Section 6(5) applies where a person, in carrying on a taxable activity, accepts an office as director. Section 6(5) applies to persons appointed as a director under s 6(3)(b). In this situation, any services provided by the director are deemed to be supplied in the course or furtherance of the director’s taxable activity. Therefore, if a GST-registered sole trader accepts a directorship in carrying on their taxable activity, s 6(5) applies and the sole trader is liable to return GST on any director’s fees received.

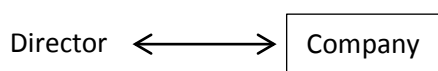
Deemed supplies by employers

23. A company may engage a person as director who is an employee of a third party employer. An employer may agree to an employee being engaged as a director of a company on the condition that the employee accounts to the employer for any directors’ fees received. In this situation, the company would ordinarily be precluded from claiming any GST input tax deductions on director’s fees paid to the employee of a third party employer. The reason for this is that, generally, the employee would not be carrying on a taxable activity. This is because the term “taxable activity” excludes any engagement, occupation or employment under any contract of service: s 6(3)(b).
24. Section 6(4) was introduced to allow a company to claim input tax deductions for fees paid to a director who is an employee of a third party employer. Section 6(4) provides that when an employee of a third party employer is engaged by a company to be a director and the employee is required to account for any fees received to their employer, the employer is deemed to supply the services to the company. The employer will therefore be liable for GST output tax on the supply of the services and the company will be able to claim input tax on the payment for those services. For more information on the introduction of this subsection, see *Tax Information Bulletin*, Vol 26, No 7 (August 2014): 96.

Application of the legislation

25. This Ruling considers the GST treatment of the supply of services as a director. The following analysis explains the GST treatment of supplies of services provided by a director in the following circumstances:
- a person (with or without a taxable activity) is engaged in their personal capacity as a director of a company;
 - a person (with or without a taxable activity) is contracted as a director of a company by a third party;
 - an employee of a third party employer is engaged as a director of a company; and
 - a partner in a partnership is engaged as a director of a company.

Director engaged in their personal capacity



26. A person may accept an office as a director in their personal capacity and not as part of carrying on any taxable activity. Alternatively, a person may accept an office as a director as part of carrying on that person's taxable activity.
27. If the person accepts an office in their personal capacity and not as part of carrying on a taxable activity, then the activity of supplying services as a director falls within the exclusion in s 6(3)(b). Section 6(5) does not apply because the person has not accepted the office as part of carrying on a taxable activity.
28. However, if the director has accepted the office as part of carrying on a taxable activity, s 6(5) overrides the exclusion in s 6(3)(b) and deems the services to be supplied in the course or furtherance of that taxable activity. If the director is registered, or liable to be registered, for GST, the director will be required to account for GST output tax on the fees received for the services they supply.

Example 1 – Director engaged in their personal capacity and does not have taxable activity

Claudius, who is not registered for GST, is an employee of a marketing agency. Fortinbras Ltd engages Claudius as a director and pays him fees for his services. Claudius' appointment as a director is not connected with his employment, nor has he accepted the directorship as part of carrying on a taxable activity. He retains the fees, having received them in his personal capacity.

Claudius is engaged as a director of a company, an activity that is excluded from the term "taxable activity" by s 6(3)(b). Section 6(5) does not apply, because Claudius did not accept the directorship as part of carrying on a taxable activity. Claudius is not required to account for GST on the fees received for directorship services.

Fortinbras Ltd cannot claim input tax deductions on the fees paid to Claudius because no GST was charged on those fees.

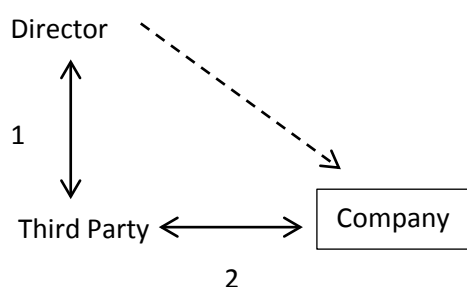
Example 2 – Director engaged in their personal capacity and has a taxable activity

Ophelia is a human resources consultant in business on her own. She is registered for GST. Ophelia accepts a position as a director of Reynaldo Ltd as part of carrying on her taxable activity. She receives fees for her services.

Because Ophelia has accepted the directorship as part of carrying on her taxable activity, s 6(5) deems her services to be supplied in the course or furtherance of her taxable activity. Ophelia should therefore provide Reynaldo Ltd with a tax invoice and account for GST output tax on the fees she is paid.

Reynaldo Ltd may claim input tax deductions for the fees paid to Ophelia, provided the requirements of the Act, such as s 20(2), are met.

Director contracted to company by third party



29. A third party may agree to provide the services of a director to a company. In this situation there are two relevant supplies for GST purposes. The first supply is the director providing their services to the third party. The second supply is the third party providing the director's services to the company.
30. The director may accept the office in the course or furtherance of a taxable activity. If the office is not accepted in the course or furtherance of a taxable activity, the director's engagement is excluded from the term "taxable activity" under s 6(3)(b). Section 6(5) would not apply because the director's services are not supplied as part of carrying on a taxable activity. Therefore, there can be no supply for GST purposes between the director and the third party.
31. However, if the director accepts the office in carrying on a taxable activity, s 6(5) deems the director's services to be supplied in the course or furtherance of their taxable activity. This is the first supply. In this situation, the director will invoice the third party for providing the director's services. The director will therefore be required to account for GST output tax on the fees they receive for these services.
32. In relation to the second supply, the third party invoices the company for the third party's services in providing the director's services. If the third party is registered, or liable to be registered, for GST, they will be required to account for GST output tax on the fees received for the supply of the director's services. Section 6(3)(b) will not apply because the third party is not engaged as a director of a company.

Example 3 – Director contracted to company by third party and does not have taxable activity

A GST-registered financial management company, Polonius Ltd, agrees to supply Osric Ltd with the services of a director. Polonius Ltd supplies the services of Marcellus, one of its specialist employees, to Osric Ltd. Directors' fees are paid by Osric Ltd to Polonius Ltd for the services provided by Marcellus.

The engagement of Marcellus as a director is excluded from the term "taxable activity" under s 6(3)(b). Section 6(5) does not apply as Marcellus has not accepted the office as part of carrying on a taxable activity. Marcellus has accepted the office as part of his employment with Polonius Ltd. Therefore, Marcellus is not required to account for GST on the supply of his directorship services.

Section 6(3)(b) does not apply to the activity of Polonius Ltd because that company is not engaged as a company director. The fees are paid in

consideration of Polonius Ltd providing the services of Marcellus to Osric Ltd. This is a supply in the course or furtherance of Polonius Ltd's taxable activity and that company will be required to account for GST output tax on the fees received for this supply.

If Osric Ltd is registered for GST, it may claim input tax deductions for the fees paid to Polonius Ltd, provided the requirements of the Act, such as s 20(2), are met.

Example 4 – Director contracted to company by third party and has taxable activity

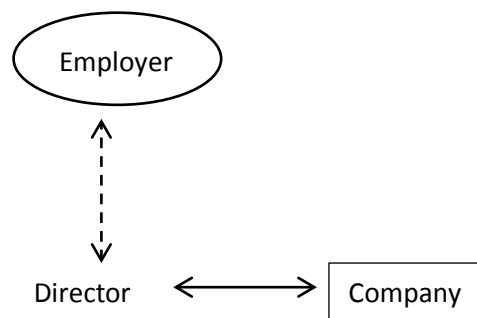
Horatio is a GST-registered accountant in business on his own. A consulting firm, Voltimand Ltd, agrees to supply another company, Yorick Ltd, with the services of a director to monitor Yorick Ltd's financial systems. Horatio agrees with Voltimand Ltd to provide his services as a director of Yorick Ltd. There are two supplies involved in this arrangement. First, Horatio provides his services to Voltimand Ltd. Second, Voltimand Ltd supplies the services of Horatio to Yorick Ltd.

Horatio's engagement as a director of Yorick Ltd is excluded from the term "taxable activity" under s 6(3)(b). However, as Horatio has accepted the office as part of carrying on his taxable activity as an accountant, s 6(5) deems his services as a director to be supplied in the course or furtherance of his taxable activity. In relation to the first supply, Horatio will therefore be required to account for GST output tax on the fees he receives from Voltimand Ltd for these services.

In relation to the second supply, Voltimand Ltd's supply of Horatio's services to Yorick Ltd does not fall within s 6(3)(b) because Voltimand Ltd is not engaged as a director of a company. Provided Voltimand Ltd is registered, or liable to be registered, for GST, it will be required to account for GST output tax on the fees received for the supply of Horatio's services.

If Yorick Ltd is registered for GST, it may claim input tax deductions for the fees paid to Voltimand Ltd, provided the requirements of the Act, such as s 20(2), are met.

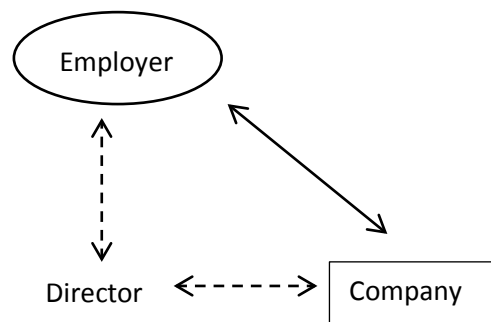
Employee engaged as a director



33. A company may engage a person as director who is also an employee of a third party employer. In this situation, either the employee holds the office as part of their employment duties, or the employee holds the office

outside of their employment. In this type of scenario, there is no contract between the employer and the company.

34. If the employee holds the office outside of their employment, they will be a director in their personal capacity (see Examples 1 and 2 above). Because the director is also an employee, it is unlikely that they will have a taxable activity, but this will depend on the circumstances of each case.
35. Sometimes an employer will permit an employee to accept an office, provided the employee accounts to the employer for the fees received. If the employee holds the office as part of their employment, the engagement of the employee as a director is excluded from the term “taxable activity” under s 6(3)(b). Section 6(5) does not apply as the director has not accepted the office as part of carrying on a taxable activity—the director is merely carrying out his or her employment duties.
36. Section 6(4) provides that when an employee is engaged as a director of a company and the employee is required to account for any fees received to their employer, the employer will be treated as supplying services to the company. This is illustrated by the following diagram:



37. The employer (provided it is registered, or liable to be registered, for GST) will therefore return GST output tax on the supply of the services by the employee and provide a tax invoice to the company. The company will then be able to claim input tax on the payment for these services.

Example 5 – Employee engaged as a director

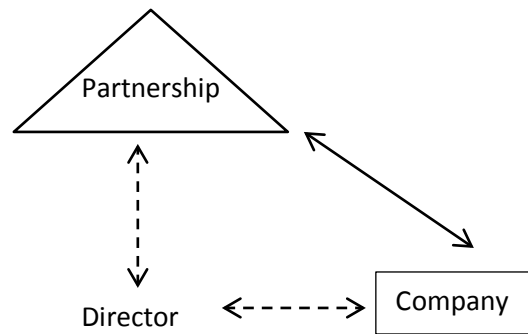
Guildenstern Ltd agrees to one of its employees, Laertes, taking up a directorship with Cornelius Ltd on the proviso that Laertes accounts for the fees he receives to Guildenstern Ltd. There is no contract between Guildenstern Ltd and Cornelius Ltd. Cornelius Ltd is not GST-registered.

The engagement of Laertes as a director is excluded from the term “taxable activity” under s 6(3)(b). Section 6(5) does not apply as Laertes has not accepted the office as part of carrying on a taxable activity. Therefore, Laertes is not required to account for GST on the supply of the directorship services.

Guildenstern Ltd is treated as making the supply of directorship services under s 6(4). If Guildenstern Ltd is registered, or liable to be registered, for GST, it is required to account for GST on the supply of the services.

Cornelius Ltd cannot claim any input tax deductions on the directors’ fees it pays, because it is not GST-registered.

Partner in a partnership engaged as a director



38. A partner in a partnership may be engaged as a director of a company as part of the partnership's business.
39. Section 2(1) defines "unincorporated body" to include a partnership. Section 57(2)(b) provides that where an unincorporated body carries on a taxable activity, any supply of goods and services made as part of carrying on that taxable activity is deemed to be supplied by the unincorporated body. If the unincorporated body is a partnership, any supply of goods and services made as part of carrying on its taxable activity is deemed to be supplied by the partnership and not by any of the partners.
40. The engagement of the partner as a director is excluded from the term "taxable activity" under s 6(3)(b). Section 6(5) does not apply because, although the partner may be carrying on the taxable activity of the partnership, the services are deemed to be supplied by the partnership, and not the partner, under s 57(2)(b). Therefore, the partner is not required to account for GST on the supply of their services.
41. Section 6(3)(b) does not apply in the case of the partnership as the partnership is not engaged as a director. The partnership supplies the services of one of its partners to another person as part of its taxable activity. The partnership will therefore be required to account for GST on the fees received for the supply of the partner's services as a director. The partnership should also provide the company with a tax invoice.
42. While s 6(4) does not apply in this situation, the company will still be able to claim input tax on the payment for the director's services. This is because the partnership is deemed to supply the partner's services under s 57(2)(b) in much the same way as s 6(4) deems an employer to provide an employee's services as a director to a company.

Example 6 – Partner in a partnership engaged as director of company

A GST-registered legal partnership provides legal advice to Rosencrantz Ltd. A partner in the partnership, Gertrude, is elected on to the board of directors of Rosencrantz Ltd as a representative of the partnership. Rosencrantz Ltd is GST registered.

The engagement of Gertrude as a director of a company falls within s 6(3)(b) and is therefore excluded from the term "taxable activity". Section 6(5) does not apply as, although Gertrude may be providing the directorship services, the services are deemed to be supplied by the

partnership under s 57(2)(b). Therefore, Gertrude is not required to account for GST on the supply of the directorship services.

The provisions of s 6(3)(b) do not apply to the partnership as it is not engaged as a director of a company. The partnership will therefore be required to account for GST output tax on the fees it receives from the company.

Rosencrantz Ltd may claim an input tax deduction on Gertrude's directorship services that the partnership invoices it for, provided the requirements of the Act, such as s 20(2), are met.

When the company may claim an input tax deduction for fees it pays

43. A person can accept an office of director in different capacities. Depending on the capacity in which the director accepted the office, the company may receive a tax invoice from the director, the director's employer, the director's partnership, or a third party. It is not up to the company to determine the capacity in which the director accepted the office.
44. Section 6(4) applies where a director of a company is also employed by a third party employer and the director must account for their fees to that employer. In this situation, s 6(4) deems the supply of directorship services to have been made by the director's employer. If the director's employer is registered for GST, they will be able to provide a tax invoice to the company for the supply of directorship services.
45. Essentially, the company may claim an input tax deduction for the fees it pays if:
 - the company is registered; and
 - the company holds a tax invoice for the directors' fees.
46. Other requirements of the Act may also need to be satisfied depending on individual circumstances.

Application date

47. This Ruling applies from 30 June 2014. This is the date that the changes to s 6 came into force. The previous Ruling, BR Pub 05/13, was issued on 1 April 2005 for an indefinite period. BR Pub 05/13 is withdrawn from 30 June 2015. As a result, there is a period from 30 June 2014 to 30 June 2015 where this Ruling and the parts of BR Pub 05/13 that were not superseded by the changes to s 6 will apply at the same time. In this regard, the Rulings are consistent. The Commissioner has set the application date for this Ruling as 30 June 2014 to provide certainty for taxpayers in relation to the new legislation and because the Commissioner's view has not changed.

References

Expired Rulings

BR Pub 00/09 "Directors' Fees and GST" *Tax Information Bulletin* Vol 12, No 9 (September 2000): 9

BR Pub 00/11 "Directors' Fees and GST" *Tax Information Bulletin* Vol 12, No 11 (November 2000): 3

BR Pub 05/13 "Directors' Fees and GST" *Tax Information Bulletin* Vol 17, No 7 (September 2005): 9

Subject references

Directors' fees
GST
Output tax
Partnership
Taxable activity

Legislative references

Goods and Services Tax Act 1985, ss 6, 8, 20,
57
Taxation (Annual Rates, Employee Allowances,
and Remedial Matters) Act 2014, s 187

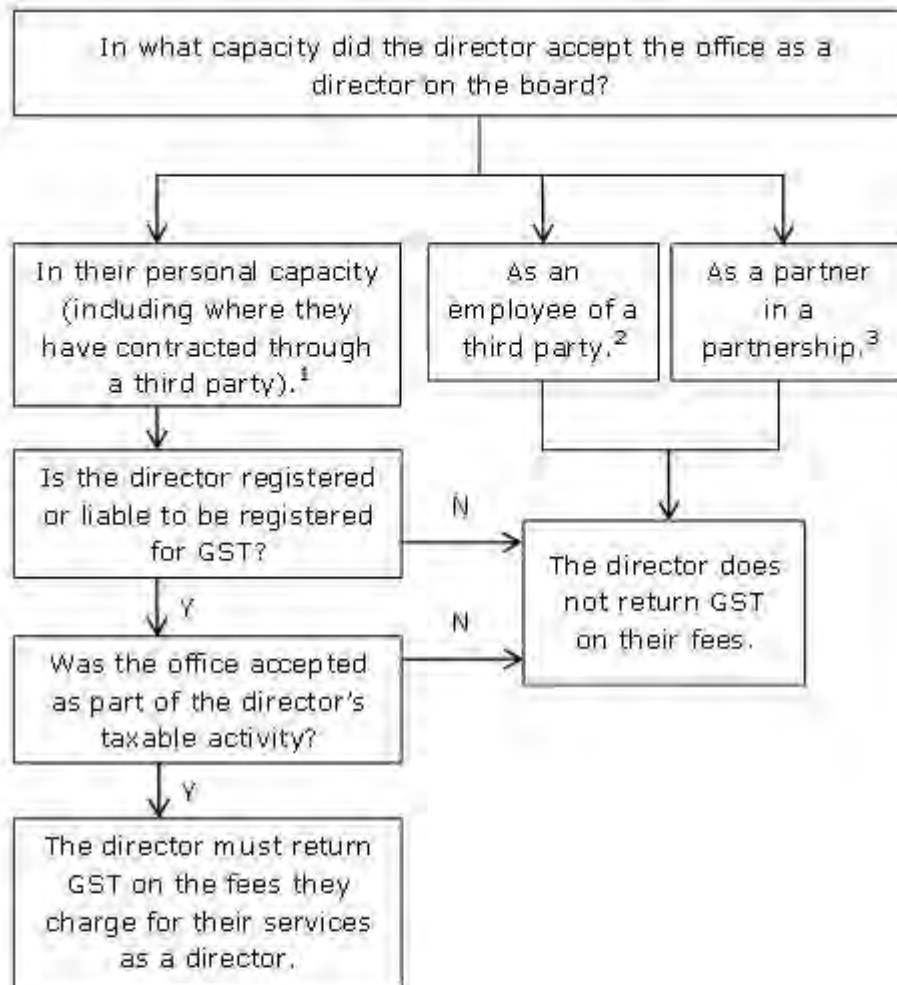
Case references

Wilson & Horton v CIR (1995) 17 NZTC 12,325
(CA)

Other references

Public Information Bulletin 164
Public Information Bulletin 175
Tax Information Bulletin Vol 26, No 7 (August
2014): 96

Appendix 1 – Does a director need to return GST on their fees?



¹ Where the director is contracted through a third party, the third party may need to return GST on the fees they receive for providing the services of the director to the company. See paras 29-32 of the Commentary.

² The employer may be required to return GST on the directors' fees where the director must account for their fees to their employer. See paras 33-37 of the Commentary.

³ The partnership may be required to return GST on the directors' fees in this situation. See paras 38-42 of the Commentary.

Appendix 2 – Legislation

Goods and Services Tax Act 1985

1. Section 6 provides:

6 Meaning of term taxable activity

- (1) For the purposes of this Act, the term taxable activity means—
 - (a) any activity which is carried on continuously or regularly by any person, whether or not for a pecuniary profit, and involves or is intended to involve, in whole or in part, the supply of goods and services to any other person for a consideration; and includes any such activity carried on in the form of a business, trade, manufacture, profession, vocation, association, or club:
 - (b) without limiting the generality of paragraph (a), the activities of any public authority or any local authority.
- (2) Anything done in connection with the beginning or ending, including a premature ending, of a taxable activity is treated as being carried out in the course or furtherance of the taxable activity.
- (3) Notwithstanding anything in subsections (1) and (2), for the purposes of this Act the term taxable activity shall not include, in relation to any person,—
 - (a) being a natural person, any activity carried on essentially as a private recreational pursuit or hobby; or
 - (aa) not being a natural person, any activity which, if it were carried on by a natural person, would be carried on essentially as a private recreational pursuit or hobby; or
 - (b) any engagement, occupation, or employment under any contract of service or as a director of a company, subject to subsection (4); or
 - (c) any engagement, occupation, or employment—
 - (i) pursuant to the Members of Parliament (Remuneration and Services) Act 2013 or the Governor-General Act 2010:
 - (ii) as a Judge, Solicitor-General, Controller and Auditor-General, or Ombudsman:
 - (ia) pursuant to an appointment made by the Governor-General or the Governor-General in Council and evidenced by a warrant or by an Order in Council or by a notice published in the *Gazette* in accordance with section 2(2) of the Official Appointments and Documents Act 1919:
 - (iii) as a Chairman or member of any local authority or any statutory board, council, committee, or other body, subject to subsection (4); or
 - (d) any activity to the extent to which the activity involves the making of exempt supplies.
- (4) Despite subsection (3)(b) and (c)(iii), if a director, member, or other person referred to in those paragraphs is paid a fee or another amount in relation to their engagement, occupation, or employment in circumstances in which they are required to account for the payment to their employer, the payment is treated as consideration for a supply of services by the employer to the person who made the payment to the director, member, or other person.
- (5) For the purposes of subsections (3)(b), (c)(iii), and (4), if a person in carrying on a taxable activity, accepts an office, any services supplied by that person as holder of that office are deemed to be supplied in the course or furtherance of that taxable activity.

2. Section 8 relevantly provides:

8 Imposition of goods and services tax on supply

- (1) Subject to this Act, a tax, to be known as goods and services tax, shall be charged in accordance with the provisions of this Act at the rate of 15% on the supply (but not including an exempt supply) in New Zealand of goods and

services, on or after 1 October 1986, by a registered person in the course or furtherance of a taxable activity carried on by that person, by reference to the value of that supply.

- (2) For the purposes of this Act, goods and services shall be deemed to be supplied in New Zealand if the supplier is resident in New Zealand, and shall be deemed to be supplied outside New Zealand if the supplier is a non-resident.

....

3. Sections 20(1), (2), (3)(a) and (b) provide:

20 Calculation of tax payable

- (1) In respect of each taxable period every registered person shall calculate the amount of tax payable by that registered person in accordance with the provisions of this section.
- (2) Notwithstanding any other provision in this Act, no deduction of input tax and no deduction calculated under section 25(2)(b) or (5) shall be made in respect of a supply, unless—
- (a) a tax invoice or debit note or credit note, in relation to that supply, has been provided in accordance with sections 24, 24BA, and 25 and is held by the registered person making that deduction at the time that any return in respect of that supply is furnished; or
 - (b) a tax invoice is not required to be issued pursuant to section 24(5) or section 24(6), or a debit note or credit note is not required to be issued pursuant to section 25; or
 - (c) sufficient records are maintained as required pursuant to section 24(7) where the supply is a supply of secondhand goods to which that section relates; or
 - (d) the supply is a supply of services that is treated by section 5B as being made by the recipient and the recipient has accounted for the output tax charged in respect of the supply; or
 - (e) the supply is a supply of goods and services that is treated as made under section 60B to a nominated person and that person maintains sufficient records as required by section 24(7B):

provided that where a tax invoice or debit note or credit note in relation to that supply has been provided in accordance with this Act, the Commissioner may determine that no deduction for input tax in relation to that supply shall be made unless that tax invoice or debit note or credit note is retained in accordance with the provisions of section 75.

- (3) Subject to this section, in calculating the amount of tax payable in respect of each taxable period, there shall be deducted from the amount of output tax of a registered person attributable to the taxable period—
- (a) in the case of a registered person who is required to account for tax payable on an invoice basis pursuant to section 19, the amount of the following:
 - (i) input tax in relation to the supply of goods and services (not being a supply of secondhand goods to which section 3A(1)(c) of the input tax definition applies), made to that registered person during that taxable period:
 - (ia) input tax in relation to the supply of secondhand goods to which section 3A(1)(c) of the input tax definition applies, to the extent that a payment in respect of that supply has been made during that taxable period:
 - (ii) input tax invoiced or paid, whichever is the earlier, pursuant to section 12 during that taxable period:
 - (iii) any amount calculated in accordance with any one of sections 25(2)(b), 25(5), 25AA(2)(b) or 25AA(3)(b); and
 - (b) in the case of a registered person who is required to account for tax payable on a payments basis or a hybrid basis pursuant to section 19, the amount of the following:
 - (i) input tax in relation to the supply of goods and services made to that registered person, being a supply of goods and services which is deemed to take place pursuant to section 9(1) or section 9(3)(a) or section 9(3)(aa) or section 9(6), to the extent that a

payment in respect of that supply has been made during the taxable period:

- (ii) input tax paid pursuant to section 12 during that taxable period:
- (iii) input tax in relation to the supply of goods and services made during that taxable period to that registered person, not being a supply of goods and services to which subparagraph (i) applies:
- (iv) any amount calculated in accordance with any one of sections 25(2)(b), 25(5), 25AA(2)(b) or 25AA(3)(b), to the extent that a payment has been made in respect of that amount; and

4. Section 57(2) provides:

57 Unincorporated bodies

- (2) Where an unincorporated body that carries on any taxable activity is registered pursuant to this Act,—
 - (a) the members of that body shall not themselves be registered or liable to be registered under this Act in relation to the carrying on of that taxable activity; and
 - (b) any supply of goods and services made in the course of carrying on that taxable activity shall be deemed for the purposes of this Act to be supplied by that body, and shall be deemed not to be made by any member of that body; and
 - (c) any supply of goods and services to, or acquisition of goods by, any member of that body acting in the capacity as a member of that body and in the course of carrying on that taxable activity, not being a supply to which paragraph (b) applies, shall be deemed for the purposes of this Act to be supplied to or acquired by that body, and shall be deemed not to be supplied to or acquired by that member; and
 - (d) that registration shall be in the name of the body, or where that body is the trustees of a trust, in the name of the trust; and
 - (e) subject to subsections (3) to (3B), any change of members of that body shall have no effect for the purposes of this Act.

5. The term “unincorporated body” is defined in s 2 as follows:

unincorporated body means an unincorporated body of persons, including a partnership, a joint venture, and the trustees of a trust.