

How GST treats particular types of agency / disbursement

Estate agents

Estate agents act on behalf of a vendor and often separately itemise their costs when they prepare an invoice. Such costs might include photographs, advertising, provision of notice boards, etc. However, these cannot be treated as disbursements for GST - they are received and used by the estate agent, not by the client.

Postal charges

Sellers often deliver goods by mail to their customers. The supply by the mail provider is exempt from GST, but it is made to the seller, not to the customer. The seller must therefore charge GST when it passes on this charge to its customer, even if that charge is separately itemised and is exactly equal to the amount charged by the mail provider.

Advocates and solicitors

Advocates and solicitors often describe any charge which they make over and above the basic fee for their services to the client as a 'disbursement', and would consider the term to include all payments to third parties and recharges of overhead expenses. However, although all of these expenses are attributable to a particular client, many of them are incurred by the advocate or solicitor themselves in the course of making their supply.

Directly attributable costs which are borne by the advocate or solicitor, sometimes referred to as 'taxable' disbursements, form part of their own supply and must be included in the taxable value of their supply when passed on to the client. However, they may treat costs for supplies which were actually received by their clients, sometimes referred to as 'nontaxable' disbursements, as disbursements for GST purposes.

The following charges can normally be treated as disbursements by solicitors on behalf of their clients:

- statutory charges (the supply by the statutory body is to the client, who has the statutory liability - the charge is met by the solicitor only as a matter of convenience), such as:
 - court fees
 - stamp duty
 - incorporation fees
 - land registry fees
 - probate fees
- charges for the professional services of a third party. For example, the sale of a property is usually organised by a solicitor, who will present a bill to the vendor for both his own services and the commission

payable to the estate agent. The supply of the estate agent's services is to the vendor, not the solicitor, and so the solicitor may treat this as a disbursement for GST purposes. The fees of surveyors, or witnesses, and charges for police and medical reports may also fall into this category

The following charges can't be treated as disbursements by solicitors on behalf of their clients:

- charges from third parties which were actually incurred for the advocate or solicitor's own purposes (for example, telegraphic transfer fees) which represent a charge by the bank to a solicitor for the service of transferring money out of the solicitor's bank account
- general expenses borne by the solicitor or their staff – for example travel, accommodation, and telephone and telex charges. The fact that the solicitor may have withdrawn funds from a separate client account to make a payment has no bearing on the situation. If those funds were withdrawn to meet costs borne by the solicitor, the solicitor may not treat the recharge to the client as a disbursement, even if it is made at cost

Solicitors' search fees - searches by an official body

Where a solicitor pays a fee for a search where the 'search' is undertaken by an official body, such as the States of Jersey, Royal Court or a parish, this may be treated as a disbursement where the document is passed on to the client, since the solicitor merely obtains a document on behalf of the client. Here, whether the solicitor passes the document obtained from the search to the building society or bank in respect of a client's property purchase, or to the client direct, the postal search fee may still be treated by the solicitor as a disbursement.

Solicitors' search fees - personal searches

Where the solicitor pays a fee to personally search official records such as are held by the States of Jersey, Royal Court or a parish, in order to extract information needed to advise the client, this cannot be treated as a disbursement for GST purposes. The fee is charged for the supply of access to the official record and it is the solicitor rather than the client who receives that service. The solicitor then uses the information in order to give advice to the client and the recovery of the outlay represents part of the overall value of the solicitor's supply to the client.

Collectors who act as agents

Amounts paid by collectors to solicitors in respect of court fees may be treated:

- as disbursements made on behalf of the creditor. Any amount recovered from debtors in respect of such fees and retained by collectors may then be regarded as reimbursement of the amount disbursed and outside the scope of GST
- legal fees. In respect of GST charged by solicitors for their services, there are only two options open to collectors:
- they may choose not to recover the GST as input tax, and simply treat the charges as disbursements. In this case, where the agreement with the creditor provides that the collector bears the cost of solicitors' services but may retain, as reimbursement of his costs, any amounts recovered from the debtor in respect of solicitors' charges awarded by the Court, such amounts may be treated as outside the scope of GST
- alternatively, they may choose to recover the GST as input tax, subject to the normal rules, but recharge the fees plus GST to the creditor under the terms of agents acting in their own name

Collectors who act as principals

If, in the particular circumstances of any case, the collector considers that he is acting as a principal, any GST charged by the solicitor may be recovered as input tax, subject to the normal rules. However, any amounts recovered from the debtor both in respect of court fees and / or solicitors' charges and retained by the collector can only represent consideration for his supply of services to the creditor. Output tax must be accounted for on all such amounts in the normal way. This treatment will not apply to assignments of debts for which the next paragraph applies.

Assigned debts

An equitable or legal assignment of the debt to the collector, whether in whole or in part, is an exempt supply of services to the collector. Collection of both equitably or legally assigned debts by the person to whom they are assigned is outside the scope of GST.

Undisclosed agency occurs when it is important that the identity of either the seller or customer is not known to the other, usually for commercial or political reasons. The party that wishes to remain anonymous appoints an agent to act on its behalf and to be seen by the other party as the principal.

Where there is an undisclosed agency, there are two main supplies: from the buyer to the agent, and by the agent to the seller. The agent may also make a supply of its services to the principal that appointed it.