

PRACTICE DIRECTION No 5 of 2015

Allowance For Goods and Services Tax in Taxations of Costs

Preamble:

This Practice Direction clarifies how Goods and Services Tax ("GST") will be treated on a taxation of costs.

At present, rule 63.75 of the Supreme Court Rules ("the Rules") provides that a "reasonable amount" will be allowed on taxation for GST paid or payable by the party entitled to costs under a costs order ("Party Entitled"). This indicates that the scale of costs in the Appendix to Order 63 of the Rules does not have any inbuilt allowance on account of GST and that is confirmed by this Practice Direction.

As some transitional and short term savings were expected when GST commenced by reason of the abolished sales tax regime, rule 63.75 of the Rules only provided for a "*reasonable amount*" to be allowed in lieu of specifying the full GST payable. The period during which short term savings were expected has since elapsed.

This Practice Direction therefore also clarifies how the Court will determine what is a "*reasonable amount*" for the purposes of rule 63.75 of the Rules in the usual case.

This Practice Direction now provides as follows:-

1. In this Practice Direction 'GST' has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* ("the GST Act").
2. Practice Direction 4 of 2000 is repealed.
3. It is acknowledged that the scale of costs provided for in the Appendix to Order 63 of the Rules does not include any allowance for GST.
4. In taxing costs the Taxing Master may allow an amount or rate to reflect the amount of GST paid or payable by the Party Entitled.
5. No allowance shall be made pursuant to paragraph 4 where the Party Entitled is not registered for GST or is otherwise entitled to claim an input credit in respect of the legal costs of the Party Entitled and the subject of the taxation.
6. Before determining whether to make an allowance in accordance with paragraph 4, the Taxing Master may require the Party Entitled to establish to the satisfaction of the Taxing Master and in such manner as the Taxing Master shall determine, whether the Party Entitled is

registered to pay GST, or whether or not the Party Entitled is entitled to an input credit in respect of the costs paid by the Party Entitled and to which the taxation relates.

7. Where the Taxing Master makes an allowance pursuant to paragraph 4 the reasonable amount within the meaning of that term in rule 63.75 of the Rules shall ordinarily be the full rate of GST payable from time to time pursuant to the GST Act unless the Taxing Master determines to allow a lesser amount or rate.
8. This Practice Direction does not apply to assessments of legal costs pursuant to Division 8 of Part 3.3 of the *Legal Profession Act*.

Dated 11 September 2015

Trevor Riley,
Chief Justice