

If the agreement was made after 2 December 1998 but before 8 July 1999 (date of Royal Assent) and the client is entitled to full input tax credits, there is no GST payable on the supply until 1 July 2005.

If the barrister was briefed after 8 July 1999 for services to be provided before and after 1 July 2000, GST is payable on those legal services supplied after 1 July 2000 whether or not there is any agreement or facility to increase the fees to cover the GST.

There is a deeming transitional provision that the supply of services is continuous and uniform over the entire period in some circumstances. This is when the agreement is to provide periodic or progressive services over the period. For example, a retainer based on providing services as required for a set fee may attract this deeming provision. The position is different if the barrister can properly separate and charge for the legal supplies provided into pre June 30 and post 1 July 2000.

Assume the barrister receives payment after 1 July 2000 for services done entirely before. There is no GST. It does not matter when the fee note is sent.

### Payment

The first due date for payment of the GST is 21 October 2000 and then quarterly. Penalties will apply to late payments.

### Pro-bono work

There is no GST where there is no cost for the supply (unless to an associate of the barrister). This is because there is no consideration and so no taxable supply. Despite this input tax credits on supplies are available because the pro-bono work is done as part of practice.

### Cashflow

Cashflow control depends on good timing, good record keeping, knowing when to bill, knowing when to obtain tax invoice for supplies, and good collection systems in place.

In any quarter barristers may want to collect fees as soon as possible so they can have the use of the 10 per cent until GST is payable up to three months 21 days later. It will also assist to pay for costs, which will include a loading for GST. The amount charged for the GST

is the barrister's and not required to be held for the ATO in trust. When the GST is due, from the barrister's funds, they must pay the tax.

Those clients who are on the accruals system (most enterprises other than financial institutions with turnover in excess of \$1 million), will want to get the fee note from the barrister before the date the GST is payable (which may be monthly or quarterly) because they can claim an input tax credit before they pay.

### Record keeping

A barrister may be asked or expected to have to provide more details in the fee notes (if they are to be the tax invoice). This is especially so if the client needs to divide the services between different types of full input tax credits, partial credits and no credits.

It is worth noting the fee note does not have to be the tax invoice. I expect there will be rare circumstances where a barrister sends a fee note that is not a tax invoice.

Records must be kept for between two and 10 years depending on the cost of the supply.

Tax invoices are a vital part of the system and must be obtained before an input tax credit is claimed. For supplies costing less than \$50 you will not usually get a tax invoice. You will have to keep records of the date, the nature or type of supply and the cost.

A supplier is not obliged by law to provide the tax invoice unless you ask for it.

Until proper tax invoices can issue, the ATO says that a document issued before 1 July 2000 for a taxable supply after that date must contain the following information:

- the supplier's name (or trading name) and address;
- the date of issue;
- the price of the taxable supply;
- either; "(i) a statement that the price of the taxable supply includes the amount of GST expected to be payable; or "(ii) the amount of GST expected to be payable.

### Disclaimer

The information contained in this paper does not constitute professional advice and must not be relied upon as such.

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## Monika at William Forster Chambers

It may be long way from Germany to Australia, but that hasn't stopped law graduate Monika Trager from travelling to Darwin to spend three months with William Forster Chambers.

Since commencing work at William Forster Chambers on 28 January 2000, Ms Trager has met many local barristers and solicitors, joined the Law Society for the Opening of the Legal Year lunch in Darwin, carried out legal research, and been exposed to law in Australia.



*Monika Trager, who has "been very well looked after" during her stay in Darwin.*

"It is very difficult for me to understand Australian law in such a short period of time, as the law is so different from ours in Germany, but I hope to learn enough to be able to make some comparisons between the two," Ms Trager said.

Ms Trager completed her legal studies at Julius Maximilians University in Wurzburg in 1997 and spent the

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following two years working in a law firm in her home town Bamberg completing the German equivalent of articles.

"There is a program available in my state, the state of Bavaria, for people to spend three months in a law firm anywhere in the world after they have completed their articles," said Ms Trager.

"Some people go to the USA, some to places like Saudi Arabia, and I chose to come to Australia.

Before arriving in Darwin Ms Trager spent six months travelling around Australia. "Everywhere you go is interesting and new — no place is the same.

"I would really like to get to a bush court while I am in the Territory as we have nothing like that in Germany," she said.

Ms Trager has an interest in criminal and tax law and would like to work for the Bavarian Government when she returns to Germany.

"Working for the government is a good job for women. Many law firms don't engage women because they have children etcetera. The government allows for more flexible working arrangements, like work share," she said.

Ms Trager says she has been well looked after during her stay in Darwin and has enjoyed her time so far.

## New references for the ALRC

Federal Attorney General Daryl Williams has issued three new references to the Australian Law Reform Commission for separate reviews of the *Marine Insurance Act 1909*, the *Judiciary Act 1903* and *Civil and Administrative Penalties*.

The Commission will examine the extent to which the Marine Insurance Act can be modernised to reflect contemporary reality in the shipping and insurance industries.

As shipping is essential to Australia's international trade, the Commission will also look at current international practice in marine insurance to ensure Australian consistency with international standards.

The Judiciary Act deals mainly with the jurisdiction and powers of the High Court. It specifies the jurisdiction which can be dealt with only by the High Court and the jurisdiction which is shared with the State and Federal Courts. The Act also deals with claims

against the Commonwealth. The Commission will examine these provisions of the Judiciary Act to ensure that the most appropriate arrangements are in place for the efficient administration of federal jurisdiction in civil matters.

The third reference to the Commission relates to Civil and Administrative Penalties. Breaches of civil law result in a financial rather than a criminal conviction. They generally carry heavy fines and are targeted at corporate crime and white collar crime and offences.

The Commission will compare how these penalties have operated so a best practice model can be developed and used as a benchmark for future legislation.

The review of the *Marine Insurance Act 1909* is to be completed by 31 December 2000, the review of the *Judiciary Act 1903* is to be completed by 28 February 2001 and the review of the *Civil and Administrative Penalties* is to be completed by 1 March 2002.

## Rounds

### Ms Mary Bryant QC

has been selected as Australia's first Chief Federal Magistrate.

### Mr John Duguid

is now at NAALAS:

1 Gardiner St, Darwin NT 0800

Tel: 8982 5151

Fax: 89812395

Email: [legalservice@naalas.org.au](mailto:legalservice@naalas.org.au)

### Ms Sally Pfitzner

has become a partner at Withnall Maley & Co.

Ron Lawford advises that he practices in the area of aviation law.

He can be contacted on telephone: 8948 3766 or fax: 8948 1377.

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