

AUSTRALIAN TAX ADVISER

The IFX Legal Tax Team

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SECTION 1 – PROFESSIONAL DEVELOPMENTS

Contractors and GST

Readers may recall that last month's Tax Adviser addressed the issue of employees and contractors. The decisions in *Construction, Forestry, Maritime, Mining and Energy Union & Anor v Personnel Contracting Pty Ltd*¹ and *ZG Operations Australia Pty Ltd & Anor v Jamsek & Ors* handed down on 9 February 2022² confirmed that the nature of the relationship between contracting parties is to be determined based on the terms of the contract.

Both those decisions found that where the nature of a relationship is recorded in a written contract, the 'substance and reality' of that relationship and how the parties interact is irrelevant. It is only where the written contract is less than comprehensive that the parties' working relationship and interactions may come into question.

Once that question has been settled, the next issue is the GST treatment of payments where those payments are made to GST-registered contractors.

Payments to contractors fall into three broad categories:

- payment for services rendered by the contractor
- reimbursement of expenses incurred by the contractor
- payment of expenses on behalf of the contractor.

Payment for services is fairly straight-forward, so this article will examine the differences between 'reimbursement of expenses incurred by the contractor' and 'payment of expenses on behalf of the contractor'.

¶3.1 Reimbursement of expenses

This typically occurs when a contractor pays for meals, accommodation, transport or other expenses associated with providing services to the client. The essential difference between this scenario and the scenario where the client pays these costs on behalf of the contractor will depend upon who is liable under the contract with the provider of those meals, accommodation, transport or other expenses. Put another way, who would the supplier of those items look to in the event of cancellation or non-payment. If that person is the contractor, then the contractor would be acting as the principal in the contract. Where that person is the contractor's client on the other hand, then the contractor is acting as the agent of their client.

¶3.2 What is an agent?

In legal terms, an agent is an entity³ that is authorised to act on behalf of another entity. An agent can either be a 'universal agent' (an entity that is authorised to act on behalf of the principal in all matters) or a 'specific

¹ [2022] HCA 1

² [2022] HCA 2

³ An agent does not need to be an individual – any legal person (including a company) can be an agent.