



Technical Advisory
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Re: GCT on Maintenance Charges

General Position:

The provision of commercial rent is a taxable activity of which the supply (including maintenance) is subject to tax.

1. The Act imposes a tax on the supply of goods and services by a Registered Taxpayer in the course or furtherance of a taxable activity. The word maintenance is not defined in the GCT Act; however it can be regarded as the provision of a service or part of the cost incurred by the landlord in providing the rental of the property. The GCT treatment of maintenance fees depends not on the name given to the service, but on the nature of the service provided.
2. A distinction has to be made between two categories of maintenance fees as follows: -
 - (i) Fees in respect of maintenance costs which are the legal obligation of the lessor and which the lessor recovers from the lessee (whether separately or as part of the rental, and
 - (ii) Costs, which the lessor pays on behalf of, and recovers directly from the lessee.
3. Fees recovered in 2 (ii) above are mere pass-through charges (disbursement) not falling within the ambit of Section 18 [4] of the General Consumption Tax Act. It is our view that the fees in 2 (i) falls squarely within that provision of Section 18(1)(c) and may also fall within Section 18(4) and accordingly, subject to tax.



4. It is the legal obligation of the lessor to pay maintenance charges in respect of the common areas – i.e. insurance premiums for the premises, security, property tax, outside lighting and the maintenance of the common property.
5. In most cases the lessor may seek to recover this cost from the tenants. It cannot be said therefore that the lessor spends the lessee's money on the lessee's behalf, but rather that he meets his own obligation (expenses) from the income he receives from the lessee.
6. The lessee is not the direct beneficiary of maintenance services, but the lessor. The lessee as occupant enjoys these services but only because of his contractual relationship with the lessor.

Disbursement not subject to tax:

The category into which a particular maintenance fee falls is essentially a question of fact, having regard to all the circumstances. However, below is a list of the conditions we would expect to be satisfied for a fee to be treated as a non-taxable re-imbusement falling into category 2 (ii) above.

- ✓ The fee is a recovery for a payment made by the lessor to a third party in which the lessor acts as agent of the lessee;
- ✓ The lessee actually received and used the goods or services provided by the third party.
- ✓ The lessee authorized the lessor to make the payment on his behalf;
- ✓ The lessee knew that the goods or services paid for would be provided by a third party;
- ✓ The lessor's outlay is separately itemized when he invoices the lessee;
- ✓ The goods or services, which the lessor paid for, are clearly additional to the supplies, which he provides to the lessee on his own account.
- ✓ The lessor has documents in support of the amount disbursed;
- ✓ The lessor derives no direct benefit from the goods or services purchased on behalf of the lessee.
- ✓ The lessor does not claim a credit for tax stated on the invoice.

Reimbursed fee in respect of expenditures by the lessor not meeting all the conditions above are, in our view, taxable within the terms of Section 18 (1) or (4).

However, it is difficult to make general rules for each item of maintenance. An examination has to be made of all the circumstances in each particular case in order to determine, according to the above guidelines, the tax status of the fee.

Extract from the GCT Act

18. Meaning of supply.

18. (1) For the purposes of this Act "supply" includes-

(a) the sale, transfer or other disposition of goods by a registered taxpayer so that the goods sold, transferred or otherwise disposed of no longer form part of the assets of a taxable activity;

(b) the exercise of a power of sale by a person other than a registered taxpayer in satisfaction of a debt owed by a registered taxpayer;

(c) the provision of services,

18 (4) Where a registered taxpayer receives an amount by way of reimbursement, recovery or otherwise in respect of goods or services acquired by him for the purpose of making taxable supplies, he shall be deemed to have made a taxable supply and the amount aforesaid shall be deemed to be the consideration for that supply.

FOURTH SCHEDULE (Section 18 (8))

TAXABLE SUPPLIES WHICH CONSTITUTE THE PROVISION OF SERVICES

The following shall be regarded as the provision of services -

- (a) the production of goods consequent on the treatment or processing of other goods;
- (b) the supply of -
 - (i) water (other than in a container);
 - (ii) electricity;
 - (iii) refrigeration;
 - (iv) air-conditioning;
- (c) hiring (other than under a hire purchase agreement), leasing or renting of goods;
- (d) the supply, other than the sale of real property, of anything for a consideration which is not a supply of goods;**
- (e) the supply of drinks or meals in the operation of a bar, canteen, club, hotel, restaurant or other place of business similar thereto or a catering service other than drinks or meals supplied in the cafeteria or canteen of an educational institution approved by the Minister of Education.