



AUSTRALIAN
FUNERAL
DIRECTORS
ASSOCIATION

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23 July 2021

Melissa Harrison
Australian Taxation Office
Email: Melissa.harrison@ato.gov.au

GSTD 2021/D2: is the supply of a burial right in respect of a public cemetery subject to GST?

Dear Melissa,

The Australian Taxation Office (ATO) has published a draft decision that the supply of a burial right in a public cemetery is not subject to GST. The Australian Funeral Directors Association is pleased to provide our submission to the ATO to assist in its review of the GST consequences of a burial right in respect of a public (i.e., state-owned) cemetery.

AFDA's primary concerns which will be addressed in this submission relate to:

- The potential reputational damage that might impact the funeral industry by a retrospective application;
- The administrative and cost burden that would need to be carried by the funeral industry which is comprised of many small, family-owned businesses if those businesses are to be responsible for the administration on refunds; and,
- The implications for 'competitive neutrality' requirements of federal and state governments if public cemeteries are to be exempt from GST.

About AFDA

Formed in 1935, the Australian Funeral Directors Association (AFDA) members represent 65% of the approximately 160,000 funerals conducted in Australia annually. AFDA is widely recognised as the authoritative voice on all funeral industry matters and its key objective is to optimise the funeral experience and ensure quality delivery of service to the wider community by enhancing and promoting professional funeral standards. AFDA has 142 members with principal head offices with an additional 490 premises/branches totaling 632 funeral premises. AFDA also has 73 Affiliate Members who are suppliers to the industry. AFDA members represent the majority of funeral directors in Australia.

AFDA view on GST for funerals and the proposed changes

AFDA wishes to highlight the following points of view in our submission:

- The funeral industry has applied the 'single supply' method of GST calculation since the introduction of GST in 2000;
- Interment rights should not be subject to GST;
- Funeral directors should not charge GST when acting as an agent for the purpose of organising a burial;

- The ATO is seeking to correct previous advice given by it to the industry in relation to the application of GST on burial rights in respect of public cemeteries; and,
- Consumers that have paid GST either to a funeral director or to a cemetery directly within the last 7 years may be due a refund of the GST paid if the ATO proceeds with its new advice.

There are 6 key points AFDA wishes to bring to the attention of the ATO:

1. Funeral directors applied GST in accordance with past rulings from the ATO.
2. The significant administration burden that would be placed on funeral directors of retrospectivity if the ATO's new advice were applied.
3. The cost of administration charges would likely outweigh the value of the majority of GST refunds.
4. Competitive neutrality implications would arise from public cemeteries being exempt from GST.
5. Time of commencement – on or after 1 July 2022 is recommended if the ruling is to proceed.
6. AFDA supports any measures which reduce the cost of funerals to the public.

1) Funeral directors applied GST in accordance with past rulings from the ATO

Funeral directors have complied with the ATO's advice on GST since the introduction of GST. AFDA is concerned about the potential reputational damage to funeral directors if GST is to be refunded retrospectively. The ATO became aware of the position adopted by taxpayers or an industry practice in applying ATO rulings but did not correct ATO rulings within a reasonable timeframe. AFDA members are now in the difficult position that families and/or media may conclude that the funeral industry is responsible for overcharging the GST to client families.

2) The administration burden placed on funeral directors of retrospectivity

AFDA estimates that there could be up to 600,000 burials since 2014 that may be enquired about by the estate and/or families seeking the GST refund, as consumers are unlikely to be aware whether interment occurred in a public or private cemetery.

While not all burials take place in public cemeteries, the public may not know the difference and having to deal with enquiries would add to the administrative burden placed on funeral directors.

Most Funeral Directors are small, family-owned businesses. Ninety-two percent of AFDA members conduct less than 1000 funerals per year. Burials are approximately 35% of all funerals, meaning that many small family-owned businesses will be required to analyse 35% of all of their transactions (at-need funerals and all pre-paid funerals) for the previous 7 years.

This will require employing additional staff in many cases. For example, a business conducting 1000 funerals per annum, would have organized approximately 350 burials. This would equate to some 2450 individual transactions over the seven-year period that would need to be reviewed to establish if a refund of GST is due.

If the transaction is eligible for a refund of GST, the Funeral Home must then ensure that the correct person receives the refund. This is further complicated by the facts that:

- The payer may not be the person named on the interment right;
- An Estate that was the payer may have been wound up;

- A payer may have been reimbursed from the Estate, or another party.

Further, many Funeral Homes pre-arrange around 20% of their at-need funerals. This means a Funeral Home which conducts 1000 funerals per annum would pre-arrange about 200 funerals, equating to an additional 490 transactions that would need to be considered for a GST refund.

The retrospective nature of the ATO's draft ruling creates a significant level of confusion as to who is actually eligible for the GST refund. Clarity is sought from the ATO on the following:

- Who is eligible to claim a refund?
- Who is the correct person to claim?
- What if the original payer has died?
- Can more than one next of kin claim proportionately, especially if they paid proportionately for the funeral?
- Can a family member claim who has been reimbursed the cost of the funeral by other family members, through the deceased's estate, by an insurance policy, or some other means?
- Does the status of the original consumer/payer/recipient make a difference? For example, if the funds came from the deceased's bank account originally and the estate is subsequently wound up, to whom would the refund be owed, if sought by the contract signatory or another family member?
- What if multiple parties paid for the funeral?
- What if an equal ranking next of kin sought reimbursement but was not the signatory on the funeral contract? Who is entitled to the refund and in what circumstances?
- What if the funeral home has closed down?

Contrary to the view expressed by ATO representatives at the recent ATO webinars, AFDA believes there will be significant public interest, and furthermore, AFDA members would be ethically obliged to notify all relevant estates/client families who conducted a burial at a public cemetery since 2014. As stated, the funeral industry is concerned about reputational risk should the media or public consider the error made was by the funeral industry, and not due to the funeral industry following the ATO ruling. Should this eventuate, further costs will be incurred by the funeral industry required to engage in media campaigns to educate the media and past and potential client families, that the funeral industry was simply following the past ATO ruling.

3) The likelihood of administration charges outweighing GST refunds

If refunds are legally due, AFDA will of course comply. However, AFDA believes it is reasonable for members to apply an administration fee as the overpayments did not occur due to any fault of funeral directors, but, rather, because of the ATO's incorrect ruling. AFDA estimates that over 95% of GST refunds will be less than \$300 which in turn makes the claim almost negligible once administration costs are taken into account. This becomes burdensome and costly with little or no benefit to eligible clients.

AFDA members may also have a potential 3-month delay between the funeral director paying the refund and receiving reimbursement from the ATO leading to potential cash flow issues for funeral directors' businesses.

4) Competitive neutrality implications

AFDA is concerned on behalf of some members who own private cemeteries that the intended actions by the ATO will prevent, restrict or distort competition between private and public cemeteries, thus providing an unjustifiable advantage to government-owned public cemeteries.

5) Time of commencement

As the change will be a 'whole of industry' change, AFDA recommends allowing a lead time that commences on or after 1 July 2022. Communication and education to members will take significant resources and time to best guarantee all funeral directors are aware and ready to implement the changes by this date.

6) AFDA supports any measures which reduce the cost of funerals to the public.

AFDA recognises funerals can be costly particularly in relation to burial costs. Any change that reduces the cost of the overall funeral for families AFDA supports.

AFDA confirms that we have seen the correspondence submitted by Ken Fehily from Fehily Advisory and in the main, supports Ken's position and advice on this matter.

Conclusion and Recommendations

AFDA is concerned about the potential reputational damage to its members and the administrative burden that would have to be carried by funeral directors, many of which are small, family-owned businesses, if the ATO were to require the industry to administer the GST retrospectively.

AFDA therefore recommends the following:

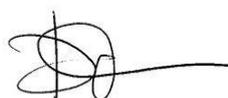
- That once administration fees are taken into account, 95% of GST refunds will not result in a refund, making retrospectivity costly and unviable for many businesses in the sector.
- Any changes should commence from 1 July 2022.
- Competitive neutrality implications should be considered by the ATO before proceeding with this decision.

AFDA wishes to thank the ATO for considering the concerns of the Australian Funeral Directors Association, and would be pleased to continue to be part of any future consultation process.

Yours faithfully,



Adrian Barrett
National President



Dale Gilson
Chief Executive Officer