GSTR 1999/D13 - Goods and Services Tax: Grants of Financial Assistance

Draft Goods and Services Tax Ruling
Goods and Services Tax: Grants of Financial Assistance

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Preamble

This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered, views of the Australian Taxation Office. This draft may not be relied on by taxation officers, taxpayers and practitioners, as it is not a ruling or advice in terms of section 37 of the ***Taxation Administration Act 1953****. When officially released it will be a public ruling for the purposes of section 37 and may be relied upon by any person to whom it applies.*

What this Ruling is about

1. This Ruling deals with the application of the Goods and Services Tax (‘GST’) to grants of financial assistance and funding. The Ruling provides guidelines for working out when grants of financial assistance and funding constitute consideration for a taxable supply. The Ruling applies to grants made both by governments and by the private sector.

2. The Ruling also deals with the application of the *A New Tax System (Goods and Services Tax Transition) Act 1999* (‘the Transition Act’) to grants.

3. We will issue a further Ruling will issue in relation to payments between government related entities that are specifically covered by an appropriation. Such payments are not subject to GST. This is relevant in determining the treatment of grants made from one government related entity to another.

4. All legislative references in this Ruling are to the *A New Tax System (Goods and Services Tax) Act 1999* (‘the GST Act’) unless otherwise specified.

Date of effect

5. This Ruling, when finalised, will apply on and from 8 July 1999 (the date of Royal Assent to the (‘GST’) legislation).

Context of grants

6. One entity may provide financial assistance to another by means of direct grants, contributions, subsidies, co-payments and similar means. Both government and private organisations make such payments, sometimes referred to as transfer payments, for many reasons. These range from money given out by a charity for food or clothing to major government-funded projects.

7. In this Ruling we refer to such payments of financial assistance as grants. The term 'grantor' refers to the entity that makes a grant. The term 'grantee' refers to the entity to whom a grant is made.

Ruling

8. Grants to private and community organisations will be subject to GST where they represent consideration for a taxable supply. In determining whether this is the case, the grant must satisfy all of the following tests:

a) does it represent *consideration* for a *supply*;

b) is the supply to which it relates made in the course or furtherance of an *enterprise* that is carried on by the supplier;

c) is the supply for which it is consideration connected with Australia; and

d) is the person making the supply that it relates to registered for GST, or required to be registered for GST?

Is the grant consideration for a supply?

9. For a grant to be subject to GST, it must be consideration for a supply. Whether a grant is consideration for a supply will depend on the particular facts and circumstances of each grant program. However, this Ruling will assist grantees and grantors in determining whether GST applies to a grant.

10. The term *supply* is defined as 'any form of supply whatsoever'.[1] Supplies include, but are not limited to:

- the provision of advice or information;
- the creation, grant, transfer, assignment or surrender of any right; and

[1] Subsection 9-10(1).

- the entry into, or release from, an obligation to do anything, or to refrain from an act; or to tolerate an act or situation.[2]

Grants in kind are supplies

11. A grant of something other than money is a supply. In the case of grants in kind, the grantor supplies the thing granted to the grantee. The grantee may make a supply to the grantor in return for that thing. Where this is the case, GST will apply to each supply, providing they are taxable supplies. Where the parties are at arms length, the value of each supply will be the same and no net GST will be payable by either party.

Most grants are consideration for a supply

12. A grant of money is not a supply but may be consideration for a supply. Consideration is any payment, act or forbearance in connection with, in response to, or for the inducement of a supply of anything.[3] Consideration may be voluntarily made, and it need not be made by the recipient of the supply.[4]

Undertaking or obligation to do something

13. In most cases, a grantee will enter into an obligation, or make an undertaking, to do something in return for the grant. Such an obligation or undertaking is a supply for which the grant is consideration. For example, the grantee may undertake:

- to do something with the granted funds;
- to use the funds granted in a manner that will further the grantor's objectives; or
- to provide specified services for or on behalf of the grantor.

Creation or surrender of a right in the grantor

14. A grant agreement may establish a right in the grantor, such as a right to repayment if the grantee fails to do use the funds in the manner specified by the grantor. The creation of such a right establishes that there is a supply by the grantee to the grantor for which the grant is consideration.

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[2] Subsection 9-10(2).
[3] Subsection 9-15(1).
[4] Subsection 9-15(2).

15. Where the grantee has an existing right, which the grantee surrenders in exchange for the grant, the surrender of the right is a supply[5] for which the grant is consideration.

16. However, where a grantor merely expects the grantee to spend the grant in a particular manner and where there is no undertaking or obligation on the part of the grantee to do so, the mere expectation does not establish a supply to the grantor for which the grant is consideration.

Provision of information by the grantee

17. In most cases, a grantee is required to provide information of some form to the grantor. A grant is consideration for a supply where it is paid in connection with a supply of information.

18. A payment is still in connection with a supply of information even if it is not occasioned by the provision of information. For example, a provision of a report on how the granted funds were expended will be a supply of information in connection with the grant.

Gifts to non-profit bodies are not consideration

19. A gift to a non-profit body is not consideration for GST purposes.[6] This is the case whether or not the gift is in connection with the supply of anything. A 'gift' is something transferred by the grantor voluntarily and free from contractual obligation, with no advantage of a material character received by the giver in return.

Is the supply made in the course or furtherance of an enterprise?

20. The supply to which the grant relates must be made in the course or furtherance of an enterprise that is carried on by the supplier. When we finalise Draft Miscellaneous Taxes Ruling MT 1999/D1, the parts of it that explain the definition of 'enterprise' under section 38 of the *A New Tax System (Australian Business Number) Act 1999* ('ABN Act') will reflect our interpretation of the definition of 'enterprise' under section 9-20. (See paragraphs 84 to 92 for further explanation.)

Is the supply connected with Australia

21. We will be issuing a draft Ruling in January 2000 dealing with our interpretation of supplies connected with Australia.

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[5] Paragraph 9-10(2)(e).
[6] Paragraph 9-15(3)(b).

Is the grantee registered or required to be registered

22. Before a grant will be subject to GST, the person making the supply, that is the grantee, must be registered, or be required to be registered.[7] A supply is not subject to GST unless this registration requirement is met. Further guidance on this question can be found in the registration guide issued by the Australian Business Registrar.

Input tax credits for grants

23. Where both grantor and grantee are registered, or required to be registered, a grantor will be able to claim an input tax credit for the grant if the supply is a *creditable acquisition* of the grantor[8]. We explain this at paragraphs 114 to 120.

Timing rules

24. There are 'attribution' rules in the GST Act which determine when GST is payable on grants. We explain the application of the attribution rules at paragraphs 121 to 130.

Application of GST Transition Act

25. While most grants programs operate on the basis of financial years, in some cases a grants program will be entered into over a period which will span the introduction of GST. The application of the provisions of the GST Transition Act will depend on the nature of the supply for which the grant is consideration. We explain the application of the Transition Act to grants at paragraphs 131 to 143.

Explanations (this forms part of the Ruling)

26. The GST treatment of grants primarily depends on whether the grant represents *consideration* that is in connection with a *taxable supply*. Consideration and taxable supply are defined in sections 9-15 and 9-5 of the GST Act respectively.

27. GST is payable on taxable supplies. Section 9-5 of the GST Act sets out the four basic requirements to be met for a supply to be a taxable supply:

- the supply must be made for consideration;

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7 Paragraph 9-5(d).
8 Section 11-5.

- it must be in the course or furtherance of an enterprise that is carried on by the supplier;
- it must be connected with Australia; and
- the supplier must be registered or required to be registered.

Is the grant consideration for a supply?

28. Given the scope of the definition of supply and the variety of circumstances surrounding particular grants and grants programs, it is not practicable to establish an exhaustive set of rules for determining whether a grant represents consideration for a supply. Each case needs to be considered having regard to its facts and circumstances.

Meaning of supply

29. *Supply* is defined by subsection 9-10(1) as 'any form of supply whatsoever'. GST is not limited to supplies of goods and services.

30. Subsection 9-10(2) provides a list of acts which fall within the boundaries of the term 'supply'. The list is illustrative of the intended breadth of the term, but it is not exhaustive and does not limit its scope.

Grants of money

31. Most transactions involve an exchange of money for goods, services, or something else; and the relevant supply will be the thing exchanged for money. The money provided for that thing is consideration for the supply.

32. The definition of supply achieves this outcome by specifically excluding most supplies of money[9]. Consequently, making a grant of money is not a supply. An exception to this rule occurs in the case of a financial transaction such as a loan, where money is supplied in exchange for money. Such transactions are input taxed, under Subdivision 40-A, as financial supplies.[10]

33. These principles apply to a grant of money in any form. *Money* is defined broadly in the dictionary to the GST Act.[11] For example, a payment made by cash, by cheque, by a credit card, or by a transfer to a deposit or loan account is encompassed by the definition of money, and such payments are not supplies.

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[9] Subsection 9-10(4).
[10] Subsection 9-10(4).
[11] Section 195-1.

Grants in kind

34. Where a grant is provided in a form which falls outside the definition of money, such as a grant of property, the grant itself will be a supply. As most grants in kind are made in return for another supply, there will be a 'supply' by grantor and grantee to each other.

35. Where both supplies are taxable supplies, each party will be liable to GST on the supply it makes. The amount of GST is based on the GST-inclusive market value of the supply. Where there is an arm's length transaction between the parties, the value of each supply will be the same.

36. Where a grant in kind is made, each party makes a supply and an acquisition, and each party needs to account for GST payable and input tax credits on the transaction. No net GST will be payable where the relevant supplies are made in the same tax period.

Consideration for a supply

37. A supply is a taxable supply, if, among other things, the supply is made for *consideration.*[12] Consequently, a grant of money must represent consideration for a taxable supply before it can attract GST.

38. The definition of consideration in section 9-15 extends beyond payments that are directly related to the supply and includes such things as acts and forbearances to act.[13] It may include voluntarily made payments, and payments made by persons other than the recipient of a supply.[14]

39. A payment will be consideration for a supply if the payment is 'in connection with', 'in response to' or 'for the inducement' of a supply[15]. In almost all cases, a grant will be in connection with a supply, in response to a supply, or for the inducement of a supply.

40. Many grants are paid in exchange for the grantee's entry into an obligation to the grantor. The grant is made 'in connection with' such an obligation or supply. The obligation may be to use the granted money for a specified purpose, or to provide particular services to the community, in exchange for the grant.

41. Whether a grant bears the necessary relationship to a supply, and if so, which supply the grant relates to, will be a question that depends on the facts and circumstances surrounding each case.

[12] Paragraph 9-5(a).
[13] Subsection 9-15(1).
[14] Subsection 9-15(2).
[15] Subsection 9-15(1).

Grant where grantee enters into an obligation or undertaking

42. Most grants would come with some form of condition attached, so that the grantee enters into an obligation or undertaking to do something, to refrain from doing something, or to tolerate a particular situation, in exchange for the payment of the grant.

43. Conditions that a grantee may enter into include a requirement to use the granted funds in a particular manner, to further an objective of the grants program, or to deliver specified services to the community.

44. The acceptance by the grantee of conditions attached to a grant by the grantor, or the entry into an obligation to fulfil such conditions, will establish a supply to the grantor in connection with the grant.

Grant where grantee undertakes to do something

45. A supply may be established without the grantee entering into any legally binding obligation. In many cases, a grant is paid in exchange for the grantee making an undertaking to the grantor. The undertaking may be to use the granted funds in a particular manner. It may be to further a particular objective of the grantor, or of the relevant grants program. The making of such an undertaking by the grantee will establish a supply made by the grantee to the grantor in connection with the grant.

46. A grantee making an undertaking to the grantor will establish a supply to the grantor, having regard to the very broad meaning of supply.

47. An undertaking or obligation to further a grantor's objectives made in exchange for the grant will render the grant consideration for a supply. An undertaking to further the grantor's objectives may be expressly set out in a grant agreement, or it may be implied by the conduct of the parties.

Example

48. Snake Glass Jugglers is a dance troupe that develops and presents performance art. While its performances are popular and critically acclaimed, their continued presentation is not viable given increasing production costs. In order that the troupe can continue its work, and in recognition to the organisation's contribution to the arts, it receives a grant of financial assistance from the Gooseville Arts Foundation, a body which is established for the purpose of fostering the arts.

49. In exchange for the grant, the troupe enters into an obligation to continue to develop and present its innovative performances. The

entry into the obligation establishes a supply to the arts foundation for which the grant represents consideration.

Undertaking to provide services for the grantor

50. In many cases, a grants program will be set up in a manner under which the grantor 'purchases' the provision of services which may be provided to the community. Such programs are commonly set up in a manner that clearly establishes that the grantee makes a supply to the grantor in exchange for the grant.

Example

51. A Justice Department of a state establishes a legal aid program which funds legal firms and non-profit legal centres. Quillick and Melley, a firm of solicitors, is one of the program participants. The terms of the participants' agreement with the Justice Department provide that Quillick and Melley will provide legal advice to citizens of Boocalture in exchange for a grant. The grant provides a 'bucket of funds', and is not a payment for particular supplies made to identifiable individuals. The undertaking establishes a supply made to the Justice Department, as it assists the department in furthering its program objective of providing legal advice.

Grant where grantee creates a right

52. In some cases, a grantee may create a right in favour of the grantor which is supplied in exchange for the grant. For example, a grant agreement may establish the grantor's right to repayment of the grant in certain circumstances. The creation of the grantor's right to repayment establishes a supply[16] by the grantee for which the grant is consideration.

Example: right to repayment where funds not used appropriately

53. The Guava Research Council provides funding to the Melgary Research Institute to research the incidence of fruit fly in guavas. Under the grant agreement, the Council is entitled to repayment of the money if the institute does not use the funds to further the research which is the subject of the grant. The creation of the right to repayment establishes a supply by the Melgary Research Institute to the Guava Research Council, for which the grant is consideration.

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[16] Section 9-10(2)(e).

Grant where grantee provides information

54. Paragraph 9-10(2)(c) specifically includes a provision of advice or information in the meaning of 'supply'. That paragraph does not restrict the advice or information to information of a particular type, or information provided for a particular purpose.

55. In most cases, a person or organisation that receives a grant is required to provide information, such as a report on the manner of disbursement of the funds, to the grantor. The grantor uses this information to maintain accountability over the funds disbursed, and to assist in evaluating the effectiveness of the program in meeting its objectives. This is a common requirement of government grants programs, where the funding authority must ensure that funds are used in accordance with the objectives of the program.

56. The grant is consideration that is in connection with the supply of advice or information. In such a case the advice or information provided establishes that there is a supply to the grantor in connection with the grant. However, in the case of a grant to a non-profit body, whether the information supplied provides an advantage of a material character to the grantor is relevant. This question is discussed at paragraphs 154 to 160 below.

Example: undertaking to report on the expenditure of funds.

57. A Health department makes a grant to an organisation that uses the money granted for cancer research. It undertakes to provide a report that states the manner in which the money was spent in order to establish that the grantee used the funds as agreed. The report establishes a supply which is made to the grantor, and the grant is made in connection with that supply.

Reimbursement grants

58. In this Ruling, a reimbursement grant is a grant which is made to reimburse particular expenses of the grantee. Such a grant is normally, but not always, made after particular expenses are incurred. It is also common for the grantee to make an application for such a grant after it has incurred the relevant expenses.

59. A reimbursement grant may be distinguished from a payment made under an agency, where the intermediary between the grantor and the third party is acting as agent for either the grantor or the third parties. Specific rules dealing with supplies made through agents exist in Division 153. In the case of a reimbursement grant, there are two independent dealings between principals; one between the grantee and a third party, and another between the grantee and the grantor.

60. A reimbursement grant may also be distinguished from an employer's reimbursement of employees, a company's reimbursement of its officers[17] and a partnership's reimbursement of its partners. Specific provisions in Division 111 deal with entitlement to creditable acquisitions for such reimbursements. Division 111 also applies to certain other withholding payments under the Pay As You Go ('PAYG') system.[18]

61. Under a reimbursement grant, the grantee applies for, and obtains, reimbursement of the grantee's expenses from the grantor. The dealing between the grantee and grantor will be a separate GST transaction to any dealings between the grantee and third parties. The general rules outlined above apply to determine whether the arrangement between the grantor and the grantee constitutes a taxable supply for which the grant is consideration.

Application for reimbursement

62. Where a grantee seeks a reimbursement grant, it is usual for the grantee to submit an application for the grant of reimbursement to the grantor, and for the application to contain information which the grantor will use to determine whether to make the grant of reimbursement. The provision of the information in such an application will establish a supply to the grantor.

63. While the provision of information in the application establishes a supply, it will not be a taxable supply until the grantor considers the application and makes the grant. The grant made subsequent to the application will be consideration for the supply, as the grant is provided in connection with, and in response to, the information provided in the application for the grant.

Example

64. Vacuum Australia is an agency which administers a scheme to encourage the use of vacuum cleaners, with the objective of keeping Australia's footpaths clean. It provides reimbursement for the costs of vacuum cleaners acquired by businesses. The Agency has a discretion as to whether it approves claims. Alana, who operates a greengrocery, acquires a vacuum cleaner for use in the business and makes an application for reimbursement. The application contains information about how she will use the vacuum cleaner. The grant is approved after the grantor considers the application for reimbursement.

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[17] The term 'officer' has the meaning given by the Corporations Law.

[18] *A New Tax System (Taxation Laws Amendment) Bill (No 1) 1999* proposes an extended scope for Division 114 consequent on the introduction of the Pay As You Go system.

65. The reimbursement grant is subject to GST. The information in the application for reimbursement establishes a supply by Alana to Vacuum Australia, and the grant is consideration that is in connection with, and in response to, the information in the application.

Rights to reimbursement

66. Where the grantee has an existing right, which is surrendered in exchange for the grant, the surrender of the right in exchange for the grant will establish a supply[19] that the grant represents consideration for.

67. However, a mere hope or expectation of a grant that may be made at the discretion of the grantor will not establish a supply in exchange for the grant. Where there is only a hope or expectation of something, there is nothing that is supplied to the grantor in return for the grant.

Example: surrender of a right

68. A grantee spends money and applies for a grant of reimbursement with an expectation that it will obtain funds on the basis of the conditions of the grants program. If the grantee fulfils the conditions of the grants program, and creates a right to a grant of reimbursement, the surrender of the right establishes a supply for which the grant is consideration.

Expectation of reimbursement

69. Where a grantee has an existing right to reimbursement, which is surrendered in exchange for the reimbursement grant, the grant represents consideration for the surrender of the right to reimbursement.[20]

70. In many cases, a grantee applies for a grant of reimbursement with an expectation or hope that it will obtain the funds applied for. For example, a reimbursement grant is dependent on the exercise of a discretion of the grantor, and the grantee has no pre-existing right to reimbursement. The satisfaction of a mere expectation of reimbursement will not, of itself, establish that there is a supply for which the reimbursement is consideration. Even where the expectation is soundly based on the grantee's knowledge that it has satisfied the conditions of the grants program, it does not amount to a right to reimbursement where the grantor may exercise a discretion as to whether or not to make the grant.

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[19] Paragraph 9-10(2)(e).
[20] Paragraph 9-10(2)(e).

Example

71. If, in the example at paragraph 64 and 65 of this Ruling, Alana had a pre-existing right to reimbursement, the surrender of that right to Vacuum Australia in exchange for the reimbursement would also establish a supply for which the grant is consideration. However, as Alana had a mere expectation of receiving the reimbursement, this expectation would not of itself be sufficient to establish a taxable supply.

Voluntary and discretionary payments

72. In some circumstances, grants may be made which have no conditions attached. An unconditional grant will not normally be subject to GST in the absence of any other supply, such as a supply of information. A mere expectation on the part of the grantor that granted funds be expended would not be sufficient to establish a supply in connection with a grant.

73. However, a voluntarily made payment may be consideration for a supply. If a payment of financial assistance is a payment made at the discretion of a person or organisation, this will not stop it being consideration for a supply.

74. Ordinarily, a gift is subject to GST if it represents consideration for a supply. A gift may be consideration for a supply if it is made in connection with, in response to, or for the inducement of a supply of anything. A gift may be made as an inducement to make a supply of goods or services to the giver. If the gift is an incentive payment intended to solicit a supply, it is consideration for the inducement of any supply made, even though it is voluntarily made.

Gifts to non-profit bodies are not consideration

75. A gift made to a charity or other non-profit body is not subject to GST. The definition of consideration specifically excludes gifts to non-profit bodies.[21]

Meaning of gift in paragraph 9-15(3)(b)

76. The term 'gift' is not defined in the GST Act, and takes on its ordinary meaning. Guidance is provided in income tax cases relating to gifts. Applying the test laid down in *FC of T v McPhail* (1968) 117 CLR 111, a gift is something which is transferred voluntarily by

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[21] Paragraph 9-15(3)(b).

the grantor, with no advantage of a material character received in return for the making of the gift.

77. Consequently, where a grant to a non-profit body is made, but the only supplies for which the grant is consideration have no material value, the grant will not be subject to GST.

78. The entry into an obligation to account for use of money granted, or provide accounting or reporting information on how the grant was expended, in exchange for the grant, are examples of supplies which provide no material advantage to the grantor.

79. However, the value of other things supplied in connection with the payment may establish that the grant is consideration for a supply. For example, a non-profit body may enter into an obligation to use granted funds in a particular manner. Such an arrangement, where it provides a material benefit to the grantor, will make the grant something more than a gift.

Example

80. A grant is made to a non-profit body to conduct specific research and provide a report on the results of that research to the grantor. Where the report provides a material benefit to the grantor, this will establish that the grant is consideration for the supply of the report. Such a report may be contrasted with a report on how the money was expended which is provided as an accountability mechanism which has no material value.

Effect of documentation

81. In many cases, grantors will enter into a written contract or agreement that specifies the things that the grantee will be required to do in exchange for the grant.

82. The existence of documentation relating to a grant in a particular form, such as a letter, deed or written contract, is not conclusive evidence that a grant is consideration for a supply. However, any documentation relating to a grant is likely to assist in determining whether the grant is consideration for a taxable supply.

83. If documentation in relation to a grant establishes specific supplies that are to be provided in connection with a grant, this will strongly suggest that the grant is consideration for that supply.

Is the supply made in the course or furtherance of an enterprise?

84. Where it is established that a grant is consideration for a supply, the enterprise test must also be satisfied if the supply is to be subject to GST.

85. 'Enterprise' is defined in the GST Act.[22] The same definition appears in the ABN Act,[23] and has been considered in Draft Miscellaneous Taxes Ruling MT 1999/D1. When officially released, this Ruling will state our view on the meaning of the term 'enterprise' in the ABN Act. The parts of it that explain the definition of the 'enterprise' under section 38 of the ABN Act will reflect our view of the definition of 'enterprise' under section 9-20 of the GST Act.

Enterprises

86. Some activities amount to an enterprise because of their nature. Activities done in the form of a business, or an adventure or concern in the nature of a trade amount to an enterprise[24].

87. Activities which are on a regular or continuous basis, in the form of a lease, licence or other grant of an interest in property, also amount to an enterprise.[25]

88. Some activities amount to an enterprise because they are activities of a particular type of organisation. The definition of enterprise includes all the activities of these types of institutions:

- trustees of funds, authorities and institutions to which deductible gifts can be made[26];
- charitable institutions and funds[27];
- religious institutions[28]; and
- an Australian government, or a body corporate, or corporation sole, established for a public purpose by or under an Australian law.[29]

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22 Section 9-20.
23 Section 38.
24 Paragraphs 9-20(1)(a) and (b).
25 Paragraph 9-20(1)(c).
26 Paragraph 9-20(1)(d). Such bodies must be covered by Subdivision 30-B of the *Income Tax Assessment Act* 1997.
27 Paragraph 9-20(1)(e).
28 Paragraph 9-20(1)(f).
29 Paragraph 9-20(1)(g).

In the course or furtherance of an enterprise

89. Many grants made will not be consideration for a taxable supply because any undertaking made, or obligation entered into, by the recipient of the grant is not made in the course or furtherance of an enterprise.

90. A payment of personal income support is unlikely to be subject to GST, because any supply made in relation to that income support would not normally be in the course or furtherance of an enterprise.

91. Similarly, a payment made to an employee or other payment that is subject to withholding of income tax under the Pay As You Go ('PAYG') system is not made in the course or furtherance of an enterprise, as the definition of enterprise specifically excludes an activity or series of activities done in connection with earning withholding payments.[30]

Example

92. Jennifer receives payments of unemployment benefit in return for entering into an obligation to search for work and to report on attempts to find employment. However, the unemployment benefit is not subject to GST because the undertaking and reports are not supplied in the course or furtherance of an enterprise.

Is the supply connected with Australia?

93. A grant will not be subject to GST unless the supply to which the grant relates is 'connected with Australia'. This concept is defined in section 9-25 of the GST Act.

94. Most supplies for which grants are consideration are supplies other than of goods or real property. Subsection 9-25(5) of the GST Act governs whether such supplies are connected with Australia. A supply, other than of goods or real property, is connected with Australia if 'the thing is done' in Australia, or the supply is made through an enterprise which the supplier carries on in Australia. An enterprise is carried on in Australia if it is carried on through a permanent establishment as defined in section 6(1) of the *Income Tax Assessment Act 1936*, or a place that would be a permanent establishment if the negative limbs of that definition did not apply.[31]

95. In the case of a grant made in exchange for an undertaking to use funds granted in a particular fashion, the supply to the grantor is established by the undertaking given in exchange for the grant. If the

[30] Paragraph 9-15(2)(a).
[31] The negative limbs of the definition of permanent enterprise are paragraphs (e), (f) and (g).

undertaking is entered into in Australia, the supply will be connected with Australia. However, if the undertaking is made from overseas, then the supply will not be connected with Australia.

96. We will issue a draft GST Ruling in January 2000 which provides further guidance on the meaning of 'connected with Australia' as defined in the GST Act.

Example

97. The Leigh Stevens Foundation makes grants of humanitarian aid to relief organisations operating overseas. A grant is made to a humanitarian organisation in the country of Daren for a promise to use the funds to assist refugees who have fled fighting in neighbouring Andew. The humanitarian organisation does not have a permanent establishment in Australia. As the undertaking in exchange for the funds is supplied from Daren, it is not connected with Australia, and the grant is not subject to GST.

Is the grantee registered, or required to be registered?

98. As grants are consideration for a supply, rather than a supply, the question whether a grant is subject to GST depends on the registration status of the grantee, rather than the grantor.

99. GST is a value added tax which is paid by suppliers, but is ultimately borne by consumers as part of the price of goods, services and other supplies.

100. An entity that is registered for GST is liable to remit GST payable to the ATO on taxable supplies that it makes. Against that liability, a registered entity can claim input tax credits for the GST which is embedded in the cost of inputs. The net amount payable represents a tax on the value added by the entity's activities.

Registered grantee

101. If the grantee is registered for GST, or required to be so registered, the grant may be consideration for a taxable supply if the other requirements of the taxable supply definition in section 9-5 are met.

102. A registered grantee will be required to remit GST on the grant to the ATO with the Business Activity Statement for the tax period to which the grant is attributable.

103. A registered grantor may be entitled to claim an input tax credit in respect of the GST payable on the grant. This is further

discussed under the heading 'Input tax credits for grants' at paragraphs 114 to 120 below.

104. Registration for GST will often provide an advantage to a grantee. It is likely that most grantors will be registered for GST. Where the grantee is liable for GST on the grant, the grantor can claim an input tax credit for the GST if it is a creditable acquisition, which will normally be the case.

105. A grantor who can claim an input tax credit may be in a position to 'gross up' the grant by the amount of the GST on the grant. The 'gross up' of the grant is funded by the grantor's input tax credit entitlement. Such an increase would offset the grantee's liability to GST. Grossing up a grant means increasing the amount of a grant in order to cover the GST liability of the grantee who is making a taxable supply.

106. The Ruling does not cover whether or not grants should be grossed up to allow for GST. This is a matter for the grantor to determine, having regard to how GST applies to the grant.

Example

107. The Battlers' Foundation is a charitable institution. It applies for a grant from a state Community Services Department to purchase computer equipment costing $11,000, undertaking to use the computer in the course of delivering assistance to the needy. The Foundation is eligible for a grant of $10,000, but the Department's funding guidelines permit it to increase the grant in anticipation of input tax credits, if the grantee supplies evidence of registration and undertakes to provide a tax invoice.

108. As the organisation is registered, the department grosses up the grant, and the foundation can claim an input tax credit on the computer equipment used in its enterprise.

Cost of grant to department:		Value of grant to foundation:	
Gross grant paid	$11,000	Grant received	$11,000
less Input tax credit	($1,000)	less GST payable	($1,000)
Net cost	$10,000	Net receipt	$10,000

Cost of computers to foundation:	
Computer (+GST)	$11,000
less input tax credit	($1,000)
Net cost	$10,000

Unregistered grantee

109. If the grantee is not required to be registered for GST, and does not choose to be registered, the grant is not subject to GST.

110. However, if the grantee is not registered, the grantee is a consumer, and GST is ultimately borne by consumers. The grantor is less likely to be in a position to gross up a grant to an unregistered grantee. In addition, the unregistered grantee is not in a position to claim input tax credits for acquisitions which include GST in their price.

Example

111. In this example, the facts are the same as in the example at paragraphs 106 and 107; but the Foundation is neither registered nor required to be registered.

112. As the organisation is not registered, it will not be able to claim input tax credits on any acquisitions it makes. The unregistered enterprise ultimately bears the GST payable on the computer equipment, as a consumer.

Cost of grant to department:		Value of grant to foundation:	
Gross grant paid	$10,000	Grant received	$10,000
less Input tax credit	(Nil)	less GST payable	(Nil)
Net cost	$10,000	Net receipt	$10,000
		Cost of computers to foundation:	
		Computer (+GST)	$11,000
		input tax credit	(Nil)
		Net cost	$11,000

113. The example is not intended to indicate that grantors will ‘gross up’ grants for GST as a matter of course. The amount of a grant is a matter for the grantor to determine. However, in many cases, the grantor will only gross up the grant where the grantee is registered for GST and the grantor is assured of entitlement to an input tax credit.

Input tax credits for grants

Grants as creditable acquisitions

114. Whether a grantor is able to obtain an input tax credit for a payment made as a grant will primarily depend on the nature of the supply to which the grant relates, and whether the grantor and grantee are registered, or required to be registered.

115. If the grantor is neither registered, nor required to be registered, for GST, it will not be entitled to claim an input tax credit. This is the case even if the grant is subject to GST in the hands of the grantee.[32] Similarly, if the grantee is neither registered nor required to be registered, any supply made by the grantee is not a taxable supply, and the grantor cannot claim an input tax credit in relation to the supply.

116. A registered grantor will be able to claim an input tax credit if the grant gives rise to a creditable acquisition of the grantor. This will occur if the supply to the grantor in exchange for the grant is a taxable supply for which the grant is consideration, and the grant is acquired for a creditable purpose.[33]

117. A taxable supply made by a grantee in return for a grant will be acquired by the grantor for a creditable purpose if the grantor acquires it in carrying on its enterprise.

118. However, a thing supplied in connection with a grant is not acquired for a creditable purpose to the extent that:

- the acquisition is of a private or domestic nature; or
- the acquisition relates to input taxed supplies, apart from some financial supplies.

Tax invoice required

119. Even though an acquisition is a creditable acquisition, the grantor will not be able to claim an input tax credit for the acquisition until the grantor obtains a tax invoice for the grant. The input tax credit is attributed to the tax period in which the grantor obtains the tax invoice.[34]

120. In some cases, the grantor will be able to issue its own tax invoices in order to claim input tax credits. Such *recipient created tax invoices* may be issued by the entity to whom the taxable supply is made if the Commissioner has issued a written determination in respect of the relevant class of invoices. Draft GST Ruling

[32] Paragraph 11-5(d).
[33] Section 11-5.
[34] Section 29-10(3).

GSTR 1999/D5 deals with the circumstances in which the Commissioner will permit the issue of recipient created tax invoices.

Timing rules

121. GST and input tax credits are accounted for on a periodic basis, and the attribution rules determine the tax periods in which GST is payable on particular transactions. These rules also determine the tax periods in which input tax credits may be claimed.

122. This section merely provides an overview of the attribution rules. Further information relating to the attribution of GST to tax periods can be obtained from information available from the ATO. GST Ruling GSTR 1999/D7 provides guidance on how to attribute GST payable, input tax credits and adjustments to tax periods.

Attribution of GST

123. The tax period to which consideration is to be attributed for GST purposes depends on the nature of the supply for which the grant is consideration, and the basis on which the grantee accounts. The general attribution rules apply to supplies made for which grants are consideration.

124. The attribution of grants to particular tax periods depends on whether a grantee who makes a supply in exchange for a grant accounts for GST on a cash basis, or on a basis other than cash.

125. A grantee or grantor may choose to account for GST on a cash basis if its annual turnover is $1 million or less, or if it accounts for its income tax on a receipts basis. The Commissioner may also determine that particular types of enterprises may account for GST on a cash basis.

126. If the grantee accounts for GST on a cash basis, the GST on the grant is attributable to the tax period in which the grant is received.

127. If the grantee accounts for GST on a basis other than cash, the GST on the grant is attributable to the tax period in which the earlier of the following events occurs:

- the grant is received; or
- a tax invoice is issued relating to the supply for which the grant is consideration.

Attribution of creditable acquisitions

128. Where the grant is a creditable acquisition of the grantor, the grantor is entitled to an input tax credit for the GST payable by the grantee on the grant.

129. As with the attribution of GST on taxable supplies, the tax period to which an input tax credit for the grant is to be attributed for GST purposes depends on the nature of the relevant supply. The general attribution rules apply to input tax credits on grants.

130. The attribution of input tax credits for grants to particular tax periods depends on whether the grantor accounts for GST on a cash basis, or on a basis other than cash. A grantor who accounts for GST on a cash basis claims an input tax credit in the tax period in the grant is paid. A grantor who accounts for GST on a different basis claims an input tax credit in the tax period in which the earlier of the payment of the grant and the issue of the invoice occurs.

Application of GST Transition Act

131. As most government grants programs apply to particular financial years, we expect the transitional rules in the GST Transition Act to have limited operation. However, in some cases a grants program is entered into over a number of years and the Transitional rules may have application in such cases. Their application would depend on the nature of the supply to be provided.

Supply of goods, services or property to the grantor

132. Where goods are supplied to the grantor in exchange for the grant, it will be subject to GST to the extent that the goods are removed or made available to the grantor after 30 June 2000.[35] If land or a right, lease or similar entitlement over land is supplied in exchange for the grant, the grant is subject to GST when the land is made available to the grantor.[36]

133. Where a grant is paid in exchange for the supply of services to the grantor, the grant will be subject to GST to the extent that the services are performed after 30 June 2000.[37]

Supply of things other than goods, services or property

134. In the majority of cases, a grant is made in exchange for the supply to the grantor of something other than goods, services or

[35] GST Transition Act, subsection 6(2).
[36] GST Transition Act, subsection 6(3).
[37] GST Transition Act, subsection 6(4).

property. A supply of something outside one of these categories will be made when the thing is 'performed or done'.[38]

135. In many cases, a grant of funding will be made in exchange for the supply established by entering into an obligation or making an undertaking to do something. This will occur when the obligation is entered into or the undertaking is made.

136. If an arrangement provides for the grantee to undertake to supply services to the community over a period in exchange for funding, and the funding is not identifiable to any particular services to be performed, the payment represents a grant, rather than a third party co-payment. The time of supply for the purposes of the GST Transition Act will be when the undertaking to provide the supply is made. The supply for which the grant is consideration is the undertaking to supply services to others, not the actual supplies of services to others.

137. If information is supplied to the grantor in exchange for the grant, the grant will be made at the time the information is supplied.

Several things supplied in exchange for a grant

138. Where a number of things are supplied in relation to the grant, the amount of the grant should be apportioned according to the value of the things which are supplied to the grantor in exchange for the grant.

139. Some things supplied in exchange for a grant may have no material value, while others may have a value commensurate with the value of the grant. In such a case, the time of supply of the things with no material value may be ignored and only the time of supply of the things 'for value' will be relevant. Where a number of things of value are supplied to the grantor, an apportionment will need to be made of the grant among those things.

Example

140. Under an enrichment program, an Education Department makes a grant to the Debrowe Academy. In exchange for the grant, the academy enters into an obligation, on 1 April 2000, to provide remedial reading services to children in the town of Bambrenko for the period from 1 July 2000 to 30 June 2001. Debrowe also supplies information to the Department by providing periodic reports on the use of the funds during the grant period.

141. For the purposes of the GST Transition Act, the time of supply of the entry into the obligation is the time at which the obligation is

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[38] GST Transition Act, subsection 6(5).

entered into, 1 April 2000. The reports are supplied on a periodic basis over the 2000-01 financial year.

142. The value of the supply is reflected in the entry into the obligation to provide particular services to the community, and the supply of reporting information has no material value. Consequently the grant is referable wholly to the entry into the obligation to provide community services, and the grant is not subject to GST.

143. Further information is available from the ATO on the operation of the GST Transition Act.

Your comments

144. If you wish to comment on this draft Ruling, please send your comments promptly by **18 February 2000** to:

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Detailed contents list

145. Below is a detailed contents list for this Draft Ruling:

Commissioner of Taxation
24 December 1999

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations:

GSTR 1999/D5; GSTR 1999/D7;
MT 1999/D1

Subject references:

- attribution
- creditable acquisition
- discretionary payments
- grants
- GST
- GST-free
- GST return
- Input tax credit
- Input taxed supplies
- Input taxed

Legislative references:

- ANTS(GST)A99 9-5
- ANTS(GST)A99 9-10(1)
- ANTS(GST)A99 9-10(2)
- ANTS(GST)A99 9-10(2)(e)
- ANTS(GST)A99 9-10(4)
- ANTS(GST)A99 9-15(1)
- ANTS(GST)A99 9-15(2)
- ANTS(GST)A99 9-15(2)(a)
- ANTS(GST)A99 9-15(3)(b)
- ANTS(GST)A99 9-20(1)(c)
- ANTS(GST)A99 9-20(1)(d)
- ANTS(GST)A99 9-20(1)(e)
- ANTS(GST)A99 9-20(1)(f)
- ANTS(GST)A99 9-20(1)(g)
- ANTS(GST)A99 9-25
- ANTS(GST)A99 11-5
- ANTS(GST)A99 29-10
- ANTS(GST)A99 195-1
- ANTS(GSTT)A99 6(2)
- ANTS(GSTT)A99 6(3)
- ANTS(GSTT)A99 6(4)
- ANTS(GSTT)A99 6(5)

Case references:
- FC of T v. McPhail (1968) 117 CLR 111
- Klopper & Anor v. FC of T 97 ATC 4179

ATO references:
NO 99/17931-7
BO
ISSN: 1034-9758