GSTR 2011/D4 - Goods and services tax: financial assistance payments

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Draft Goods and Services Tax Ruling

Goods and services tax: financial assistance payments

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What this Ruling is about

1. This draft Ruling deals with the application of the goods and services tax (GST) to financial assistance payments.

2. Governments, government agencies, non-profit bodies, charities and other entities ('payer') make financial assistance payments under different arrangements.

3. Financial assistance payments can be made for a number of reasons including implementing or supporting government policy and initiatives and philanthropy.

4. The recipients of those financial assistance payments are usually government related entities, non-profit bodies, charities, corporate entities or individuals ('payee').

Types of arrangements

5. Financial assistance payments can be made under broad categories of arrangements, including but not limited to, payments for:

- providing advice or information;
- a right or the entry into an obligation to do, or not to do, something;
- sponsorships;
- gifts; or

- providing goods or services to third parties (referred to in this draft Ruling as tripartite arrangements).

6. This draft Ruling:

- explains the GST consequences resulting from financial assistance payments;
- discusses common arrangements and the principles that are relevant to analysing these arrangements; and
- includes examples to illustrate the application of the principles to particular arrangements.

7. In this draft Ruling:

- 'financial assistance payments' include payments described as grants, subsidies, sponsorships, financial assistance or support, co-payments, rebates and contributions;
- 'agreement' refers to the various types of financial assistance payment arrangements collectively unless a particular type of agreement, such as a contract, is specified;[1] and
- unless otherwise stated, all legislative references are to the A New Tax System (Goods and Services Tax) Act 1999 (GST Act).



It is assumed that where a payee makes a supply for which the payment is consideration, the other requirements for making a taxable supply are satisfied.[2] That is:

- the payee makes the supply in the course or furtherance of their enterprise;
- the payee is registered or required to be registered for GST;[3]
- the supply is connected with Australia; and
- the supply is not GST-free or input taxed.

Previous Ruling

8. This draft Ruling when finalised will replace *Goods and Services Tax Ruling GSTR 2000/11 Goods and services tax: grants of financial assistance*.

[1] An 'agreement' also includes a memorandum of understanding between government entities that are part of the Crown in right of the same polity.
[2] Paragraphs 9-5(b) to 9-5(d).
[3] A payee that is not registered for GST may be required to register if receiving the financial assistance payment results in their GST turnover meeting the registration turnover threshold (see Divisions 23 and 188).

9. GSTR 2000/11 will be withdrawn with effect from the date this draft Ruling is finalised.

Ruling

10. GST is payable on taxable supplies.[4] For the payee to make a taxable supply for a financial assistance payment, they must make a supply for consideration. This is established by:

(a) examining the facts and circumstances surrounding the arrangement between the parties; and

(b) applying the rules of the GST Act[5] to determine if there is:

(i) a supply; and

(ii) a sufficient connection between the supply and the financial assistance payment.

Examining the facts and circumstances surrounding the arrangement between the parties

11. To determine if there is a supply for consideration that is a financial assistance payment, the surrounding facts and circumstances of the arrangement, including any documentation, must be examined. For example, if the application for a financial assistance payment is the only written evidence of an agreement between the parties, the surrounding facts and circumstances must also be taken into account.

12. An arrangement for the making of a financial assistance payment may be evidenced by:

- written and oral contracts;
- deeds, assignments and options;
- licence and permit conditions;
- applications;
- legal instruments;
- letters of offer (including departmental or ministerial correspondence to payees);
- memoranda of understanding; or
- Acts of parliament, legislative instruments, Ministerial directions and Departmental guidelines.

[4] Section 9-40.
[5] Section 9-5.

Applying the rules of the GST Act

(i) Is there a supply?

13. The meaning of 'supply' is very broad – it means any form of supply whatsoever[6] and includes:

- a supply of goods or services;
- a provision of advice or information;
- a grant, transfer or surrender of real property;
- a creation, grant, transfer, assignment or surrender of any right; or
- an entry into, or release from, an obligation to: do anything, refrain from an act, or tolerate an act or situation.[7]

The meaning of supply is explained in detail in *Goods and Services Tax Ruling GSTR 2006/9 Goods and services tax: supplies*.

14. The granting of rights or entry into an obligation are supplies. However, these supplies can form part of a supply which is the substance of the transaction.

Example 1 – Supply that is the substance of the transaction

15. *Rick contracts with Con, a car repairer, to have Rick's car serviced. At the time the contract is made, Rick acquires a right to have the service performed and Con assumes the obligation to service the car. However, the substance of the transaction is the supply of vehicle maintenance services by Con to Rick. The exchanges of rights and obligations form part of that supply. The payment is for the supply of the service of vehicle maintenance by Con to Rick.*

(ii) Sufficient connection between the supply and the financial assistance payment

16. Consideration is broadly defined, therefore most financial assistance payments are consideration. However, consideration does **not** include:

(a) a payment made by a government related entity to another government related entity where the payment is specifically covered by an appropriation under an Australian law;[8] or

Payments covered by an appropriation are discussed in detail in *Goods and Services Tax Ruling GSTR 2011/2 Goods and services tax: appropriations.*

[6] Subsection 9-10(1).
[7] Paragraph 9-10(2).
[8] Paragraph 9-15(3)(c).

(b) a gift made to a non-profit body.[9]


See paragraphs 53 to 56 of this draft Ruling for further discussion on gifts to non-profit bodies.

17. For a financial assistance payment to be consideration for a supply it is not sufficient for there to be a supply and a payment. The supply must be for that payment.

18. A financial assistance payment is consideration for a supply if the payment is 'in connection with' a supply.

19. Consideration can also be 'in response to' or 'for the inducement of' a supply.

20. To determine whether a financial assistance payment is consideration 'in connection with', 'in response to' or 'for the inducement of' a supply it needs to be established whether there is a sufficient nexus between the financial assistance payment and the supply.

21. Establishing whether there is a sufficient nexus between the financial assistance payment and the supply is a question of fact and degree.

22. In determining whether a financial assistance payment has a sufficient nexus to a supply regard needs to be had to the true character of the transaction. An arrangement between parties is characterised not merely by the description which parties give to the arrangement, but by the agreements entered into and the surrounding circumstances.

Sufficient nexus and certain financial assistance payment arrangements

Payment for a right

23. In some arrangements the payer will derive a direct and specific benefit in the form of a right in return for the financial assistance payment. In these circumstances, the payment has a sufficient nexus with the supply of the right because of the connection between the payment and the supply of the right. For example, if the payer is provided with the right to commercially exploit the results of a project in return for the financial assistance payment.

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

Payment for the entry into an obligation to do or not do something

24. Some financial assistance payments are made for the payee entering into an obligation with the payer to do or not do something. The payment has a sufficient nexus with the supply of the entry into the obligation where the payee is obligated to do or not do something, and taking into account the terms of the agreement and the surrounding circumstances, it is the obligation for which the financial assistance payment is made.

25. Where the payer merely expects or anticipates that the payee will or will not do something with or for the financial assistance payment but there is no obligation on the payee to do that thing, the mere expectation by the payer does not establish a supply to the payer for which the payment is consideration.[10]

Example 2 – Payment for entry into an obligation

26. *Snake Glass Jugglers is a commercial 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 of the organisation's contribution to the arts, it receives a financial assistance payment from the Gooseville Arts Foundation, a body that is established for the purpose of fostering the arts.*

27. *The troupe enters into a written agreement that, in return for the payment, it will continue to develop and present its innovative performances. The agreement provides that the payment is to be repaid if the payee fails to do this. By agreeing to continue to develop and present its performances, the troupe enters into an obligation for which the payment is consideration. The financial assistance payment has a sufficient nexus with the obligation. Therefore, the payment is consideration for the supply of the obligation.*

Example 3 – payment is not for an obligation

28. *A local tennis club is seeking funding to enable them to resurface their tennis courts. The local council provides a financial assistance payment to a local tennis club. The payment is intended to provide funds to allow the tennis club to resurface its courts. The tennis club has not agreed to carry out the resurfacing but if it does not it must return the funds.*

29. *As there is no obligation on the tennis club to carry out the resurfacing of the courts it does not make a supply of entering into an obligation to the local council.*

[10] Paragraphs 102 to 103 (Proposition 9: creation of expectations alone does not establish a supply) of GSTR 2006/9.

30. *Where the payment is ultimately used for its intended purpose, that is resurfacing the tennis court, there is no sufficient nexus with any supply made by the tennis club to the local council. This is because the mere doing of the thing that was expected does not amount to a supply to the local council unless it involves some other good, service or other identifiable supply being provided for which the payment is consideration.*

Payments for providing advice and information

31. Providing advice or information is a supply.[11] A financial assistance payment has a sufficient nexus with this supply where the payment is for the information or is made for the purpose of obtaining such information.

Example 4 – Payment for providing information to be used by the payer

32. *A government agency makes a financial assistance payment to a market research company for the purpose of undertaking specific research, which will be used by the government agency. The payment has sufficient nexus with the conducting of the research and provision of the report.*

Supplies of peripheral things

33. Things are often supplied by the payee to the payer that are merely part of the mechanism of making or accounting for the financial assistance payment.

34. Although providing advice or information is a supply, a financial assistance payment does not have a sufficient nexus with such a supply unless the purpose of the financial assistance payment was to obtain that supply.

35. Financial assistance payments are not normally made for the purposes of obtaining information from the payee about its accounting for financial assistance payment expenditure. A requirement to account for the financial assistance payment is usually peripheral to the making of the financial assistance payment.

36. Though the supply of a peripheral thing does not have a sufficient nexus with the financial assistance payment, the payment may be consideration for some other supply depending on the facts and circumstances of the arrangement.

[11] Paragraph 9-10(2)(c).

Example 5 – Supply of information that is peripheral to the payment

37. *A government agency makes a financial assistance payment to a business to enable the business to purchase computer equipment. The business is required to provide a report to the government agency outlining the particular items of equipment it purchased with the financial assistance payment.*

38. *The payment is to enable the business to purchase the computer equipment, not to provide a report to the payer. The financial assistance payment is not consideration for the supply of information, because the payment does not have a sufficient nexus with that supply.*[12]

39. It is also common for a payee to submit an application for financial assistance to the payer, and for the application to include all information necessary to determine the payee's entitlement to a financial assistance payment. Providing information in the application is a supply to the payer. However, the payment is not consideration for that supply, as the payment does not have a sufficient nexus with that supply. Submitting the application, together with the information required to consider it, is merely a mechanism to establish whether a financial assistance payment will be made and does not have a sufficient nexus with the payment.

Example 6 – Submitting an application for the payment

40. *A government entity administers a scheme that assists businesses with a low turnover. Under the scheme, eligible businesses are entitled to a rebate equivalent to half their business loan interest repayments for the last calendar year.*

41. *Eligible businesses must supply their personal information, turnover and bank business loan interest summary.*

42. *The supply of this information is peripheral to the rebate arrangement and as such the rebate does not have a sufficient nexus with this supply. The rebate is paid because the payee meets the eligibility criteria. The supply of the information merely evidences that the criteria are satisfied.*[13]

43. The same principle applies where the payee does not need to apply for a payment but the payer determines that the payee meets certain eligibility criteria.

[12] The financial assistance payment may be consideration for some other supply depending on the facts and circumstances of the arrangement.
[13] The financial assistance payment may or may not be consideration for another supply depending on the facts and circumstances of the arrangement.

44. A supply of a peripheral thing can also include the entry into an obligation to repay a financial assistance payment, through a repayment clause in an agreement. Where the substance of the arrangement is that the payment is provided to enable the payee to undertake some activity but if the payment is not used as stipulated, it must be repaid to the payer, the financial assistance payment is not consideration for the obligation to repay. However, the financial assistance payment may be consideration for another supply, such as entering into an obligation to undertake the activity, depending on the facts and circumstances of the arrangement.

Sponsorships

45. Payers may sponsor a range of things such as community activities and academic scholarships. This may include the payee acknowledging the payer in promotional material, programs or by other means. Ultimately whether a payment is consideration for such an acknowledgement is a matter of fact and degree.

46. If a payee is required to provide goods, services or something else to the payer there will be a sufficient nexus between the payment and the supply of those goods services or things. For example if the payee is required to include the payer's name on promotional material, programs or uniforms or advertising the payer's name at events and in the media, the payment has a sufficient nexus with the supply of the promotion and advertising.

Example 7 – Sponsorship payment: promotional activities

47. *A sponsor provides an athletics club with funding for new club rooms. Under the arrangement acknowledgement is to be provided by way of the sponsor's brand appearing on the club's vehicles and on athletes' apparel. There is also a requirement for athletes to promote the sponsor's business by marketing and other promotional activities such as public appearances.*

48. *Providing the above advertising and promotional activities is a supply. As the payment has a sufficient nexus with the supply, the payment is consideration for the supply.*

Payments under a tripartite arrangement

49. A tripartite arrangement can involve the payee:

- making separate supplies to the payer and a third party; or
- making and providing a supply to a third party that is paid for by the payer.

50. The GST consequences in a tripartite context were considered by the Full Federal Court in the *Department of Transport* case.[14] This case concerned whether a subsidy provider made creditable acquisitions in respect of the subsidy payments and was therefore entitled to input tax credits under the GST Act. In making their decision, the Full Federal Court considered whether a supply was made to the subsidy payer, the Department of Transport (Vic).

51. Whether a financial assistance payment is consideration for a supply depends on the relevant facts and circumstances of the arrangement and requires consideration of the principles outlined in this draft Ruling. The factors outlined in the draft Addendum to GSTR 2006/9[15] are also relevant in establishing whether the payee makes a supply to the payer:

> 221A. While there was no indication on the facts in *Department of Transport* that there was a binding obligation between the Department and the taxi operator for the latter to provide transport to the eligible passenger, the Full Federal Court concluded that there was a supply of the service of transport of the eligible passenger by the taxi operator to the Department. In practice, whether such a supply can be identified for a particular arrangement will require careful consideration of all the relevant facts and circumstances.
>
> 221B. The Commissioner considers that the following factors, in combination, may point to a supply being made by the supplier to the payer under a tripartite arrangement that involves the supplier providing a service or goods to the customer, and where there is no binding obligation between the payer and the supplier for the supplier to provide the service or goods to the customer:
>
> (a) there is a pre-existing framework or agreement between the payer and the supplier which contemplates that the parties act in a particular manner in respect of supplies that are to be provided by the supplier to particular third parties or a class of third parties;
>
> (b) the pre-existing framework or agreement:
>
> i. identifies a mechanism by which the particular third parties or the class of third parties are to be identified such that the supplies provided to them come within the scope of the framework or agreement; and
>
> ii. specifies that the payer is under an obligation to pay the supplier if the supplier provides a relevant supply to a third party and also sets out a mechanism by which such payment is authorised;
>
> (c) the framework or agreement and the mechanism for authorising the payment are in existence before the supplier provides the supply to the third party (that

[14] *Commissioner of Taxation v Secretary to the Department of Transport (Vic)* [2010] FCAFC 84; 2010 ATC 20-196; 76 ATR 306.
[15] *Goods and Services Tax Ruling GSTR 2006/9DA - Draft Addendum GSTR 2006/9 Goods and services tax: supplies.*

is, the supplier knows in advance that the payer is obliged to pay some or all of the consideration where that supply is provided to the third party);

(d) the supplier provides the supply to the third party in conformity with the pre-existing framework or agreement between the parties; and

(e) the obligation of the payer to make payment pursuant to the pre-existing framework or agreement is not an administrative arrangement to pay on behalf of the third party for a liability owed by the third party to the supplier. Rather, once the supply becomes a supply to which the framework or agreement applies, the framework or agreement establishes a liability owed by the payer (not the third party) to the supplier in the event that the supplier provides the relevant supply to the third party.

52. In any tripartite arrangement, whether the payer is entitled to an input tax credit depends on whether the payment is consideration for a supply made to the payer and whether the other elements of a creditable acquisition in section 11-5 are satisfied.

The GST consequences of tripartite arrangements are explained in *Goods and Services Tax Ruling GSTR 2006/9 Goods and services tax: supplies* and in *Goods and Services Tax Ruling GSTR 2006/9DA - Draft Addendum GSTR 2006/9 Goods and services tax: supplies*.

Gifts to a non-profit body

53. A non-profit body is a body which is not carried on for the purpose of profit or gain to its members.

54. Consistent with *Taxation Ruling TR 2005/13 Income tax: tax deductible gifts – what is a gift*, for GST purposes a gift is considered to have the following characteristics and features:

- there is a transfer of a beneficial interest in property;[16]
- the transfer is made voluntarily;[17]
- the transfer arises by way of benefaction;[18] and
- no material benefit or advantage is received by the giver (payer) by way of return.[19]

55. As a gift made to a non-profit body is not consideration for a supply, if a payer makes a gift to a non-profit body there are no GST consequences.[20]

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[16] See paragraphs 16 to 19 of TR 2005/13.
[17] See paragraphs 23 to 26 of TR 2005/13.
[18] See paragraphs 27 to 31 and paragraphs 33 to 36 of TR 2005/13.
[19] See paragraphs 37 to 44 of TR 2005/13.
[20] Paragraph 9-15(3)(b).

56. However, a voluntary payment can be consideration for a supply.[21] Where the payment is a gift but is not made to a non-profit body it may be in connection with, in response to, or for the inducement of a supply. For example, a tip may be paid in response to the supply of good service and therefore consideration for a supply.

Other related issues

Financial assistance in kind can be both consideration and a supply

57. Where financial assistance is provided in a form that falls outside the definition of money, such as a transfer of real property or a provision of goods or services, the provision of the financial assistance itself is a supply. As financial assistance in kind may be made in return for another supply, there may be both a supply and an acquisition by each party.

58. Each party that makes a taxable supply is liable for GST on the supply it makes. Because the consideration is non-monetary, the amount of GST is based on the GST inclusive market value of the consideration,[22] which is the market value of the consideration without any discount for GST payable on the other supply. Where there is an arm's length transaction between the parties, the value of the consideration provided by each party is the same. In most cases, no additional net amount is payable by either party as a consequence of the arrangement where the GST and input tax credit for each party are attributable to the same tax period and the supplies have the same GST-inclusive market value.[23] However, both parties are still required to account for their supplies and acquisitions in their activity statements.

See *Goods and Services Tax Ruling GSTR 2001/6 Goods and services tax: non-monetary consideration*.

Financial supplies

59. A financial assistance arrangement that is a loan is an input taxed financial supply, if the provision of the loan satisfies the requirements of subparagraph 40-5.09(1) of the GST Regulations. This is so even where the terms of the loan allow for repayments to be waived on the occurrence of a specified event.

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[21] Subsection 9-15(2).
[22] Paragraph 9-75(1)(b).
[23] Assuming the acquisition of the supply is creditable. The parties need to record the GST payable on the supply, and their entitlement to input tax credits, to determine the net amount. A valid tax invoice or recipient created tax invoice must be held to claim the input tax credit to offset the GST payable (sections 29-10 and 29-70).

60. Many financial assistance payments are also made on the condition that they become repayable in the event of some specified default of the payee, such as a failure to meet milestones, or to spend the funds in the agreed manner. In these circumstances, there is no provision of an interest in a credit arrangement by the payer at the time the financial assistance payment is made. If, in the event of a default, the payer allows time for the payee to repay some or all of the payment, there may at that time be a provision of an interest in a credit arrangement, which is a financial supply if the requirements of subregulation 40-5.09(1) of the GST Regulations are satisfied.

See *Goods and Services Tax Ruling GSTR 2002/2 Goods and services tax: GST treatment of financial supplies and related supplies and acquisitions.*

Detailed Examples

In these examples it is assumed that:

- the payee is registered or required to be registered for GST and if they make a supply it is made in the course or furtherance of their enterprise and is connected with Australia; and
- the payer is registered or required to be registered for GST and if they make an acquisition it is a creditable acquisition.

Example 8 – Payments for the supply of rights

61. *Yearning for Learning, a non-profit organisation established to advance teaching and learning, provides financial assistance payments to enable Australian tertiary institutions to undertake research.*

62. *Yearning for Learning invites bids from Australian tertiary education institutions to receive financial assistance payments to undertake or further the institution's innovative research.*

63. *To receive the financial assistance payment (which is paid at the commencement of the project), a successful payee must enter into a written agreement with Yearning for Learning in which:*

- *the payee agrees to pass intellectual property rights in the material created to the payer; and*
- *unused monies, for example if research ceases during a two year period, must be repaid to the payer.*

64. *The substance of this arrangement is that the payee makes a supply of intellectual property rights. The financial assistance payment has a sufficient nexus with this supply because the payee is required to supply the intellectual property to obtain the financial assistance payment. Therefore the payment is consideration for that supply. The tertiary institution is liable for GST on the supply of the rights. Yearning for Learning is entitled to an input tax credit on their acquisition of the intellectual property rights*.

65. *The obligation supplied by the payee to repay unused monies is peripheral to the arrangement and does not have a sufficient nexus with the financial assistance payment.*

Example 9 – Payments for the entry into an obligation not to do something

66. *A government department instigates an exit assistance package to reduce the size of a particular industry. The package provides financial assistance payments to exiting members.*

67. *Eligible businesses are those that satisfy certain income and assets tests.*

68. *As a condition of receiving the financial assistance payment the eligible payee must agree to exit the industry, and not to return to the industry within 5 years of receiving the financial assistance payment. If the payee breaches this condition, they are required to repay the payment in full.*

69. *Under this arrangement, the payee makes a supply by entering into an obligation to exit their industry and to refrain from returning to their industry. The financial assistance payment has a sufficient nexus with the supply made as the payment is to acquire the payee's undertaking to leave, and remain out of, the industry. Therefore, the financial assistance payment is consideration for that supply*.

70. *The payee is liable for GST on the supply. The government department is entitled to an input tax credit for acquiring the entry into an obligation to exit the industry.*

71. *While the payee also supplies the entry into the obligation to repay the payment in certain circumstances, this supply does not have sufficient nexus with the financial assistance payment. It is the supply of a peripheral thing.*

Example 10 – Mere expectation

72. *A local government body introduces a financial assistance initiative to assist community groups. A Scout Group requests funds from the local government body in relation to the building of a Scout Hall.*

73. *Over several months the Scout Group enters into further negotiations with the local government body in relation to the building of the Scout Hall. Because of uncertainty in relation to the viability of the project, the local government body agrees to provide the Scout Group with financial assistance however the payment must be returned if the Hall is not built by a particular date.*

74. *The Scout Group is not obligated to build the Scout Hall. They merely agree to return the funds if the Scout Hall is not built.*

75. *While the entry into the obligation to repay the payment if the Hall is not built by a particular date is a supply, it does not have a sufficient nexus with the payment. It is the supply of a peripheral thing.*

76. *Therefore, there are no GST consequences for the payee and no input tax credit entitlement for the local government body.*

77. *Although the Scout Group builds the Scout Hall using the payment made by the local government body, the payment does not have a sufficient nexus with a supply. The building of the Scout Hall does not result in the supply of goods, services or other things to the local government body and there was no obligation to build the Hall.*

Example 11 – No supply made to payer

78. *A state government administers a financial assistance program to provide funding to independent schools to assist them with the additional costs associated with complying with statutory obligations.*

79. *The provision of the funding is not dependent on a school satisfying any conditions or meeting obligations. A school that receives the funding is not required to meet any expenditure or accountability requirements or report on the use of the funds.*

80. *Under this arrangement, the funding does not have a sufficient nexus with a supply and therefore there are no GST consequences for the school. The school merely obtains the government funding because it meets eligibility criteria. As the school makes no taxable supply to the state government, there is no input tax credit entitlement for the state government.*

Example 12 – Repayment clause

81. *The circumstances in Example 11 apply but there is a requirement to repay the financial assistance payment if the school is not open for the full academic year.*

82. *While there is an obligation to repay the monies if the school is not open for the full academic year, the supply of this obligation does not have a sufficient nexus with the funding. It is the supply of a peripheral thing.*

83. *Under the arrangement, there is no consideration for a supply and therefore there are no GST consequences for the school. It merely obtains the government funding because it is operational for the academic year. As the school makes no taxable supply to the state government there is no input tax credit entitlement for the state government.*

Example 13 – Supplies of peripheral things

84. *A government agency offers prepared food retailers a rebate of up to $3,000 when they purchase and install a new commercial dishwasher in their kitchen.*

85. *To be eligible for the rebate the dishwasher must be installed in existing premises and the dishwasher must meet a specified energy efficiency rating.*

86. *To obtain the rebate the payee (prepared food retailer) must submit an application form with copies of their purchase and installation invoices.*

87. *The payee does not enter into any obligations, other than agreeing to provide further evidence to support their claim if requested. The rebate provided by the government agency does not have a sufficient nexus with any supply made by the payee.*

88. *Although the provision of the payee's information and the obligation to provide further information if requested are supplies, the rebate does not have a sufficient nexus with those supplies. Therefore, there are no GST consequences for the payee. As the payee does not make a taxable supply, there is no input tax credit entitlement to the government agency.*

Example 14 – Supplies of peripheral things and natural disaster payments

89. *A government authority offers funding assistance for small business operators who have suffered loss or damage as a direct result of a natural disaster. The funding is by way of a lump sum payment and is determined by assessing the individual payee's needs.*

90. *Eligible businesses are those that operate as a partnership or sole trader, have an ABN and operate within a defined disaster area. To receive funding, an eligible business must complete and return a claim form including quotes from two repairers.*

91. *Under the arrangement, information provided by payees, who receive funding based on an estimate of expenses, is used by the payer to assess the payee's eligibility for funding.*

92. *When an eligible business is offered funding the parties enter into an agreement under which the business is required to repay any funding not used for the approved purpose*.

93. *The provision of information by the payee is a supply. However, it is not a supply made by the payee for the payment. It is a supply of a peripheral thing.*

94. *Payees who receive funding based on an estimate of expenses also supply the entry into an obligation to repay any unused funds. Again, the payment does not have a sufficient nexus with this supply. The payment is made to assist in meeting the costs of carrying out the works and not in return for the obligation to repay unused funds.*

95. *There is no obligation to carry out the works. The mere expectation that the works will be carried out is not a supply.*

96. *As the payment does not have a sufficient nexus with any supply made by the payee there are no GST consequences for the payee and therefore no input tax credit entitlement to the payer.*

Example 15 – Sponsorships

97. *Demeter Sports Goods, a sporting goods manufacturer, sponsors organisations that provide sport and recreational activities which contribute to the health and wellbeing of the community.*

98. *To receive the financial assistance payment, eligible organisations must agree to the following:*

- *display the logo of Demeter Sports Goods on event signage;*
- *place Demeter Sports Goods' signage at optimal locations for media and public exposure; and*
- *display the logo of Demeter Sports Goods on uniforms, invitations/tickets, event programs, advertisements, newsletters and award certificates.*

99. *The payee makes a supply of the entry into the above obligations. However, the entry into the obligations forms part of a larger transaction involving the displaying of the logos and placing of signage that are the supplies to which the payment has a sufficient nexus. Therefore, Demeter Sports Goods is acquiring these supplies in return for the financial assistance payment. The payee is liable for GST in respect of these supplies. Demeter Sports Goods is entitled to an input tax credit for acquiring these supplies.*

Date of effect

100. When the final Ruling is issued, it is proposed to apply both before and after its date of issue subject to the proposed transitional arrangement outlined in paragraphs 104 to 105 of this draft Ruling.

101. The final Ruling will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the ruling (see paragraphs 75 to 77 of Taxation Ruling TR 2006/10).

Conflict between GSTR 2000/11 and the final Ruling

102. Where entities have relied on GSTR 2000/11 to treat a supply as a taxable supply and the supply is not a taxable supply under the views expressed in this draft Ruling, they may seek a refund for past overpaid GST if it is within relevant time limits[24] and the payer is first refunded the overpaid amount.[25]

103. Where entities have relied on GSTR 2000/11 to determine that they did not make a taxable supply and the supply is a taxable supply under the views expressed in this draft Ruling, then no GST is payable on that supply. This means the amount of input tax credit the recipient is entitled to is zero.[26]

Proposed transitional arrangement

104. It is proposed that entities can continue to rely on the views expressed in the withdrawn GSTR 2000/11 for payments made before 31 December 2012 if:

- the arrangement between the parties was entered into before the date of issue of the final Ruling; and
- the GST consequences concerning the treatment of financial assistance payments made under those arrangements is impacted by any conflict between the views expressed in the final Ruling and GSTR 2000/11.

105. Where entities have entered into arrangements that they can not alter to take into account a change in GST treatment as a result of the views expressed in the final Ruling, they should apply to the ATO, in writing, for consideration of their circumstances on a case by case basis.

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[24] Section 105-55 of Schedule 1 to the *Taxation Administration Act 1953* (TAA).
[25] Section 105-65 of Schedule 1 to the TAA provides for restriction of GST refunds in certain circumstances.
[26] Section 11-25 of the GST Act and subsection 357-60(3) of Schedule 1 to the TAA, which applies from 1 July 2010. Before 1 July 2010, the Commissioner's view is that section 11-25 of the GST Act and section 105-60 of Schedule 1 to the TAA apply to provide the same outcome, that is the amount of input tax credit the recipient is entitled to in respect of that payment is zero.

Appendix 1 – Explanation

This Appendix is provided as information to help you understand how the Commissioner's preliminary view has been reached. It does not form part of the proposed binding public ruling.

Relationship between supply and consideration

106. A supply is not a taxable supply unless it is made for consideration. Consideration 'for a supply or acquisition' is defined by section 9-15. [27]

107. The definition of consideration is broad and extends beyond payments to include acts and forbearances to act.[28] It includes voluntary payments, and payments made by persons other than the recipient of a supply.[29]

108. A payment is consideration for a supply if the payment is 'in connection with', 'in response to' or 'for the inducement' of a supply.[30]

109. While caution needs to be exercised in applying decisions on connective terms in other contexts, the term 'in connection with' is of wide import[31] and has been held to be broader in scope than 'for'.[32]

110. In *Vidler's case*,[33] the Administrative Appeals Tribunal stated at paragraph 65:

> The GST Act uses expressions such as 'make [a] supply for consideration' (s 9-5(a)) and 'consideration for the supply' (s 75-10(2)), but then, in the Dictionary in s 195-1 and also in the definition in s 9-15(1)(a), embraces within the concept of 'consideration' any payment that is made 'in connection with' a supply. The introduction of that broader concept 'in connection with' cannot have been accidental. It must be assumed that the object of the legislation is to cast the net more widely than would have been the case if, in both s 195-1 and s 9-15(1)(a), the relationship between 'supply' and 'consideration' had been governed by the word 'for' rather than the expression 'in connection with'.

111. Therefore, the Commissioner considers that the nature of the link required between supply and consideration is specified in the definition of consideration. That is, a payment is consideration for a supply if the payment is 'in connection with', 'in response to' or 'for the inducement' of a supply.

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[27] Section 195-1.
[28] Subsection 9-15(1).
[29] Subsection 9-15(2).
[30] Subsection 9-15(1).
[31] *Burswood Management Ltd v. Federal Attorney-General* 23 FCR 144; 94 ALR 220.
[32] For example, in the High Court decision in *Berry v. FC of T* (1953) 89 CLR 653, Kitto J considered the meaning of consideration 'for or in connection with' in the context of former section 84 of the Income Tax Assessment Act 1936, a provision which included consideration for or in connection with goodwill in a lease premium. Kitto J held that 'in connection with' was a broader test than 'for'. At p. 659 he commented that consideration will be in connection with property where 'the receipt of the payment has a substantial relation, in a practical business sense, to that property'.
[33] *Vidler v FCT* [2009] AATA 395; 2009 ATC 10-093.

112. In determining whether a 'compensation amount' was part consideration for the supply of property, the Tribunal also stated in *Vidler's case:*[34]:

> ….. It is not sufficient to establish a relationship or an association of some kind between a payment and some act, activity or event that is not a taxable supply, or perhaps not a supply at all, and argue from that position that the payment is not consideration for a supply. For if, despite that relationship or association, there is nevertheless a 'connection' between a payment and some act, activity or event that is a supply, then the payment will form (at least part of) the consideration for that supply.

113. Thus, the Commissioner considers that in determining whether there is a connection between a financial assistance payment and a supply, the test is whether there is a sufficient nexus (or link) that provides a substantial relation between the supply and payment.

114. A financial assistance payment may have a sufficient nexus (or link) with a supply even though it may also serve to fulfil another aspect, or be connected with other aspects, of the arrangement, such as the objectives of the payer, that are not themselves supplies by the payee.

Gifts to non-profit bodies

Meaning of non-profit body

115. 'Non-profit body' is not defined in the GST Act. There are two elements to the definition:

- the entity must be a body; and
- the body must have the characteristic of being a 'non-profit body'.

116. The term 'body' has broad meaning. It is defined in the Macquarie Dictionary as including '17. A collective group; or an artificial person: body politic, body corporate.[35]

117. The Commissioner considers that a non-profit body is a body which is not carried on for the purpose of profit or gain to its members.

118. A body is a non-profit body if, by operation of law (for example, a statute governing a body's activities) or by its constituent documents, the body is prevented from distributing its profits or assets amongst its members while the body is functional and on its winding-up.[36] The body's actions must, of course, be consistent with the prohibition.

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[34] *Vidler v FCT* [2009] AATA 395; 2009 ATC 10-093.
[35] *The Macquarie Dictionary* (The Macquarie University, 3rd Ed 1998).
[36] Examples of suitable clauses in constituent documents are outlined in *Taxation Ruling TR 97/22: Income tax: exempt sporting clubs* at paragraph 22.

Meaning of gift

119. The term 'gift' is not defined in the GST Act and so takes on its ordinary meaning. The Commissioner considers that for GST purposes, income tax cases relating to gifts provide guidance. The income tax legislation similarly gives special treatment to gifts to some charitable and non-profit bodies.

120. The Commissioner's view on what is a gift for the purposes of the income tax gift deduction provisions[37] is explained in TR 2005/13. Although this view is expressed in the context of deductible gift recipients, the Commissioner considers the principles (outlined at paragraph 122 of this draft Ruling) are also relevant in determining whether there is a gift to a non-profit body for GST purposes.

121. In determining whether a financial assistance payment is a gift it is necessary to consider the whole of the circumstances surrounding the payment and this may include the role of parties other than the giver (payer) and the recipient of the gift. It is the substance and reality of the payment that has to be ascertained. It is therefore necessary to take account of those acts, transactions, arrangements and circumstances that provide context and the explanation for the payment.

122. Rather than attempting a definition of gift, the courts have described a gift as having the following characteristics and features:

- there is a transfer of the beneficial interest in property;[38]
- the transfer is made voluntarily;[39]
- the transfer arises by way of benefaction;[40] and
- no material benefit or advantage is received by the giver (payer) by way of return.[41]

123. In doing so, the courts have recognised that the criteria may not be absolute and may involve a matter of degree.

Refer to *Taxation Ruling TR 2005/13 Income tax: tax deductible gifts – what is a gift* for a detailed discussion of the meaning of 'gift'.

124. A payment that is made as a function of government, and does not have the characteristics of benefaction including detached, disinterested generosity,[42] is not a gift.

[37] Division 30 of the *Income Tax Assessment Act 1997*.
[38] See paragraphs 16 to 19 of TR 2005/13.
[39] See paragraphs 23 to 26 of TR 2005/13.
[40] See paragraphs 27 to 31 and paragraphs 33 to 36 of TR 2005/13.
[41] See paragraphs 37 to 44 of TR 2005/13.
[42] See paragraph 36 of TR 2005/13.

125. A payment may have conditions that relate to the payer's right to determine how the gift is to be used and still be gift.[43] Such conditions reflect the terms on which the donor makes, and the donee accepts, the payment.[44] The payment may still be a gift if the rights that arise as part of the making of the payment do not directly or indirectly provide a material benefit to the payer or an associate.

Example 16 – mere recognition of the gift

126. *Bruce Michael, a wealthy philanthropist, decides to give $5,000,000 to the public hospital in his area to build a new wing on the hospital to deal with people suffering from alcoholism.*

127. *To recognise Bruce's generosity, the hospital will name the new wing in his honour. In further recognition, the hospital will also acknowledge the gift by placing a plaque in the foyer of the new building. These acts by the hospital would not affect the status of the payment as it still possesses the characteristics of a gift, that is the payment was made voluntarily and the naming is not a material benefit. As the public hospital is a non-profit body and the payment is a gift there is no provision of consideration and therefore there are no GST consequences of the payment.*

Example 17 – acquittal report that is not a material benefit

128. *Bruce voluntarily gives money to a university to conduct cancer research and to disseminate the results in the usual way by publication in academic journals. An agreement is entered into between Bruce and the university under which the university will account for the use of his money on cancer research. If the university is a non-profit body, the payment is a gift and is not the provision of consideration. The supply of information in accounting for the financial assistance payment does not provide a material benefit to Bruce.*

[43] *Muschinski v. Dodds* (1984-1985) 160 CLR 583, 62 ALR 429, per Brennan J dissenting judgement at p.604. For more detail on the nature of the rights and obligations flowing see *Countess of Bective v. FC of T* (1932) 47 CLR 417 per Dixon J.

[44] *Muschinski v. Dodds* supra, at p. 604 per Brennan J.

Appendix 2 – GST outcome summary

129. The following table provides a summary of the GST outcomes of various financial assistance payment circumstances.

In these examples it is assumed that:

- the payee is registered or required to be registered for GST and if they make a supply it is made in the course or furtherance of their enterprise and is connected with Australia
- the payer is registered or required to be registered for GST and if it makes an acquisition it is a creditable acquisition.

Thing provided	Example	GST outcome for payee	GST outcome for payer	Draft Ruling paragraph number
Rights 	The payer provides the payee with funds to undertake a research project and the payer receives the right to commercially exploit the intellectual property resulting from the research.	Liable to GST	Entitled to an input tax credit	23
Obligation to do something 	Payee enters into an obligation with the payer, under which the payee is required to deliver specified services to the community. The payer makes the payment to the payee for the purpose of those services being delivered.	Liable to GST	Entitled to an input tax credit	24 to 30

Thing provided	Example	GST outcome for payee	GST outcome for payer	Draft Ruling paragraph number
Obligation to not do something 	The payee enters into an obligation to exit their industry and to refrain from returning to their industry in return for a financial assistance payment from the payer.	Liable to GST	Entitled to an input tax credit	24 to 30
Advice or information 	The payer pays the payee to carry out a survey and provide a report on the survey's findings.	Liable to GST	Entitled to an input tax credit	31 to 32
Peripheral supplies 	The **only** supply the payee makes is, submitting an application for the payment, agreeing to repay an amount not spent and/or giving a report to the payer about how the monies were spent.	No GST payable	Not entitled to an input tax credit	33 to 44
Sponsorships 	The payee provides advertising and promotional activities for the payer's sponsorship payment.	Liable to GST	Entitled to an input tax credit	45 to 48
Gift 	The payee is a non-profit body and the payment is a 'gift' as defined in TR 2005/13.	No GST payable	Not entitled to an input tax credit	53 to 56

Appendix 3 – Your comments

130. You are invited to comment on this draft Ruling and any transitional arrangements that should be taken into account. Please forward your comments to the contact officer by the due date.

131. A compendium of comments is also prepared for the consideration of the relevant Rulings Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be:

- provided to persons providing comments; and
- published on the ATO website at www.ato.gov.au.

Please advise if you do not want your comments included in the edited version of the compendium.

Due date:	**16 December 2011**
Contact officer:	**Warren Stamoulis**
Email address:	**Warren.Stamoulis@ato.gov.au**
Telephone:	**(08) 8218 9286**
Facsimile:	**(08) 8208 1898**
Address:	**PO Box 9977**
	Adelaide, SA, 5001

Appendix 4 – Detailed contents list

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 97/22; TR 2005/13;
TR 2006/10; GSTR 2001/6;
GSTR 2002/2; GSTR 2006/9;
GSTR 2006/9DA; GSTR 2011/2

Previous Rulings/Determinations:

GSTR 2000/11

Subject references:

- charities
- creditable acquisition
- gifts
- gifts to organisations
- government agencies
- government entities
- government grants income
- grants in kind
- grants of financial assistance & funding
- Goods and Services Tax
- GST
- GST charities
- GST consideration
- GST financial assistance
- GST financial supplies
- GST Government Stream
- GST input tax credits & creditable acquisitions
- GST non profit
- GST Non profit stream
- GST non-monetary consideration
- GST payments
- GST public benevolent institutions
- GST supply
- local government

Legislative references:

- ANTS(GST)A 1999 9-5
- ANTS(GST)A 1999 9-5(a)
- ANTS(GST)A 1999 9-5(b)
- ANTS(GST)A 1999 9-5(c)
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- FC of T v Secretary to the Department of Transport (Vic) [2010] FCAFC 84; 2010 ATC 20-196; 76 ATR 306
- Muschinski v. Dodds (1984 - 1985) 160 CLR 583; 62 ALR 429
- Vidler v FCT [2009] AATA 395; 2009 ATC 10-093

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