



***GSTA TPP 054 - Goods and services tax: Is B's payment to A consideration for A's supply to B where, under an agreement between A and B: A licenses intellectual property to B (who sublicenses it to C) and; the amount B pays A is calculated by reference to the extent of B's supply to C?***

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 This document has changed over time. This is a consolidated version of the ruling which was published on 14 June 2005



## Goods and Services Tax Advice

### Goods and services tax: Is B's payment to A consideration for A's supply to B where, under an agreement between A and B:

- A licenses intellectual property to B (who sublicenses it to C) and;
- the amount B pays A is calculated by reference to the extent of B's supply to C?

#### Preamble

*This document is a ruling for the purposes of section 37 of the Taxation Administration Act 1953. It illustrates the principles contained in **Goods and Services Tax Ruling GSTR 2000/11 on grants**. You can rely on the information presented in this document, which provides advice on the operation of the GST system.*

#### Answer

Whether consideration is for a particular supply is a matter to be determined on the facts and the form and substance of the transaction. The test is one of sufficient relationship or nexus to the supply and whether an item of consideration is 'in response to' or 'for the inducement of' a supply. Although B's payment to A is calculated by reference to the on-supplies by B to C, the requisite connection is to the supply A makes to B.

#### Background

Under the terms of the agreement between A and B, the royalty could be based upon goods sold or produced, or services performed. This creates a connection between the payment by B to A, and the supply by B to C.

#### Explanation

The definitions of supply and consideration are broad and questions commonly arise as to which of the identifiable supplies an item of consideration is connected with. This depends on the facts of the case, having regard to the structure of the GST as a tax on transactions.

A's entitlement to payment arises under its contract with B and forms part of that transaction.

The fact that the royalty payment is calculated by reference to B's supply to C is not sufficient to lead to the conclusion that it is consideration for B's supply to C.

In the case of the supply of the sub-licence, any amounts paid by C to B would ordinarily be consideration for the supply of the sub-licence.

#### Application of this GST Advice

This Advice is based on GSTR 2000/11. It explains our view of the law as it applied from 1 July 2000. You can rely on this Advice on and from its date of issue for the purposes of section 37 of the *Taxation Administration Act 1953*. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and our view of when you can rely on our interpretation of the law in GST public and private rulings.

If this Advice conflicts with a previous private ruling that you have obtained, this public ruling prevails. However, if you have relied on a private ruling, you are protected in respect of what you have done up to the date of issue of this public ruling. This means that if you have underpaid an amount of GST, you are not liable for the shortfall prior to the date of issue of this later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

Commissioner of Taxation  
Date

#### Related Rulings/Determinations/GST Advice:

GSTR 2001/4  
GSTR 2001/6

#### Subject references:

supply  
consideration  
in connection with  
royalties

***Legislative references:***

TAA 1953 37

**ATO references**

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