GSTR 2000/4 - Goods and Services Tax: appropriations

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Goods and Services Tax Ruling
Goods and Services Tax: appropriations

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Preamble

This document is a ruling for the purposes of section 37 of the Taxation Administration Act 1953. You can rely on the information presented in this document - which provides advice on the operation of the GST system.

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]

What this Ruling is about

1. This Ruling deals with the application of paragraph 9-15(3)(c) of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act), to payments made between government related entities that are specifically covered by an appropriation under an Australian law.

2. Such payments are not consideration for a supply and will therefore not be subject to GST.

3. 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

4. This Ruling will apply on and from 8 July 1999 (the date of Royal Assent to the 'GST' legislation).

Context for appropriations

5. The policy intent behind the appropriations provision can be found in the following statement in 'Tax reform: Not a new tax, a new tax system'[1]:

> 'The non-commercial activities of government will be outside the scope of the GST. For example, appropriations for general government activities will not be taxable, nor will grants from

[1] Page 98

one level of government to another, as neither constitutes consideration for a supply.'

6. The appropriations provision is intended to exclude funding payments, which are non commercial in nature, from the operation of GST, while not excluding payments which represent fees for goods, services and similar things.

Ruling

7. Paragraph 9-15(3)(c) provides that: 'a payment made by a government related entity to another government related entity is not the provision of consideration if the payment is specifically covered by an appropriation under an *Australian law.'

8. The term 'government related entity' means:

(a) a Department of State of the Commonwealth; or

(b) a Department of the Parliament; or

(c) an Executive Agency, or Statutory Agency, within the meaning of the *Public Service Act 1999*; or

(d) a Department of State of a State or Territory; or

(e) an organisation that:

(i) [2]

(ii) is either established by the Commonwealth, a State or a Territory (whether under a law or not) to carry on an enterprise or established for a public purpose by an *Australian law; and

(iii) can be separately identified by reference to the nature of the activities carried on through the organisation or the location of the organisation; whether or not the organisation is part of a Department or branch described in paragraph (a), (b), (c) or (d) or of another organisation of the kind described in this paragraph.; or

(f) [3]a local governing body established by or under a *State law or *Territory law; that registers for GST separately.

[2] Subparagraph (e)(i) of the definition of 'government entity' in section 41 of the ABN Act limits that paragraph's scope to organisations which are not entities; this limitation does not apply for the definition of 'government related entity' in section 195-1 of the GST Act.

9. A payment between government related entities is "specifically covered by an appropriation under an Australian law" if it has the following features:

- the payment is made by a government related entity to another government related entity; and
- the authority to make the payment is found in an Act or other instrument of a legislative character which appropriates moneys; and
- the payment is either:
  - covered by an appropriation that specifically deal with transactions between one government related entity and another, or
  - not part of a commercial transaction.

Explanations

Payment by a government related entity to another government related entity

10. Paragraph 9-15(3)(c) applies to payments. The payment must be made by a government related entity, and it must be made to another government related entity.

11. 'Government related entities' are the individual organisations which governments choose to register separately for GST[4]. The term is defined in the dictionary to the GST Act[5]. That definition builds on the 'government entity' definition in section 41 of the *A New Tax System (Australian Business Number) Act 1999* ('ABN Act').

12. Reading the two definitions together, the term 'government related entity' is as described in paragraph 8 above.

13. Each registered government related entity is regarded for GST purposes as a separate entity, and transactions among such entities are subject to the GST law in the same way as transactions among separate legal entities[6].

14. GST applies to supplies between entities. Transactions among individual parts of an organisation that are not separately registered have no GST effect, as they do not involve supplies or acquisitions

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[3] This paragraph does not appear in the ABN Act definition and is only part of the definition of 'government related entities' for the GST Act. It appears as paragraph (c) of that definition.
[4] Section 149-5.
[5] Section 195-1.
[6] Section 149-15.

from separate entities. Consequently, supplies within a government agency or department will not have GST consequences unless the supplies are between separately registered government related entities.

Appropriation under an Australian law

'Appropriation'

15. The term 'appropriation' is not defined in the GST Act. The Macquarie Dictionary defines appropriation as

> '1. anything appropriated to a special purpose, as money; 2. the act of appropriating; 3. an act of a legislature authorising money to be paid from the Treasury for a special use.'

16. The Oxford Dictionary of Law defines appropriation as

> 'The allocation of a sum of money to a particular purpose. The annual Appropriation Act authorises the issue from the Consolidated fund of money required to meet government expenditure and allocates it between departments and by reference to itemised heads of expenditure.'

17. The dictionary definitions indicate that the term appropriation has a general meaning and a 'government specific' meaning which refers to Acts appropriating money. Having regard to the qualification "under an Australian law", we regard the 'government specific' meaning as the appropriate meaning in the context of paragraph 9-15(3)(c).

18. On this basis, we consider that an "appropriation under an Australian Law" means an allocation of moneys by a statute of the Commonwealth, a State or a Territory, or by delegated legislation.

'Specifically covered'

19. An appropriation provides the Parliamentary authority for the allocation of moneys from a fund, such as a consolidated revenue fund, for a particular purpose. An appropriation is not in itself a payment. It is an authorisation for an arm of government to draw funds from the specified fund in furtherance of the purpose, so that a payment will be covered by an appropriation if it is outlaid for the purpose of the appropriation.

20. The legislation requires that the appropriation be 'specifically covered' under an Australian law. In practice, the purpose will not always be explicitly specified by the appropriation. For example, where an appropriation is specified to be to a particular agency, or class of agencies, without further specification of the purpose, the payment would be taken to be for the purpose of funding that agency, or that class of agencies. Alternatively an appropriation might be

specified to be 'for the purposes of', say, a department or a minister. In such cases the meaning and extent of the purpose of the department or the minister may be determined from the past practice of the department or minister. In other cases, the purposes may be determined by the relevant minister subsequent to the appropriation being made.

21. Documents which are considered by a Parliament in passing Appropriation Bills, such as budget papers, are not themselves the appropriations which are made by Acts of Parliament, but they provide guidance in determining the funding programs which are covered by appropriations.

22. In many cases, the purpose will be specified in very general terms. Under the global budgeting principle, appropriations are made to particular portfolios or agencies for the provision of specified outputs, representing services which are provided to achieve outcomes required by the appropriating government.

23. We consider that all the cases in paragraphs 20-22 are specifically covered by an Australian law.

24. In addition, payments covered by appropriations which specifically contemplate transaction between one government related entity and another such entity would also be specifically covered by an appropriation under an Australian law. For example, an appropriation might specifically require a government related entity to buy particular goods or services from another government related entity.

'Australian Law'

25. The appropriations provision provides that a payment must be made under an 'Australian law'. The GST Act defines an Australian law by reference to the dictionary to the *Income Tax Assessment Act 1997*, which in turn refers to definitions of a 'Commonwealth law', a 'State law' and 'Territory law'.

26. Read together, these definitions mean that an Australian law has the following meaning:

Australian law means***:***

a) a law the Commonwealth; or

b) a law of a State; or

c) a law of a territory.

27. The term 'Australian law' would encompass Acts and laws made under law making powers which are delegated by Parliaments, such as regulations, by-laws, proclamations and orders made under

Acts. However, appropriations are normally made by Acts of Parliament.

Payments for commercial transactions

28. The hallmark of an appropriation, as the term is used in paragraph 9-15(3)(c) is that it is a funding payment that is non-commercial in nature or an appropriation specifically to fund an activity. This is because an appropriation usually ends once the funds are transferred to the ultimate government related entity to be used in the course of its operations. Accordingly, an agency may be funded through an appropriation, but the money that the agency subsequently expends on goods and services to further its operations will not usually retain the character of an appropriation. However, if such transactions are specifically contemplated by the appropriation itself then they will be specifically covered by the appropriation whether they are commercial or not.

Example

29. A Roads Department receives an appropriation from its State government. It then uses this money to buy earthmoving equipment in the marketplace. The expenditure on the earthmoving equipment will be consideration for a taxable supply.

30. Similarly, not all payments between government related entities will be appropriations. An appropriation payment is generally made in connection with a non-commercial funding transaction where no goods, services or presently existing property rights are provided to the paying agency in return for the payment. The contrast lies between a payment provided as a means of funding the delivery of outputs by an entity on behalf of a government and a transaction which represents a commercial charge made by the entity for goods and services in a commercial setting.

Identifying commercial transactions

31. As a guide, payments are not appropriations where they are regarded as 'requited' under the Australian Bureau of Statistics' government financial statistics (GFS) classification framework[7][8]. Payments are regarded as 'requited' where goods, services, or property rights, which can be recorded in accounts, flow in return.

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[7] ABS, Cat. 5514.0: Government Finance Statistics Australia: Concepts, Sources and Methods, p. 89

[8] This guide is subject to the nature of the appropriation. An appropriation may be specific enough to cover a commercial transaction; see paragraph 24.

Conversely, a payment is unrequited where no goods, services, or property rights flow to the payer in return for the payment[9].

32. The reference to property rights in paragraph 30 is to presently existing rights, such as a right to use intellectual property which is the result of a project funded by a grant payment to a government related entity. Contingent rights which crystallise in cases of default by the recipient would not be regarded as property rights for this purpose.

33. In addition, internal transfers within a government department, even if supported by purchaser-provider agreements, are not supplies between entities unless the respective divisions within the government organisation have registered for GST.

34. Incidental things that a government related entity is required to do as part of a transaction, such as comply with departmental controls, and things which are general management or accountability requirements, should not be interpreted as being 'goods, services or property rights'.

Detailed contents list

35. Below is a detailed contents list for this Ruling:

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[9] ABS, p. 10

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- ANTS(GST)A99 9-15(3)(c)

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