GSTR 2006/11 - 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 105-60 of Schedule 1 to 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.*

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* (GST Act), to payments made between government related entities that are specifically covered by an appropriation under an Australian law.

2. For a discussion on grants of financial assistance see Goods and Services Tax Ruling GSTR 2000/11 Goods and services tax: grants of financial assistance.

3. This Ruling does not address gifts[1] to non-profit bodies or the operation of Division 72[2] of the GST Act.

4. All legislative references in this Ruling are to the GST Act unless otherwise specified.

Date of effect

5. This Ruling explains the Commissioner's view of the law as it applied from 1 July 2000. You can rely upon this Ruling on and from its date of issue for the purposes of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953*. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and the Commissioner's view of when you can rely on our interpretation of the law in GST public and private rulings.

6. If this Ruling conflicts with a previous private ruling that you have obtained, this public ruling prevails. However, if you have relied on a previous 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.

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[1] See GSTR 2000/11 for a discussion on gifts.
[2] Division 72 applies where there is a supply made to an associate and does not apply to a payment that meets paragraph 9-15(3)(c).

Previous Rulings

7. This Ruling replaces Goods and Services Tax Ruling GSTR 2004/5 Goods and services tax: appropriations. GSTR 2004/5 is withdrawn with effect from the date of issue of this Ruling. You can rely upon GSTR 2004/5 until the date of issue of this Ruling. This means that if you have relied on GSTR 2004/5 to determine whether a payment is consideration, then you are protected in respect of that treatment for payments made prior to the release of this Ruling.

Context for appropriations

Goods and services tax

8. Each government related entity[3] that is registered or required to be registered for GST needs to consider whether there are any GST consequences in relation to its activities. There will be a GST liability if the requirements under section 9-5 for a taxable supply are met.

9. The requirements in section 9-5 are:

(a) the supply is made for consideration;

(b) the supply is made in the course or furtherance of an enterprise that is carried on;

(c) the supply is connected with Australia; and

(d) you are registered or required to be registered.

However, the supply is not a taxable supply to the extent that it is GST-free or input taxed.

10. Paragraph 9-5(a) requires three things: a supply, consideration and that the consideration is for that supply.[4]

Supply

11. If there is no supply there is no taxable supply and the payment is not subject to GST. If there is no supply, there is no need to consider whether or not paragraph 9-15(3)(c) applies to a payment.

[3] The meaning of 'government related entity' is discussed in paragraphs 40 to 45 of this Ruling.

[4] For further discussion on supplies see, for example, Goods and Services Tax Ruling GSTR 2000/11 Goods and services tax: grants of financial assistance, Goods and Services Tax Ruling GSTR 2001/4 Goods and services tax: GST consequences of court orders and out-of-court settlements, and Goods and Services Tax Ruling GSTR 2006/9 Goods and services tax: supplies.

12. Whether there is a supply for consideration when there is a payment of financial assistance is discussed in Goods and Services Tax Ruling GSTR 2000/11. The principles from GSTR 2000/11 may be used to determine if there is a supply where a payment is made that is authorised by an appropriation. In particular, GSTR 2000/11 discusses whether there is a supply in various scenarios and, if there is, whether the payment is consideration for that supply.

13. As this Ruling only discusses paragraph 9-15(3)(c), it may be necessary to look not just to this Ruling, but also to other Rulings such as GSTR 2000/11 to determine whether a payment authorised by an appropriation is subject to GST.

Consideration

14. A payment that meets the requirements of paragraph 9-15(3)(c) is not consideration. This means that the payment is not consideration *for a supply*, and hence there is no taxable supply. This is because the requirements of paragraph 9-5(a) are not met if there is no supply for consideration.

Policy for paragraph 9-15(3)(c)

15. 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'*.[5]

> The Government's intention would be to apply the GST to the commercial activities of all levels of government in the normal manner. However, there are Constitutional limitations on subjecting some activities of government to the GST. … 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 one level of government to another, as neither constitutes consideration for a supply.

[5] Tax reform: Not a new tax, a new tax system, Commonwealth of Australia 1998, at page 98.

16. 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. This is reflected in paragraph 1.16 of the Senate Supplementary Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998:

> For example, if a State government makes an appropriation to a State Crown department, there would be no GST on this payment as it would be covered by ***new paragraph 9-15(3)(c)***. If the department makes a further payment to a State authority under the appropriation, there would be no GST on this payment. If the authority distributes the money to various registered community bodies and the community bodies have to use the money for particular purposes (that is, the payments are not unconditional gifts), the payments to the community bodies will be consideration for a supply, and hence will be taxable.

17. In addition, not exempting government from GST on payments or fees for goods, services and similar things is also reflected in the *Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations* (Intergovernmental Agreement). Section 10 of the *A New Tax System (Commonwealth-State Financial Arrangements) Act 1999* and various Acts of the States and Territories give effect to that Intergovernmental Agreement. Paragraph 17 of that Intergovernmental Agreement states:

> The Parties intend that the Commonwealth, States, Territories and local government and their statutory corporations and authorities will operate as if they were subject to the GST legislation. They will be entitled to register, will pay GST or make voluntary or notional payments where necessary and will be entitled to claim input tax credits in the same way as non-Government organisations.

Ruling with Explanation

18. 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.

Therefore, the following requirements have to be met for a payment not to be consideration under that paragraph:

- there has to be an appropriation under an Australian law;
- the payment must be made by a government related entity to another government related entity; and
- the payment must be specifically covered by the appropriation.

These requirements are discussed in paragraphs 23 to 62 of this Ruling.

19. It should be noted however that even if these requirements are not met and paragraph 9-15(3)(c) does not apply GST may still not be applicable.

20. For GST to apply the payment has to be consideration for a taxable supply. One of the requirements for a taxable supply is that there is a supply made for consideration (paragraph 9-5(a)).[6] Hence, there has to be a supply for there to be a taxable supply.[7] If a payment is not made for a supply then there cannot be a taxable supply and GST is not applicable.

21. However, where paragraph 9-15(3)(c) does not apply and there is a supply, then the supply is subject to the basic GST rules. To determine whether a payment made by one government related entity to another should be GST-inclusive or not, it will be necessary to determine the GST status of the supply.

22. Whether or not there is a supply for consideration is out of the scope of this Ruling, but has been discussed in other GST rulings.[8]

Appropriation under an Australian law

'Appropriation'

23. The term 'appropriation' is not defined in the GST Act. The Macquarie Dictionary[9] defines appropriation as:

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

24. The Oxford Dictionary of Law[10] 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 itemized heads of expenditure.

25. 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 relevant meaning in the context of paragraph 9-15(3)(c). That is, an appropriation is an authorisation for the expenditure of money.

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6 The other requirements are listed in section 9-5.
7 Assuming the other requirements in section 9-5 are met.
8 See for example, as noted above, GSTR 2000/11 for a discussion of whether there is or is not a supply in the context of grants of financial assistance. See also GSTR 2006/9.
9 Rev. 3rd edn, The Macquarie Library Pty Ltd, NSW.
10 2002, Oxford University Press, Melbourne.

'Australian law'

26. For the appropriations provision to apply the payment must be specifically covered by an appropriation made under an 'Australian law'. The GST Act defines an Australian law by reference to the dictionary to the *Income Tax Assessment Act 1997*,[11] which in turn refers to the definitions in that Act of 'Commonwealth law', 'State law' and 'Territory law'.

27. When the above definitions are read together, 'an Australian law' means:

- a law of the Commonwealth;
- a law of a State; or
- a law of a Territory.

28. 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.

29. On this basis, we consider that an 'appropriation under an Australian law' means an authorisation for the expenditure of money, by a statute of the Commonwealth, a State or a Territory, or by delegated legislation, in furtherance of a particular purpose. An appropriation is not in itself a payment. Throughout this Ruling, we refer to the relevant delegated legislation and statutes as an 'appropriation Act'.

Payment by a government related entity to another government related entity

'Payment'

30. Paragraph 9-15(3)(c) is intended to apply to payments of a funding nature. As noted in paragraph 29, an 'appropriation under an Australian law' is the authority for the expenditure of government money. In the context of paragraph 9-15(3)(c) the Commissioner is of the view that for a payment to come within paragraph 9-15(3)(c) the payment has to be of a funding nature and not commercial in character. For a payment to be of a funding nature, the payment must be an expenditure of money supported by a statute of the Commonwealth, a State or a Territory, or by delegated legislation.

31. Whether or not the funds have left the Consolidated Revenue Fund (CRF) is not relevant to determining whether there is a payment by a government related entity to another government related entity. Aside from the operation of paragraph 9-15(3)(c) the allocation of the funds is a payment for GST purposes.[12] If subsection 9-15(1) is met the payment is consideration.

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[11] That is, section 995-1 of the *Income Tax Assessment Act 1997*. See section 195-1 of the GST Act.

[12] For example, section 6 of the *Financial Management and Accountability Act 1997* treats notional payments as real payments.

32. When considering if paragraph 9-15(3)(c) applies to the payment, the purpose of the payment will be integral in characterising the payment as being of a funding nature or otherwise.

33. Not all payments between government related entities will be of a funding nature.

34. Accordingly, an agency may be funded by the allocation of government money under the authority of an appropriation Act, but when the funds are expended on goods and services to further the agency's operations, that expenditure will not be of a funding nature whether paid to a government related entity or a non-government related entity. At this point paragraph 9-15(3)(c) no longer has application and the basic GST rules apply.

35. Therefore, once the funds are allocated to the particular government related entity to be used in the course of its operations, any payments using those funds by that particular government related entity may not be made as an allocation of government money under the law appropriating the funds. The use of those funds, that is, payments made with the funds, to meet the particular government related entity's expenditure in the course of its operations, will not be payments of a funding nature. Therefore, paragraph 9-15(3)(c) will not be met and the basic GST rules will apply.

36. This accords with the intention as given in the Senate Supplementary Explanatory Memorandum,[13] as noted in paragraph 16 of this Ruling. That is, where the funding transfer from the department to the State authority is otherwise covered by paragraph 9-15(3)(c), but the use of those funds by the State authority is in its operations, such as payments to the community bodies for services, those payments are meant to be subject to the basic GST rules.

37. This remains the case even when the transaction is documented in the other relevant supporting documents as discussed at paragraphs 50 to 62 of this Ruling, such as the Portfolio Budget Statements, because the payment does not have the character of being made to specifically fund an activity. The payment could now be characterised as part of the entity's operating account for administration purposes. The payment is no longer made to fund the entity's operations; instead it is used by the entity in its operations.

38. The same conclusion applies even where the supplier of the relevant goods and services is another government related entity.

39. Where the paying agency receives something in return for the payment, the payment may be consideration for a supply. That is, the basic GST rules will apply to the payment.

[13] Senate Supplementary Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998.

'Government related entity'

40. The payment must be made by a government related entity, and it must be made to another government related entity. This will be a question of fact.

41. The term 'government related entity' is defined in the dictionary to the GST Act.[14] That definition builds on the 'government entity' definition in section 41 of the *A New Tax System (Australian Business Number) Act 1999* (the ABN Act).

42. For the purposes of this Ruling the two definitions are read together and the term 'government related entity' is taken to mean:

- a Department of State of the Commonwealth;
- a Department of the Parliament;
- an Executive Agency, or Statutory Agency, within the meaning of the *Public Service Act 1999*;
- a Department of State of a State or Territory;
- an organisation, whether or not it is an entity, that:

  (i) 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

  (ii) 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 the first four dot points above or of another organisation of the kind described in (i) or (ii);[15] or
- a local governing body established by or under a State law or Territory law.[16]

[14] Section 195-1.
[15] Subparagraph 41(e)(i) of the definition of 'government entity' in section 41 of the ABN Act limits points (i) and (ii) 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 (paragraph (b) of that definition).
[16] This element of the definition does not appear in the ABN Act definition of 'government entity' and is only part of the definition of 'government related entity' in section 195-1 of the GST Act (paragraph (c) of that definition).

43. The ability to separately register 'government related entities' means that GST may apply to supplies made between what are separate entities for GST purposes that are both, for example, in the same State, Department or other body. Each registered government related entity is regarded for GST purposes as a separate entity, and supplies between such entities are subject to the GST law in the same way as supplies between separate legal entities.[17] This is why transactions that would not normally be thought to involve any supply or payment from one entity to another may be treated for GST purposes as though they did involve a supply or payment from one government related entity to another. Such payments could be consideration for a supply unless paragraph 9-15(3)(c) applies. Note that paragraph 9-15(3)(c) applies to government related entities, which includes some entities that are not included as government entities.

44. Activities within a government agency or department cannot be subject to GST unless they are supplies made by separately registered government related entities as defined in the GST Act.

45. In the following discussion and examples the entities are government related entities that are individually registered for GST, unless stated otherwise.

Specifically covered

46. Paragraph 9-15(3)(c) requires that the payment be 'specifically covered by an appropriation' under an Australian law. The phrase 'specifically covered' is not defined in the GST Act.

47. To be specifically covered by an appropriation does not mean that the payment must be specified **in the wording of** the appropriation made under the relevant Australian law. Rather, the payment has to be specifically covered **by** the appropriation which is the authority for the payment. For the Commonwealth, this authority is required by sections 81 and 83 of the Commonwealth Constitution and is conferred by the provision of the relevant Act under which the money for the payment is appropriated from the Commonwealth CRF. There are similar requirements for the States and Territories.[18]

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[17] Section 149-15.

[18] For example section 66 of the *Constitution of Queensland 2001*, section 45 of the *Constitution Act 1902* (NSW), section 92 of the *Constitution Act 1975* (Vic), paragraph 72 of the *Constitution Act 1889* (WA), section 57 of the *Australian Capital Territory (Self-Government) Act 1988*, section 44 of the *Northern Territory (Self-Government) Act 1978*, section 63 of the *Constitution Act 1934* (SA) and section 38 of the *Constitution Act 1934* (Tas).

What has to be specified?

48. A payment authorised by an appropriation is an expenditure of money authorised by a statute or by delegated legislation. For Parliament to authorise expenditure it needs to specify the amount allocated. The payment is made so that particular outcomes or other purposes desired by Parliament are achieved.[19] Hence, to be specifically covered the following must be specified:

- the purpose of the payment; and
- the amount of the payment.

49. If the 'specifically covered' requirement is not met then the basic GST rules will apply.

Where does this have to be specified?

50. Although the authorisation for the payment derives from an appropriation Act, that Act may only be based on a higher-level 'Outcomes' approach. Under the Outcomes approach, only a brief outline of funding arrangements is given in the appropriation Act. This brevity does not allow for specific details of the payment required to meet the 'specifically covered' element in paragraph 9-15(3)(c) to be included in the appropriation Act.

51. In some cases, 'special' or 'standing' appropriations from the CRF may be authorised by Acts other than those considered annually by Parliament. While a 'special' or 'standing' appropriation may be mentioned in budget papers, this is not always the case.

52. In practice, the details of an appropriation, such as particular information about its purpose, may not always be specified by the appropriation Act. In many cases, the purpose will be documented in very general terms in the appropriation Act, but explained further in relevant supporting documents.

53. For this reason the details relevant to a payment, being its purpose and amount, that can show it is specifically covered by an appropriation, have to be specified in the appropriation Act taken together with the relevant supporting documents.

54. Relevant supporting documents are those documents which explain the purpose of the payment. Those documents may also show the amount of the payment.

55. The relevant supporting documents are on their own insufficient to establish whether the payment is specifically covered by an appropriation. The relevant supporting documents, in conjunction with the relevant appropriation Act, must show how the payment is sourced from an appropriation and its purpose.

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[19] Refer to paragraphs 30 to 39 of this Ruling which explain when a payment is not made as an allocation of government money under the law, and is therefore, not a payment that is made under an appropriation.

56. For example, a letter from a Minister to a government related entity will not itself provide authority for an expenditure and may not itself provide sufficient information to show a payment is specifically covered by the appropriation. However, it may, together with other documents, such as a Portfolio Budget Statement, provide further explanation of an amount in the appropriation Act with authority for the expenditure coming from the appropriation Act.

57. Budget papers, Portfolio Budget Statements and Agency Budget Statements are relevant supporting documents because they explain the specific purpose of the appropriation. Other documents that are a part of the appropriation process may also be relevant to substantiating the specifics of the appropriation. These documents do not need to exist prior to the finalisation of the appropriation process. It is sufficient that they relate to the appropriation process. They are also relevant supporting documents. For example, the following documents may provide additional information that further explains the amounts given in an appropriation Act and can be relevant supporting documents:

- Ministerial Statements or Speeches related to the Budget, or appropriation Act or policy to which the appropriation Act relates;
- Government released Budget overview documents;
- Ministerial media releases related to the Budget and/or policy to which the appropriation Act relates;
- Budget documentation (background documents prepared at an agency level in the process of seeking funds to be included in that budget) related to the appropriation Act;
- Written agreements such as Funding Deeds, Service Level Agreements, Deeds of Agreement or Memoranda of Understanding between government related entities;
- Computer records and accounts which link payments to appropriation sources through mechanisms such as cost codes; or
- Letters from a Minister to government related entities.

58. When a government related entity uses money allocated by an appropriation to make a payment, the payment may be specifically covered by an appropriation, but only where the amount of that payment and the purpose of the payment are specified in an appropriation Act or in the relevant supporting documents.

59. If a government related entity uses money allocated by an appropriation to make a funding payment to another government related entity, and this payment is not specifically covered in an appropriation Act or in the relevant supporting documents, then the basic GST rules apply to the payment. As noted in paragraphs 11 to 13 of this Ruling there will need to be a supply for which the payment is consideration for the payment to be subject to GST.

60. The initial source of funds being from a payment covered by an appropriation is not relevant. What is important is that the payment be to another government related entity and is specifically covered by an appropriation under an Australian law as shown by reference to the appropriation Act and relevant supporting documents. It is not enough for the payment to be merely linked to or associated with the appropriation or to another payment that is specifically covered by the appropriation. Payments that are not so specified are subject to the basic GST rules.

61. If a payment made in a particular tax period is consideration for a supply and it is not specifically covered by an appropriation in the tax period to which the Activity Statement relates, but subsequently becomes specifically covered because the relevant supporting document comes into existence in a later tax period, and paragraph 9-15(3)(c) is then met, an adjustment under Division 19 may be required if there is an adjustment event.[20] This is because the payment may be consideration for a taxable supply during the initial tax period, but may stop being a taxable supply if paragraph 9-15(3)(c) is met in the later tax period, as the payment would no longer be consideration for the supply.

62. However, if the payment is not of a funding nature then paragraph 9-15(3)(c) will not be met. It does not matter whether the payment meets the requirements for being specifically covered. The basic GST rules will apply. This is discussed at paragraphs 30 to 39 of this Ruling. In these circumstances, if there is no supply made for the payment then there are no GST consequences. However, if there is a supply made then it will be taxable if the other requirements of section 9-5 are met.

Examples

Example 1 – payments specifically covered by an appropriation

63. *A Portfolio Budget Statement contains information about a State Government Department of Education allocation of $10 million to the State's government schools to upgrade the schools' information technology facilities. The objectives of the upgrade listed in the Portfolio Budget Statement include increasing the schools' online resources and replacing old computers with new computers.*

[20] See Goods and Services Tax Ruling GSTR 2000/19 for a discussion on making adjustments under Division 19 for adjustment events.

64. *An appropriation allocates funds from the State's CRF to the State Government Department of Education.*[21] *The payment is of a funding nature. Further, as it is specified in the Portfolio Budget Statement (that is, the purpose and the amount are stated) the payment is specifically covered by an appropriation under an Australian law.*

65. *The State Government Department of Education then makes payments to the schools. These payments by the State Government Department of Education are funding payments and they are also specifically covered by the appropriation.*

66. *It is not necessary for the name of each government school to be listed in the Portfolio Budget Statement as it will be a question of fact as to whether the payment by the State Government Department of Education is made to a government related entity (the government schools). If this funding payment is made from one government related entity to another government related entity and is specifically covered by an appropriation, it will not be consideration.*

Example 2 – payment to a non-government related entity

67. *The same Portfolio Budget Statement from Example 1 provides for a payment of $2 million to be made to non-government schools. The allocation of funds from the CRF to the State Government Department of Education is a funding payment and is specifically covered by an appropriation (that is, the purpose and amount is stated in the relevant supporting documents) and therefore is not consideration.*

68. *Although the payments by the State Government Department of Education to the non-government schools also have a funding character and are specified in the Portfolio Budget Statement, these payments do not satisfy paragraph 9-15(3)(c) because the payments are made to non-government schools which are not government related entities. Therefore, the payments from the State Government Department of Education to the non-government schools may be consideration for a supply. Refer to GSTR 2000/11 for further information in relation to establishing whether there is a supply for consideration in the context of grants of financial assistance.*

[21] When the funds are allocated to the Department of Education they may not leave the CRF, and may not do so until paid outside of the government. However, for GST purposes there has still been a payment to the Department of Education and from the Department of Education to the government schools. See paragraph 31 of this Ruling.

Example 3 – not a payment specifically covered by an appropriation – government supplier

69. *Using the same facts from Example 1, when the money has reached a government school it has reached the particular government related entity for use in its operations. Any payments with that money by the particular school are not of a funding nature and are not specifically covered by the appropriation. If a government school enters into a contract with another government school for acquisitions to upgrade its information technology facilities the use of the money is not a funding payment. This is because the purpose of the payment by the school is not to fund the activities of the other school, but rather to pay for goods or services supplied to it by the other school.*

70. *When the school expends the funding allocated to it under the appropriation Act the basic GST rules will apply to the supply and acquisition of the upgrades to the school's information technology facilities. This outcome is the same whether or not the school contracts with another government related entity.*

Example 4 – payment which is part of another payment can be specifically covered by an appropriation

71. *Schedule 1 to the annual Appropriation Act (No. 1) 2003-2004 specified an amount of $1 billion as appropriated for the purposes of the Outcome of the Department. The relevant supporting documents specify an amount of $26 million to be available for the purposes of a Tribunal within the Department's portfolio as part of the aggregate amount appropriated to the Outcome of the Department. When the Department makes a payment to the Tribunal out of the $26 million it will be of a funding nature and not commercial in character. The payment will be specifically covered by the appropriation as the purpose and amount are specified in the other relevant supporting documents, and consequently are not consideration by virtue of paragraph 9-15(3)(c) as the payments are made from one government related entity to another government related entity.*

Example 5 – payment is consideration for a supply

72. *Newly created Department A is established with the sole function of investigating how to improve the level of exports by Australian enterprises. It received a payment specifically covered by an appropriation to 'investigate export impediments' to Australian businesses. As part of Department A's function it enters into an agreement with Department B to look into law improvement and the existing controls on exports for $500,000. This $500,000 is sourced from the funds Department A received that were funding payments and were specifically covered by the appropriation.*

73. *Although the payment to Department B is paid for with funds sourced from the payment for Department A, the purpose and the amount of the payment to Department B is not specified in the appropriation Act or the relevant supporting documents. Furthermore, the payment by Department A to Department B is a use of the funds in its operations and is therefore not of a funding nature. The purpose of the payment by Department A to Department B is to remunerate Department B for supplies made to Department A as part of Department A's investigation into export impediments. Department A is not funding Department B's activities.*

74. *Because the payment is not of a funding nature it does not matter whether it meets the requirements for being specifically covered. It is insufficient that there is merely a link between the payments. The payment from Department A to Department B is consideration for a supply.*

Example 6 – input taxed government related entity

75. *The Department of Residential Accommodation (DRA) of a Territory supplies housing. The DRA is a government related entity. The supplies of housing it makes are input taxed supplies of residential premises under section 40-35. A funding payment is allocated to DRA and the amount of the payment and its purpose is specified in relevant supporting documents to the Territory's Annual Appropriation Act. Therefore, this payment to the DRA meets paragraph 9-15(3)(c) and is not consideration.*

76. *During the course of the year, the DRA requires corporate services which are provided by the Territory's Administration Agency. The corporate services are supplies under section 9-10. When the DRA pays the Territory's Administration Agency for the corporate services, this is a use of the funds by the DRA in its operations and is therefore not a funding payment. The payment by the DRA is consideration for the supply of corporate services.*

Example 7 – not a payment specifically covered by an appropriation

77. *Local councils receive funding allocated under an appropriation Act from their State Government for the purpose of improving the State's roads. Once the funds have been allocated to each of the local councils by the State government the money is for the use of the local councils in their operations. Therefore, any payments made by the local councils are not of a funding nature.*

78. *Paragraph 9-15(3)(c) is not met in relation to those payments by the local councils. It does not matter whether or not they meet the requirements for being specifically covered.*

79. *One local council uses this money to hire earthmoving equipment from another local council. The expenditure on the earthmoving equipment will be consideration for a supply, and subject to GST if the other requirements of section 9-5 are met. It is irrelevant whether the other local council is a government related entity.*

Example 8 – not a payment specifically covered by an appropriation – cost recovery basis

80. *Department A occupies a building in the city centre. As one level of the building is unoccupied by Department A it leases the space to Department B. The rent that Department B pays to Department A is calculated on a cost recovery basis. The rent is paid using funds allocated to Department B in an appropriation Act for its general running costs. The payment from Department B to Department A is not of a funding nature. Paragraph 9-15(3)(c) is not met and it is irrelevant whether or not it meets the requirements for being specifically covered.*

81. *Department A makes a supply of accommodation to Department B for consideration. The supply of accommodation is subject to the basic GST rules and will be a taxable supply if the other requirements of section 9-5 are satisfied. It does not matter that the rent is calculated on a cost recovery basis.*

Example 9 – not a payment specifically covered by an appropriation – Service Agreement

82. *The Schedule to the Appropriation Act specifies an amount of $2 million to be expended by the Parks Department for the purpose of irrigating parks. This payment is specifically covered by an appropriation as the purpose and amount are specified in the relevant supporting documents.*

83. *The Parks Department invites tenders and both government and non-government entities submit bids. A Council wins the bidding process and the Parks Department in turn enters into a Service Agreement with that Council for the irrigation of parks. The Service Agreement says the provision of funds is subject to the Council's compliance with the terms and conditions of the Service Agreement. This Service Agreement includes various milestones the Council is required to satisfy and performance indicators to show the milestones have been met. The Council is also required to prepare reports under the Service Agreement such as reports on the performance of irrigation systems, proposed methods to improve irrigation effectiveness and the acquittal of funds. If the milestones are not met by the Council the Service Agreement allows the Parks Department to recover money from the Council.*

84. *In this case, the use of the funds, that is the $2 million or part thereof, by the Parks Department will be in furthering its operations. When it pays the funds to the Council, the funds are not of the character of a funding payment. This is the case whether the Parks Department engages a government related entity or a non-government related entity to provide the services. The payment made by the Parks Department to the Council is not covered by paragraph 9-15(3)(c) and is consideration. The next step is to determine if the Council has made a supply for that consideration. GSTR 2000/11 may assist in the context of grants of financial assistance.*

Specific Purpose Payments

85. Payments made from the Commonwealth CRF to the States and Territories are governed by a provision in the relevant Commonwealth Appropriation Act. For example, section 7 in *Appropriation Act (No. 2) 2006-2007* (No. 2 Act) provides that the Finance Minister may issue a specified amount from the Commonwealth CRF for a State, Australian Capital Territory, Northern Territory or local government payment item for an outcome of an entity. This amount may only be applied for the purpose of making payments to or for the States, the Australian Capital Territory, the Northern Territory or local government authorities for the purpose of contributing to achieving that outcome. Section 3 of the No. 2 Act defines 'State, ACT, NT and local government item' as 'an amount set out in Schedule 2 opposite an outcome of an entity under the heading "Payments to the States, ACT, NT and local government"'. Due to this collective documentation these Specific Purpose Payments are specifically covered by an appropriation.

86. Where the payments are made through the States and Territories to local government entities to fund those entities, it will be a question of fact as to whether the relevant supporting documents contain the purpose and amount of the payment, and whether the payment is made to a government related entity. In these circumstances it will be necessary to also look at the relevant appropriation Act and relevant supporting documents of the State or Territory that relate to the payment to the local government entities to determine whether these requirements are satisfied.

87. In cases where the purpose and amount of the payment is not contained in the relevant supporting documents, the payment is not made to a government related entity, and/or the payment is not in the nature of funding, the basic GST rules will apply. If the payment is made for a supply it will be subject to GST if the other requirements of section 9-5 are met.

Example 10 – specific purpose payment

88. *The Appropriation Act (No. 2) 2020-21 (Act) provides for a State payment item to be made from the Commonwealth CRF to a State in furtherance of Outcome 1. Schedule 2 to this Act shows the amount of the payment against the State's column, and also documents the purpose as helping local governments to provide child care. The State is essentially a conduit for the funding through the local governments to Child Care Centres.*

89. *The payment to the State is of a funding nature and as the amount and the purpose are documented in the Act this payment is also specifically covered by an appropriation. Further, the payment is made from the Commonwealth CRF to a government related entity (the State). Paragraph 9-15(3)(c) is met and the payment is not consideration.*

90. *When the State allocates part of the payment to the local government it still has a funding nature. The payment will be specifically covered if the State's Appropriation Act (or other act that gives effect to the payment to local government entities for the program) or relevant supporting documents show the purpose and amount of the payment. As well as the State's documentation, the documents supporting the Specific Purpose Payment (from the Commonwealth CRF to the State) are also relevant supporting documents for the purpose of ascertaining whether the payment to the local government is specifically covered. Both sets of documents are relevant because they are both part of the appropriation process for payments to help local governments provide child care. As the local government is a government related entity, then the payment meets paragraph 9-15(3)(c). Therefore, the payment to the local government is not consideration.*

91. *The local government then uses the payment from the State to provide funding to two child care centres in the form of financial assistance. Child Care Centre A is a government related entity and Child Care Centre B is a privately run enterprise.*

92. *The payment to Child Care Centre A is specifically covered because the relevant supporting documents and appropriation Acts combined show the purpose and the amount of the payment. Further, Child Care Centre A is a government related entity. As the payment is for financial assistance and it remains of a funding nature, all the elements of paragraph 9-15(3)(c) are met. The funding received from the local government is not consideration. When Child Care Centre A uses the money to run the centre the basic GST rules will apply.*

93. *As Child Care Centre B is not a government related entity paragraph 9-15(3)(c) does not apply. The funding it receives from the local government is subject to the basic GST rules. That is, if Child Care Centre B is making a supply to the local government then GST may apply. Child Care Centre B can refer to GSTR 2000/11 for guidance on whether it is making a taxable supply to the local government in return for the payment.*

Contingency funds

94. A contingency fund is an amount appropriated for the purpose of covering shortfalls in agency budgets. Contingency funds are used by government related entities to obtain additional funding for unforseen expenditure, for example, when already appropriated funds for a particular program run out before the next budget and extra 'top-up' funding is required. These contingency funds are established by the relevant appropriation Act. Due to the nature of this type of fund, the payments sourced from a contingency fund are usually sought by government related entities outside the normal budget process.

Commonwealth

95. Commonwealth Agencies may apply for additional funding in the interim between the Budget and the Additional Estimates processes. They do this by completing an application for money from the Advance to the Finance Minister (AFM). The AFM is authorised under the annual appropriation Acts, and enables the Finance Minister to provide agencies with additional money if satisfied, amongst other things, that the expenditure for that purpose is urgent and unforseen.

96. When the additional funds are allocated to an Agency it will be necessary to establish whether the payment to the Agency is of a funding nature, as discussed at paragraphs 30 to 39 of this Ruling. Where the unforeseen expenditure represents additional funds for an existing appropriation, it will be a funding payment if the original funding is of a funding nature, as long as the additional funding only alters the amount of the payment and not the purpose.

97. If the information relating to the AFM application contains details of the purpose and amount of the payment, the payment is specifically covered by an appropriation at the Advance to the Finance Minister to Agency level. It is not necessary for additional documentation to appear in a later appropriation Act.

States and Territories

98. Each jurisdiction has a contingency fund[22] to cater for unforseen expenditure which is administered by the relevant Treasurer or Minister of Finance. In some cases, the upfront approval of the payment is sufficient authority to make the payment. In other circumstances, the payment is made prior to a special Appropriation Bill being tabled and passed through Parliament. Allowance can also be made for payments directly from a CRF when the contingency fund is not sufficient or appropriate to cover the additional payment sought. In these circumstances it is generally required that a special Appropriation Bill be tabled before the relevant Parliament within a certain time frame.

[22] This may also be known as a Treasurer's Advance or Treasurer's Reserve.

99. As noted above for Commonwealth contingency funds, if the additional funding is for an existing appropriation, it will be of a funding nature if the original funding is of a funding nature, as long as the purpose of the payment remains the same. The payment will be specifically covered if the purpose and amount are contained in the appropriation Act or relevant supporting documents, including subsequent relevant supporting documents that are part of the appropriation process. For example, an application form may be a relevant supporting document if it meets the requirements for what are relevant supporting documents in paragraphs 50 to 62 of this Ruling.

100. As noted at paragraph 61 of this Ruling, if a payment made in a tax period is not specifically covered in the tax period to which the Activity Statement relates, but subsequently becomes specifically covered because the relevant supporting document comes into existence in a later tax period, and paragraph 9-15(3)(c) is then met, an adjustment under Division 19 may be required if the payment was consideration for a supply. This is because the payment may be consideration for a taxable supply during the initial tax period, but may stop being a taxable supply if paragraph 9-15(3)(c) is met in the later tax period, as the payment would no longer be consideration for the supply.

Example 11 – additional funding for a program

101. *The State Treasurer (the Treasurer) has a contingency fund into which funds were appropriated under Appropriation Act 2. This funding payment made into the contingency fund for the purpose of the contingency fund is specifically covered by Appropriation Act 2 as the amount and purpose are stated as a line item in the Schedule to the Act.*

102. *Department A runs out of funds without completing Program X and forwards an application to the Treasurer stating the purpose and amount of the request to the Treasurer for additional funds. The original payment made for Program X was of a funding nature and was specifically covered by an appropriation. The application meets the requirements for a payment to be made from the contingency fund. The approval of the application allows the Treasurer to make the payment to Department A, a government related entity.*

103. *The payment from the contingency fund to Department A (a government related entity) is specifically covered by Appropriation Act 2. This is because the application and the documents required to be lodged with it together contain the purpose and amount of the funding. In addition, as the original payment had a funding nature, this additional payment has a funding nature. Therefore, as both entities are also government related entities, the payment from the State to Department A is not subject to GST as it meets all the requirements of paragraph 9-15(3)(c).*

Example 12 – payment from a contingency fund

104. *Department XYZ, a government related entity, received a funding payment to build a community hall in a rural area and this funding was specifically covered by an appropriation. Due to an increase in building costs the original funding payment is insufficient to complete the construction of the community hall, so Department XYZ makes a request to the Minister for additional funding from the contingency fund.*

105. *The Minister writes to Department XYZ to notify approval for additional funding from the contingency fund for the construction of the community hall. Like the original funding payment, this payment for additional funds also has a funding nature. The letter is issued by the Minister after Appropriation Bills No. 1 & No. 2 are enacted but before the Additional Estimates process commences. The application was approved because it satisfied the requirements stipulated in Appropriation Act No. 2 to release funds from the contingency fund. In addition to the approved application, the letter also details the funding amount for Department XYZ's undertaking to construct the community hall and the payment is drawn from the Minister's contingency fund.*

106. *The Minister's letter is a document that is part of the appropriation process, and the money used by the Minister's Department to fund the construction of the community hall are taken from a general appropriation to the Minister's portfolio. Therefore, the funding payment from the contingency fund to Department XYZ is specifically covered by an appropriation.*

107. *As all the requirements in paragraph 9-15(3)(c) are met the payment is not consideration. When Department XYZ uses the money to complete the construction of the community hall the basic GST rules will apply.*

Exigencies

108. Emergency funding payments may also be made in the event of unforseen emergencies, such as natural disasters. An exigency is an unforseen emergency that is met by spending money that has not been appropriated under the normal budgetary process.

109. For example, the government related entity requiring the exigency funding will usually make an application to the relevant Treasurer. The Treasurer's authority for making such payments may come from, for example, the Finance Act for a State. The Treasurer may be required to account to Parliament for the funds and table an Appropriation Bill for those funds after drawing them from the CRF.

110. The purpose of the payment will assist in establishing whether it is of a funding nature. For example, if the application to the Treasurer, in conjunction with the later appropriation Act, states the purpose and amount of the exigency payment, this, as discussed in paragraphs 46 to 62 of this Ruling, will be sufficient to satisfy the 'specifically covered by an appropriation' requirement in paragraph 9-15(3)(c).

Example 13 – exigencies

111. *Under the State's Finance Act, the Treasurer is authorised to draw money from the State's CRF for emergency purposes. Under the Finance Act, the Treasurer is required to put a special appropriation Bill before Parliament within 28 days and for that Bill to be subsequently enacted for the Treasurer to have been properly authorised to draw the money from the CRF. Due to a heavy monsoon season some remote parts of the State were flooded. The Emergency Services Agency budget was fully committed so an application for $5 million in funding was made to the State's Treasurer to provide drinking water to affected residents.*

112. *Because the application met the requirements for emergency funding the Treasurer approved the application. This approval resulted in the authority under the Finance Act to draw the $5 million from the State's CRF. The Treasurer put the 'Drinking Water (Special Funding) Bill' before Parliament within 28 days. The Bill was subsequently enacted. As later documents can be relevant supporting documents, the application together with the subsequent appropriation Act is sufficient to satisfy the 'specifically covered' element in paragraph 9-15(3)(c). The payment will be 'specifically covered by an appropriation under an Australian law' at the time the payment is made. If the other requirements in paragraph 9-15(3)(c) are also met, the payment will not be consideration. However, if the requirements of the Finance Act are later not fulfilled, such as the special appropriation Bill not being enacted, the authority to draw funds from the CRF will not have been valid. The requirements of paragraph 9-15(3)(c) will no longer be met. An adjustment under Division 19 may be required if there is an adjustment event. See paragraph 61 of this Ruling.*

113. *When the Emergency Services Agency uses the funds to purchase drinking water and transport services to take the water to affected areas, the payment it makes for these services will be subject to the basic GST rules. This is because the funds are now used in the agency's operations and are no longer of a funding nature.*

Instalments

114. If a payment is made in instalments it can still be covered by paragraph 9-15(3)(c). That is, the payment does not have to be one lump sum made to the intended recipient. The important factors are that the payment:

- is of a funding nature;
- is made by one government related entity to another government related entity; and
- is specifically covered by an appropriation.

Payment after expenditure

115. A payment can still be covered by paragraph 9-15(3)(c) if it is made after the expenditure by the recipient to which the payment relates. A payment made on such a basis may be of a funding nature when it is made as a lump sum or by instalments. As for payment by instalments, the payment must be of a funding nature, be made by one government related entity to another government related entity, and must be specifically covered by an appropriation.

Example 14 – payments after expenditure

116. *Included in the annual appropriation to a State Health Department is $10 million for financial assistance which is to be provided to a public hospital for the purpose of its mental health program. The Portfolio Budget Statement for the Health Department states this purpose and that the payment will be made to the public hospital.*

117. *The payment by the State Health Department to the public hospital is made when the public hospital requests payments for expenses already incurred associated with providing mental health services. The public hospital requests a payment of $2 million after the first quarter of the year. When the State Health Department makes this payment to the public hospital it is not consideration due to the operation of paragraph 9-15(3)(c). Payments by the State Health Department to the public hospital for the remaining $8 million will also not be consideration.*

Redirection of funding

118. At both the Commonwealth, State and Territory levels, payments originally authorised under appropriation Acts are sometimes redirected for various reasons, including where:[23]

- the responsibility for a function may be moved from one government related entity to another, or a new government related entity may be created to perform the function; or
- a government related entity may undergo a name change or could merge with another government related entity.

119. The Act giving authority to make payments from the relevant CRF may provide for the redirection of funds.

120. At both levels of government, if the relevant Act states that the appropriation will not lapse if the funding is applied for the same purpose and paragraph 9-15(3)(c) was originally met, then the funding payment will not be consideration.

121. In addition, it is considered that the act of merely transferring unspent funds held by the original government related entity to the government related entity that now has responsibility for the function, is a transfer of money and not itself a supply.

Example 15 – funding for a function is redirected

122. *Part of the way through the financial year a State Government decides to centralise all its stationery purchasing functions which are currently carried out by each individual Department. The funding payments to each individual Department for stationery needs previously satisfied paragraph 9-15(3)(c) and were not consideration. The payments were to be made in six instalments during the course of the year and there are five payments remaining.*

123. *The State Government requires that each Department is to transfer its unspent funding money for this purpose to a new government related entity, 'Stationery Services Provider'. That entity will then undertake all stationery purchasing functions for the State. The Public Finance and Audit Act specifies that the appropriation will stand where the funding is still applied for the same purpose, and provides for the redirection of the funding to Stationery Services Provider.*

124. *The transfer of unspent funding money of the first instalment from the individual Departments to Stationery Services Provider is a transfer of money and not itself a supply.*

[23] This is not an exhaustive list of events.

125. *The redirected funding (remaining five instalments) for stationery purchasing functions is still specifically covered by an appropriation as it is supported by the Public Finance and Audit Act which states the purpose and amount of the funding. Further, the funding payment is redirected from each Department, as government related entities, to Stationery Services Provider, another government related entity. Consequently, as the payment is still specifically covered by an appropriation, made by a government related entity to another government related entity, and the payment is still of a funding nature (the purpose was not changed), paragraph 9-15(3)(c) applies and the remaining five instalments are not consideration.*

No choice of supplier

126. The fact the government related entity has no choice of supplier is not enough to make the payment for that supply 'specifically covered by an appropriation'. The payment needs to be specifically covered by an appropriation by having the relevant information specified in an appropriation Act or in the relevant supporting documents.

Detailed contents list

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Related Rulings/Determinations:

GSTR 1999/1; GSTR 2000/11; GSTR 2000/19; GSTR 2001/4; GSTR 2006/9

Previous Rulings/Determinations:

GSTR 2000/4; GSTR 2004/5

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- appropriations
- Australian law
- consideration
- government related entity
- taxable supply

Legislative references:

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