

GSTR 2006/11DA - Draft Addendum - Goods and services tax: appropriations

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 This document has changed over time. This is a consolidated version of the ruling which was published on *10 November 2010*



Draft Addendum

Goods and Services Tax Ruling

Goods and services tax: appropriations

This draft Addendum seeks to amend Goods and Services Tax Ruling GSTR 2006/11 to reflect the reasoning of the Full Federal Court in *TT-Line Company Pty Ltd v. Commissioner of Taxation* [2009] FCAFC 178; (2009) 181 FCR 400; 2009 ATC 20-157; (2009) 74 ATR 771.

GSTR 2006/11 is to be amended as follows:

1. Paragraph 48

After paragraph 48, insert:

48A. In addition to paragraph 48 above, paragraph 9-15(3)(c) does not extend to a payment, pursuant to an appropriation for the supply of services which can, under the terms of the appropriation, be supplied by a government related entity or a non-government related entity. Therefore if the payment that is made by a government related entity can under the terms of the appropriation be payable to either a government related entity or a non-government related entity then paragraph 9-15(3)(c) will not apply to the payment.^{19A}

2. Paragraph 54

Omit the paragraph, substitute:

54. Relevant supporting documents are those documents which explain the purpose of the payment. Those documents may also show the amount of the payment and whether the payment is payable to government related entities and/or non-government related entities.

^{19A} Refer to Edmonds J judgment at paragraphs 62 and 63 of *TT-Line Company Pty Ltd v. Commissioner of Taxation* [2009] FCAFC 178, with which Perram J concurred at paragraph 65.

3. Paragraph 58

Omit the paragraph, substitute:

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 and the payment is for a government related entity and cannot be made to a non-government related entity.

4. Paragraph 68

After paragraph 68 insert:

Example 2A – payments to government related entities and non-government related entities

68A. *In contrast to examples 1 and 2 in paragraphs 63 to 68 of this Ruling, the Portfolio Budget Statement does not identify the amount that is payable to government schools and non-government schools. Instead, the Portfolio Budget Statement stipulates that \$12 million is to be payable to schools to upgrade school information technology facilities.*

68B. *The State Government Department of Education is the responsible department in allocating the \$12 million. Both government schools and non-government schools compete for a share of the \$12 million that will be paid to schools under this government program administered by the State Government Department of Education.*

68C. *Although the payments by the State Government Department of Education to government schools and non-government schools may have a funding character and are specified in the Portfolio Budget Statement, these payments do not satisfy paragraph 9-15(3)(c) because under the terms of the appropriation the payments from the State Government Department of Education can be made to both government schools and non-government schools. Therefore, paragraph 9-15(3)(c) does not apply to the payments from the State Government Department of Education to the government schools and non-government schools and the basic GST rules apply. 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.*

5. Paragraphs 92 and 93

Omit the paragraphs; substitute:

92. *The appropriation Act and relevant supporting documents at the Commonwealth and State levels do not specify an amount that is payable to Child Care Centres that are government related entities. Therefore, the local government decides how to distribute the payments. In this situation, once the payment reaches the local government the application of the funds may be to both government related entities and non-government related entities. Therefore, paragraph 9-15(3)(c) is no longer applicable to the payments by the local government entity.*

93. *As the payment to Child Care Centres A and B are not covered by paragraph 9-15(3)(c) the funding they receive from the local government is subject to the basic GST rules. That is, if Child Care Centre A or B is making a supply to the local government then GST may apply. Child Care Centres A and B can refer to GSTR 2000/11 for guidance on whether they are making a taxable supply to the local government in return for the payment.*

6. Detailed Contents List

Insert:

Example 2A – payments to government related entities and non-government related entities 68A

7. Legislation References

Insert:

- TT-Line Company Pty Ltd v. Commissioner of Taxation [2009] FCAFC 178; (2009) 181 FCR 400; 2009 ATC 20-157; (2009) 74 ATR 771

Date of Effect

It is proposed that when finalised, the Addendum will amend GSTR 2006/11 to state the Commissioner's view of the law as it applied both before and after the date of issue. However, entities may rely on GSTR 2006/11 in its form prior to its amendment by the final Addendum until 30 June 2011 to allow entities sufficient time to make necessary changes to their practices and systems.

The Commissioner invites comments on what, if any, transitional arrangements are appropriate in implementing the final Addendum, including arrangements appropriate to cater for circumstances where an entity needs to make systems or process changes to be fully compliant with the views expressed in it.

GSTR 2006/11

Page 4 of 5

Subject to the transitional arrangements for payments before 1 July 2011 referred to above, if the final Addendum conflicts with a previous private ruling that you have obtained, the final Addendum prevails for payments made by government related entities on or after its date of issue. However, if you have relied on a previous ruling (including the public ruling that the final Addendum amends), you are protected in respect of what you have done up to the date of issue of the final Addendum for a private ruling. This means that if you have relied on the earlier ruling and have underpaid an amount of GST, you are not liable for the shortfall. Similarly, if you have relied on the earlier ruling you are not liable to repay an amount overpaid by the Commissioner as a refund.

Your comments

You are invited to comment on this draft Addendum and the date of effect. Please forward your comments to the contact officer by the due date.

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 prepared to:

- provide responses to persons providing comments; and
- publish on the Australian Taxation Office website at www.ato.gov.au

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

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Commissioner of Taxation
10 November 2010

ATO references

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ATOlaw topic: Goods and Services Tax ~~ General rules and concepts ~~
consideration
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taxable supplies
Goods and Services Tax ~~ General rules and concepts ~~
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Goods and Services Tax ~~ Government ~~ appropriations