GSTR 2011/2 - Goods and services tax: appropriations

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Goods and Services Tax Ruling

Goods and services tax: appropriations

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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. This Ruling does not address the treatment of grants of financial assistance or gifts to non-profit bodies.[1]

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

[1] The Commissioner's views on these topics are discussed in GSTR 2000/11 Goods and services tax: grants of financial assistance.

Ruling

Consideration

4. In the absence of any special rules applying, a supply is not a taxable supply unless the supply is made for consideration.[2] Consideration includes any payment, or act or forbearance in connection with a supply or in response to or for the inducement of a supply.[3]

5. However, a payment that meets the requirements of paragraph 9-15(3)(c) is not consideration. 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.

6. The following requirements must be met to satisfy paragraph 9-15(3)(c):

- 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;[4] and
- the payment must be specifically covered by the appropriation.

Appropriation under an Australian law

'Appropriation'

7. An appropriation is an authorisation for the expenditure of money under a law.

'Australian law'

8. 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. An appropriation is not in itself a payment. This Ruling refers to such statutes and the relevant delegated legislation as an 'appropriation Act'.

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[2] A supply will be a taxable supply if the requirements of section 9-5 are satisfied. Paragraph 9-5(a) requires a supply to be made for consideration. Division 72 does not apply to a supply made by a government related entity where the supply is made for a payment that is subject to paragraph 9-15(3)(c). Equally, Division 72 does not apply to an acquisition made by a government related entity where the thing acquired was supplied for a payment that is subject to paragraph 9-15(3)(c).
[3] See subsection 9-15(1).
[4] Government related entity is defined under section 195-1.

Terms of the appropriation

9. This Ruling refers to the 'terms of the appropriation' in identifying whether a payment is subject to paragraph 9-15(3)(c). The terms of the appropriation Act are the terms in the appropriation Act that authorise the expenditure of money. While it is therefore necessary to determine the terms of the appropriation from the relevant appropriation Act, regard may be given to documents produced for the purpose of providing greater detail about the expenditure authorised under the Act.[5]

Payment by a government related entity to another government related entity

10. As noted in paragraph 6 of this Ruling, paragraph 9-15(3)(c) requires that a government related entity make a payment to another government related entity.

11. For paragraph 9-15(3)(c), an allocation of funds to a government related entity is a payment made to the government related entity. It is not necessary that the funds leave the relevant consolidated revenue fund.[6]

12. A payment can be covered by paragraph 9-15(3)(c) where it is made by instalments. That is, the payment does not have to be one lump sum.

13. A payment to a government related entity can be covered by paragraph 9-15(3)(c) if it is made to reimburse expenditure that has been incurred by the recipient.

Specifically covered

14. Paragraph 9-15(3)(c) requires that the payment be 'specifically covered by an appropriation' under an Australian law.

15. The phrase 'specifically covered' is not defined in the GST Act. Edmonds J in the Full Federal Court in *TT-Line Company Pty Ltd v. Commissioner of Taxation* (*TT-Line*)[7] considered that the minimum level of specificity required for paragraph 9-15(3)(c) to apply is that the payment is made pursuant to an appropriation 'the terms of which specify the government related entity by name or, generically, to those entities having that status.'[8]

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[5] These documents and their role in understanding the terms of the appropriation are explained in paragraph 22 to 27 of this Ruling.
[6] Section 6 of the *Financial Management and Accountability Act 1997* treats notional payments as payments.
[7] [2009] FCAFC 178; (2009) 181 FCR 400; 2009 ATC 20-157; (2009) 74 ATR 771.
[8] See paragraph 63 in the decision by Edmonds J in the *TT-Line* case. Perram J concurred at paragraph 65.

16. Not all payments between government related entities fall under paragraph 9-15(3)(c). A payment is not 'specifically covered by an appropriation' for the purposes of paragraph 9-15(3)(c) if the relevant terms of an appropriation authorise the government related entity to make payments that can be made to either a government related entity or a non-government related entity.[9] Therefore, if a payment could, under the terms of the appropriation, be payable to either a government related entity or a non-government related entity, paragraph 9-15(3)(c) does not apply to the payment.

17. A government related entity may be funded by the allocation of government money under the authority of an appropriation Act to run its operations. When the government related entity uses the funds allocated to purchase supplies to run its operations, those further payments are not covered by paragraph 9-15(3)(c) unless the terms of the appropriation specify that the payments made by the entity can only be made to a government related entity. Example 4 examines the point where the flow of money between government related entities stops being covered by paragraph 9-15(3)(c).

18. The fact that the government related entity may not have a choice of supplier other than a government related entity is not sufficient to make the payment for that supply 'specifically covered by an appropriation'. For the payment to be 'specifically covered' the terms of the appropriation need to specify that the payment can only be made to a government related entity.

Multiple appropriations

19. An appropriation Act can cover multiple appropriations. There may be multiple payments appropriated for multiple purposes to various entities or entity types. The requirement that the payment made under the appropriation can only be made to government related entities to be specifically covered for the purposes of paragraph 9-15(3)(c) applies in relation to each separate appropriation.

What must be specified?

20. For a payment to be specifically covered by an appropriation under an Australian law for the purposes of paragraph 9-15(3)(c), the terms of the appropriation must specify that the payment be made to a government related entity or entities, by name or generically.

21. If the 'specifically covered' requirement is not met the basic GST rules apply to determine whether the payment is consideration for a taxable supply.

[9] See paragraph 62 in the decision by Edmonds J in the *TT-Line* case.

Where does this have to be specified?

22. The details referred to in paragraph 20 must be stated within the terms of the appropriation. The authorisation for the payment derives from an appropriation Act. An appropriation Act may be drafted using a high-level 'Outcomes' approach which may provide only a brief outline of the funding arrangements. Other documents can be considered in understanding the terms of the appropriation established by the relevant appropriation Act if the documents work in conjunction with the appropriation Act in giving additional details about the authorised expenditure. These documents may assist in determining whether the payment that is authorised by the appropriation Act can only be made to government related entities. Examples of documents that work in conjunction with the appropriation Act include:

- documents that are linked to the appropriation Act by a provision in the appropriation Act;[10] and
- documents that were considered by Parliament together with the appropriation Bill.

23. The following documents may assist in determining if the authorised payments under an annual appropriation Act can only be made to government related entities:

- Portfolio Budget Statements;
- budget papers; and
- documents that are referred to in the above documents such as Ministerial directions.

24. An example of documents that are linked to the appropriation Act by a provision within the appropriation Act are Portfolio Budget Statements produced in conjunction with Commonwealth annual appropriation Acts. Commonwealth annual appropriation Acts typically include a provision that declares the Portfolio Budget Statements to be extrinsic material under paragraph 15AB(2)(g) of the *Acts Interpretation Act 1901*. As a result, a Court may use the Portfolio Budget Statements to decide whether a particular expenditure is consistent with the purpose of the appropriation item.

[10] See paragraph 24 of this Ruling.

25. Budget papers, Portfolio Budget Statements and Agency Budget Statements that are tabled in Parliament with an annual appropriation Bill are examples of documents that are considered by Parliament together with the relevant appropriation Bill. To the extent that these documents are consistent with the relevant appropriation Act, the documents may assist in understanding the terms of the appropriation and whether a payment that is authorised by the appropriation Act can only be made to government related entities. Additionally, if these documents refer to criteria created by the responsible Minister (for example by way of Ministerial Directions), those criteria can also assist in identifying the terms of the appropriation and whether a payment that is authorised by the appropriation Act can only be made to government related entities.[11]

26. The above approach is consistent with how the Full Federal Court determined the terms of the relevant appropriation in ascertaining whether a payment was specifically covered by an appropriation for the purposes of paragraph 9-15(3)(c) in the *TT-Line* case. The payments considered were funded under *Appropriation Act (No. 1) 2007-2008*. The *Bass Strait Passenger Vehicle Equalisation Scheme* (the Scheme) was listed as an 'Administered programme' of the Department in accordance with the Portfolio Budget Statements for the 2008 financial year. Edmonds J, with whom Perram J agreed, referred to the Scheme being identified in the Portfolio Budget Statements[12] and considered the criteria established under the ministerial directions that created the Scheme to identify the terms of the appropriation.[13] Their Honours decided that the payments made under the terms of the relevant appropriation could be made to both government related entities and non-government related entities. Consequently, paragraph 9-15(3)(c) did not apply to the payments.

27. 'Special' or 'standing' appropriations from the consolidated revenue fund may be authorised by legislation other than that considered annually by Parliament. Budget papers, Portfolio Budget Statements and Agency Budget Statements that are tabled in Parliament with the relevant Bill that either establishes or amends a special or standing appropriation may be considered in determining the terms of the appropriation established by the relevant appropriation Act. However, Budget papers, Portfolio Budget Statements and Agency Budget Statements published in respect of later budget processes that make reference to the special or standing appropriation cannot be used for this purpose.

Redirection of funding

28. The appropriation Act giving authority to make payments may also provide for the redirection of funds.

[11] See Example 5 at paragraph 43 of this Ruling.
[12] See *TT-Line* case at paragraph 35.
[13] See *TT-Line* at paragraphs 32 to 34 and 63.

29. Paragraph 9-15(3)(c) is satisfied in respect to a payment of redirected funds if the recipient of the payment under the terms of the appropriation Act can only be a government related entity (see Example 6 at paragraph 47 of this Ruling).

30. In addition, 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 a supply.[14]

31. However, paragraph 9-15(3)(c) does not apply where the funds are redirected under a service agreement made between government related entities, as opposed to under the authority of an appropriation Act (see Example 7 of this Ruling). In these circumstances it is necessary to determine whether the payment is consideration for a supply under the basic rules.

Examples

32. In the following examples, the government related entities are individually registered for GST.

Example 1 – payments specifically covered by an appropriation

33. *A Portfolio Budget Statement contains information about a State Government Department of Education allocation of $10 million to State government schools to upgrade 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.*

34. *An appropriation allocates $10 million from the State's consolidated revenue fund to the State Government Department of Education.[15] The State Department of Education is the government related entity specified in the appropriation to receive the $10 million for the purposes of allocating the payments to the State government schools to upgrade the information technology facilities. Paragraph 9-15(3)(c) applies to the payment that is allocated to the State Department of Education, because at this point of allocation of the funds the appropriation authorises the payment to be made to the State Department of Education, a government related entity, and the payment cannot be allocated to any other entity.*

[14] See subsection 9-10(4).

[15] When the funds are allocated to the Department of Education they may not leave the consolidated revenue fund, and may not do so until paid outside of the government. However, for GST purposes there is still a payment to the Department of Education and from the Department of Education to the government schools. See paragraph 11 of this Ruling.

35. *The State Government Department of Education then makes payments to the schools. These payments are from one government related entity to another government related entity. Paragraph 9-15(3)(c) also applies to the payments by the State Government Department of Education because under the terms of the appropriation the State Department of Education is authorised to allocate the $10 million to the State's government schools to upgrade the schools' information technology facilities. The State Government Department of Education cannot make the payment to non-government related entities.*

Example 2 – payment to a non-government related entity

36. *The same Portfolio Budget Statement from Example 1 provides separately for a payment of $2 million to be made to non-government schools. As discussed in Example 1, paragraph 9-15(3)(c) applies to the payment that is allocated to the State Department of Education, because at this point of allocation of the funds the appropriation authorises the payment to be made to the State Department of Education, a government related entity and the payment cannot be paid to any other entity.*

37. *The payments by the State Government Department of Education to the non-government schools 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. See GSTR 2000/11 and GSTR 2006/9 for further information in relation to establishing whether there is a supply for consideration.*[16]

Example 3 – payments to government related entities and non-government related entities

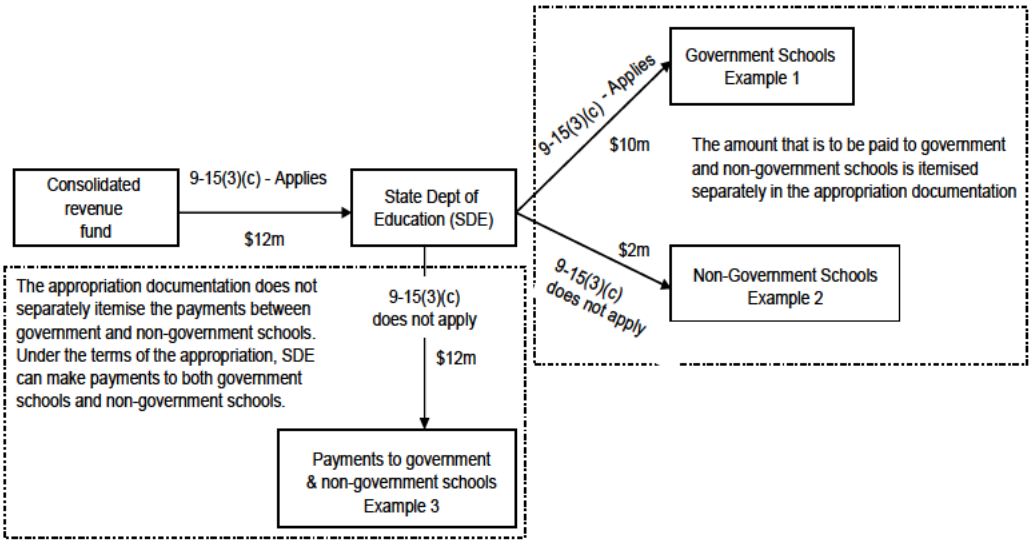
38. *In contrast to Examples 1 and 2 of this Ruling, the Portfolio Budget Statement does not separately identify the amounts that are payable to government schools and non-government schools. Instead, the Portfolio Budget Statement stipulates that $12 million in total is to be payable to schools to upgrade school information technology facilities. As discussed in Example 1, paragraph 9-15(3)(c) applies to the payment that is allocated to the State Department of Education, because at this point of allocation of the funds the appropriation authorises the payment to be made to the State Department of Education, a government related entity and the payment cannot be paid to any other entity.*

[16] This example does not consider Subdivision 38-C.

39. *The State Government Department of Education is authorised under the appropriation Act to allocate the $12 million. Both government schools and non-government schools can receive a share of the $12 million that will be paid to schools under this government program administered by the State Government Department of Education.*

40. *The payments by the State Government Department of Education to government schools and non-government schools 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 and therefore the basic GST rules apply. See GSTR 2000/11 and GSTR 2006/9 for further information in relation to establishing whether there is a supply for consideration.*[17]

41. The following flowchart summarises the outcomes for Examples 1, 2 and 3.



Example 4 – a payment not specifically covered by an appropriation – government supplier

42. *Using the same facts from Example 1, when the money has reached a government school any payments by the particular school are not specifically covered by the appropriation. The allocation of the appropriated funds has now reached the point in which the government related entity (the government school) can use the funds to upgrade its information technology facilities. This could include sourcing supplies from either government related entities or non-government entities, or a combination of both. If the government school enters into a contract with another government school for acquisitions to upgrade its information technology facilities the basic GST rules apply to the use of the funds by the school.*

[17] This example does not consider Subdivision 38-C.

Example 5 – a scheme established under Ministerial Directions

43. *The Commonwealth Government establishes a transport subsidy scheme (the Scheme) with the aim of reducing the cost of travel for eligible passengers. The scheme is operated under Ministerial Directions that were approved by the relevant Minister.*

44. *The Scheme is funded annually under an appropriation Act. The scheme is referred to as an 'Administered programme' of the relevant Department in the annual Portfolio Budget Statements. The appropriation Act authorises the payments under the Scheme and the Ministerial Directions establish the criteria under which payments will be made.*

45. *Under the Ministerial Directions the service operators who provided transport for a reduced fair to eligible passengers can make a monthly claim to the Department. The service operators that are eligible for payments under the terms of the Scheme include both government related entities and non-government related entities.*

46. *The payments by the Department under the Scheme do not satisfy paragraph 9-15(3)(c) regardless of whether a payment is made to a government related entity. This is because the recipients of payments made by the Department are not limited under the terms of the appropriation established by the appropriation Act to government related entities. Therefore the basic GST rules apply.*

Example 6 – funding for a function is redirected

47. *Midway 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 payments to each individual Department to cover operating expenses such as stationery needs, satisfy paragraph 9-15(3)(c) as the relevant appropriation Act allocated funds to each individual department for departmental expenses.*

48. *The State Government has a redirection authority within an appropriation Act that money previously allocated to Departments can be redirected to other government related entities. The State Government under its redirection authority requires each Department to transfer funds to a new government related entity, 'Stationery Services Provider'. Paragraph 9-15(3)(c) is met as the terms of the redirection authority in the appropriation Act require that the redirection of funds only be made to another government related entity.*

Example 7 – funding redirected by Department

49. *Part of the way through the financial year individual Departments enter into a supply agreement to purchase stationery supplies in bulk and one of the Departments, the Purchasing Department, has agreed to purchase all the stationery needs for each Department. Each individual department, under the supply agreement, has agreed to acquire the stationery from the Purchasing Department and pay an amount to cover the costs incurred by the Purchasing Department in acquiring the stationery. The funds used by each individual Department are allocated to those Departments for their departmental expenses under the relevant annual appropriation Act.*

50. *Paragraph 9-15(3)(c) does not apply to payments made by each individual Department to the Purchasing Department as each individual Department's authority under the appropriation Act to pay for their departmental expenses was not restricted to payments that could only be made to government related entities.*

Date of effect

51. This Ruling applies both before and after its date of issue. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Transitional arrangements

52. The following transitional arrangements were developed in consultation with Commonwealth, State and Territory bodies and recognise the long lead time that is necessary for budget preparations.

53. Goods and Services Tax Ruling GSTR 2006/11 GST: appropriations is being withdrawn with effect from 1 July 2012. Entities may continue to rely on GSTR 2006/11 for payments made before 1 July 2012 to allow sufficient time to make necessary changes to their practices and systems. Budget preparations for payments made on or after 1 July 2012 need to consider the views in this ruling that has replaced GSTR 2006/11.

54. If a supplier relies or has relied on GSTR 2006/11 to determine that paragraph 9-15(3)(c) applies to a payment made for a supply, then no GST is payable on that supply. This means that the recipient cannot claim an input tax credit in respect of that payment.[18]

Previous Rulings

55. This Ruling replaces Goods and Services Tax Ruling GSTR 2006/11 Goods and services tax: appropriations and GSTR 2006/11DA. However, GSTR 2006/11 is not withdrawn until 1 July 2012 to allow affected entities time to make changes to their practices and systems.

Commissioner of Taxation
13 July 2011

[18] Section 11-25 of the GST Act and subsection 357-60(3) of Schedule 1 to the *Taxation Administration Act 1953*, 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 *Taxation Administration Act 1953* apply to provide the same outcome, that is, the recipient cannot claim an input tax credit in respect of that payment.

Appendix 1 – Explanation

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

56. Each government related entity[19] that is registered or required to be registered for GST needs to consider whether there are any GST consequences in relation to its activities. In the absence of special rules applying, the entity incurs a GST liability if the requirements under section 9-5 for a taxable supply are met.

57. 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.

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

59. 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 paragraph 9-15(3)(c) applies to a payment.

60. Paragraph 9-5(a) requires that a supply be made for consideration. Consideration includes any payment, or act or forbearance in connection with a supply or in response to or for the inducement of a supply.[20]

Paragraph 9-15(3)(c)

61. 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.

62. To satisfy paragraph 9-15(3)(c) the following requirements must be met:

- there has to be an appropriation under an Australian law;

[19] The meaning of 'government related entity' is discussed in paragraphs 81 to 82 of this Ruling.
[20] See section 195-1 and subsection 9-15(1).

- 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.

63. GST may still not be applicable if paragraph 9-15(3)(c) does not apply to a payment.

64. There are no GST implications for a payment that is not in connection with a supply. Equally, there are no GST consequences for a supply that is not made for consideration where the supply is made for a payment subject to paragraph 9-15(3)(c). [21]

65. However, if paragraph 9-15(3)(c) does not apply to a payment and the recipient of the payment does make a supply, it is necessary to apply the basic GST rules to determine if the supply is a taxable supply.

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

66. The policy behind paragraph 9-15(3)(c) was considered in the *TT-Line* case. The Full Federal Court considered the Supplementary Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998 and the *Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations* (Intergovernmental Agreement).[22]

67. Paragraph 1.16 of the Supplementary Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998 states:

> 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.

[21] As per footnote 2 of this Ruling, Division 72 does not apply to a supply made by a government related entity where the supply is made for a payment that is subject to paragraph 9-15(3)(c). Equally, Division 72 does not apply to an acquisition made by a government related entity where the thing acquired was supplied for a payment that is subject to paragraph 9-15(3)(c).

[22] See paragraphs 19 to 21, 56, 66, and 67 to 69 of the *TT-Line* case.

68. The policy of not exempting government from GST on payments or fees for goods, services and similar things was also reflected in the Intergovernmental Agreement. Section 10 of the *A New Tax System (Commonwealth-State Financial Arrangements) Act 1999* and various Acts of the States and Territories gave effect to that Intergovernmental Agreement. Paragraph 17 of that Intergovernmental Agreement, as it was when the *TT-Line* case was decided, stated:[23]

> 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. All such payments will be included in the GST revenue.

Appropriation under an Australian law

'Appropriation'

69. The term 'appropriation' is not defined in the GST Act. *The Macquarie Dictionary*[24] 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.

70. The *Oxford Dictionary of Law*[25] 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.

71. 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', the government specific meaning is the relevant meaning in paragraph 9-15(3)(c). That is, an appropriation is an authorisation for the expenditure of money under a law.

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[23] This paragraph is now reflected in paragraph A28 of Schedule A of the *Intergovernmental Agreement on Federal Financial Relations*, December 2008.
[24] [Multimedia], version 5.0.0, 1/10/01.
[25] 2002, Oxford University Press, Melbourne.

'Australian law'

72. For paragraph 9-15(3)(c) 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 in the *Income Tax Assessment Act 1997*,[26] which in turn refers to the definitions in that Act of 'Commonwealth law', 'State law' and 'Territory law'.

73. 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.

74. The term 'Australian law' encompasses Acts and laws made under law making powers which are delegated by Parliaments, such as regulations, legislative instruments, by-laws, proclamations and orders made under Acts. However, appropriations are normally made by Acts of Parliament.

75. On this basis, 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. An appropriation is not in itself a payment.

Terms of an appropriation

76. The terms of the appropriation Act are the terms in the appropriation Act that authorise the expenditure of money. While it is therefore necessary to determine the terms of the appropriation from the relevant appropriation Act, regard may be given to documents produced for the purpose of providing greater detail about the expenditure authorised under the appropriation Act.

Payment by a government related entity to another government related entity

'Payment'

77. As noted in paragraph 62 of this Ruling, paragraph 9-15(3)(c) requires that a government related entity make a payment to another government related entity.

[26] See section 195-1 of the GST Act and section 995-1 of the *Income Tax Assessment Act 1997*.

78. For paragraph 9-15(3)(c), an allocation of funds to a government related entity is a payment made to the government related entity. It is not necessary that the funds leave the relevant consolidated revenue fund.[27]

79. A payment can be covered by paragraph 9-15(3)(c) where it is made by instalments. That is, the payment does not have to be one lump sum.

80. A payment to a government related entity can be covered by paragraph 9-15(3)(c) if it is made to reimburse expenditure that has been incurred by the recipient. For example, a government related entity may seek funds from a government department for supplies that have already been acquired. The payment by the government department to the government related entity is covered by paragraph 9-15(3)(c) if the payment is sourced from an appropriation that limits the government department to making the payments to a government related entity.

'Government related entity'

81. The term 'government related entity' is defined in the dictionary in the GST Act.[28] 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).

82. 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,

[27] Section 6 of the *Financial Management and Accountability Act 1997* treats notional payments as payments.
[28] Section 195-1.

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);[29] or

- a local governing body established by or under a State law or Territory law.[30]

83. 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, part of 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.[31] This is why transactions that would not otherwise involve any supply or payment from one entity to another may be treated for GST purposes as a supply or payment from one government related entity to another. Such payments may be consideration for a supply unless paragraph 9-15(3)(c) applies.

84. 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 and those entities are not grouped.[32]

Specifically covered

85. Paragraph 9-15(3)(c) requires that the payment be 'specifically covered by an appropriation' under an Australian law.

86. The phrase 'specifically covered' is not defined in the GST Act. Edmonds J in the *TT-Line* case considered that the minimum level of specificity required for paragraph 9-15(3)(c) to apply is that the payment is made pursuant to an appropriation 'the terms of which specify the government related entity by name or, generically, to those entities having that status.'[33]

[29] 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).
[30] 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).
[31] Section 149-15.
[32] Division 48 considers GST groups.
[33] See paragraph 63 in the judgement of Edmonds J in the *TT-Line* case. Perram J concurred at paragraph 65.

87. Not all payments between government related entities fall under paragraph 9-15(3)(c). A payment is not 'specifically covered by an appropriation' for the purposes of paragraph 9-15(3)(c) if the relevant terms of an appropriation authorise the government related entity to make payments that can be made to either a government related entity or a non-government related entity.[34] Therefore, if a payment could, under the terms of the appropriation, be payable to either a government related entity or a non-government related entity, paragraph 9-15(3)(c) does not apply to the payment.

88. A government related entity may be funded by the allocation of government money under the authority of an appropriation Act to run its operations. When the government related entity uses the funds allocated to purchase supplies to run its operations, those further payments are not covered by paragraph 9-15(3)(c) unless the terms of the appropriation specify that the payments made by the entity can only be made to a government related entity. Example 4 examines the point where the flow of money between government related entities stops being covered by paragraph 9-15(3)(c).

89. The fact that the government related entity may not have a choice of supplier other than a government related entity is not sufficient to make the payment for that supply 'specifically covered by an appropriation'. For the payment to be 'specifically covered' the terms of the appropriation need to specify that the payment can only be made to a government related entity.

Multiple appropriations

90. An appropriation Act can cover multiple appropriations. There may be multiple payments appropriated for multiple purposes to various entities or entity types. The requirement that the payment made under the appropriation can only be made to government related entities to be specifically covered for the purposes of paragraph 9-15(3)(c) applies in relation to each separate appropriation.

91. Therefore paragraph 9-15(3)(c) needs to be considered for each appropriation item in the appropriation Act. For example, an appropriation Act may authorise funding for three separate programs through three separate items. The first item makes an appropriation for payments that can be made to both government related entities and non-government related entities, the second authorises payments that can only be made to non-government related entities, and the third authorises payments that can only be made to government related entities. Paragraph 9-15(3)(c) does not apply to payments made under the first two items but does apply to payments made under the third item.

[34] See paragraph 62 in the decision by Edmonds J in the *TT-Line* case.

What must be specified?

92. For a payment to be specifically covered by an appropriation under an Australian law for the purposes of paragraph 9-15(3)(c) the terms of the appropriation must specify that the payment be made to a government related entity or entities, by name or generically.

93. If the 'specifically covered' requirement is not met the basic GST rules apply to determine whether the payment is consideration for a taxable supply.

Where does this have to be specified?

94. The details referred to in paragraph 92 must be stated within the terms of the appropriation. The authorisation for the payment derives from an appropriation Act. An appropriation Act may be drafted using a high-level 'Outcomes' approach which may provide only a brief outline of the funding arrangements. Other documents can be considered in understanding the terms of the appropriation established by the relevant appropriation Act if the documents work in conjunction with the appropriation Act in giving additional details about the authorised expenditure. These documents may assist in determining whether the payment that is authorised by the appropriation Act can only be made to government related entities. Examples of documents that work in conjunction with the appropriation Act include:

- documents that are linked to the appropriation Act by a provision in the appropriation Act;[35] and
- documents that were considered by Parliament together with the appropriation Bill.

95. The following documents may assist in determining if the authorised payments under an annual appropriation Act can only be made to government related entities:

- Portfolio Budget Statements;
- budget papers; and
- documents that are referred to in the above documents such as Ministerial directions.

96. An example of documents that are linked to the appropriation Act by a provision within the appropriation Act are Portfolio Budget Statements produced in conjunction with Commonwealth annual appropriation Acts. Commonwealth annual appropriation Acts typically include a provision that declares the Portfolio Budget Statements to be extrinsic material under paragraph 15AB(2)(g) of the *Acts Interpretation Act 1901*. As a result, a Court may use the Portfolio Budget Statements to decide whether a particular expenditure is consistent with the purpose of the appropriation item.

[35] See paragraph 96 of this Ruling.

97. Budget papers, Portfolio Budget Statements and Agency Budget Statements that are tabled in Parliament with an annual appropriation Bill are examples of documents that are considered by Parliament together with the relevant appropriation Bill. To the extent that these documents are consistent with the relevant appropriation Act, the documents may assist in understanding the terms of the appropriation and whether a payment that is authorised by the appropriation Act can only be made to government related entities. Additionally, if these documents refer to criteria created by the responsible Minister (for example by way of Ministerial Directions), those criteria can also assist in identifying the terms of the appropriation and whether a payment that is authorised by the appropriation Act can only be made to government related entities.[36]

98. The above approach is consistent with how the Full Federal Court determined the terms of the relevant appropriation in ascertaining whether a payment was specifically covered by an appropriation for the purposes of paragraph 9-15(3)(c) in the *TT-Line case*. The payments considered were funded under *Appropriation Act (No. 1) 2007-2008*. The *Bass Strait Passenger Vehicle Equalisation Scheme* (the Scheme) was listed as an 'Administered programme' of the Department in accordance with the Portfolio Budget Statements for the 2008 financial year. Edmonds J, with whom Perram J agreed, referred to the Scheme being identified in the Portfolio Budget Statements[37] and considered the criteria established under the ministerial directions that created the Scheme to identify the terms of the appropriation.[38] Their Honours decided that the payments made under the terms of the relevant appropriation could be made to both government related entities and non-government related entities. Consequently, paragraph 9-15(3)(c) did not apply to the payments.

99. 'Special' or 'standing' appropriations from the consolidated revenue fund may be authorised by legislation other than that considered annually by Parliament. Budget papers, Portfolio Budget Statements and Agency Budget Statements that are tabled in Parliament with the relevant Bill that either establishes or amends a special or standing appropriation may be considered in determining the terms of the appropriation established by the relevant appropriation Act. However, Budget papers, Portfolio Budget Statements and Agency Budget Statements published in respect of later budget processes that make reference to the special or standing appropriation cannot be used for this purpose.

100. A Memorandum of Understanding between two government related entities which documents services and corresponding payments for those services, cannot support the applicability of paragraph 9-15(3)(c) if the terms of the appropriation do not restrict the payment to government related entities only.

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[36] See Example 5 of this Ruling.
[37] See *TT-Line* case at paragraph 35.
[38] See *TT-Line* at paragraphs 32 to 34 and 63.

101. Documents prepared by agencies in seeking funds to be included in budget appropriations cannot be referred to in identifying the terms of the appropriation as these documents are not considered with the appropriation Bill before Parliament. These documents are preparatory and do not represent the final terms of the appropriation and therefore can not be relied upon to give greater detail of the payments authorised under the appropriation.

102. While the following documents will not be relevant in identifying the terms of an appropriation established by an appropriation Act, they may assist in establishing from which appropriation the payment was sourced:

- 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.

Specific Purpose Payments

103. Payments made from the Commonwealth consolidated revenue fund 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 consolidated revenue fund 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 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''. Paragraph 9-15(3)(c) applies to these payments as these payments can only be made to States, ACT, NT and local governments that are government related entities.

Contingency funds

104. A contingency fund is an amount appropriated for 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 or other enabling legislation. Due to the nature of this type of fund, payments sourced from a contingency fund are usually sought by government related entities outside the budget process.

105. Paragraph 9-15(3)(c) applies to payments of contingency funds if, under the terms of the relevant appropriation Act, the payment from the contingency fund can only be paid to a government related entity.

Commonwealth

106. 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 is urgent and unforeseen.

107. Where the unforeseen expenditure represents additional funds for an existing appropriation, the payment of the additional funds is covered by paragraph 9-15(3)(c) if the additional funding is restricted to government related entities.

States and Territories

108. Each jurisdiction has a contingency fund[39] 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 others, the payment is made before a special Appropriation Bill is enacted. Allowance can also be made for payments made directly from a consolidated revenue fund 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.

109. As noted above for Commonwealth contingency funds, a payment of additional funds is covered by paragraph 9-15(3)(c) if the additional funding is, under the terms of the appropriation, restricted to government related entities.

110. If the appropriation that authorises additional funding does not restrict the payments to government related entities paragraph 9-15(3)(c) does not apply. However, an adjustment under Division 19 may be required if paragraph 9-15(3)(c) does not apply to a payment that is consideration for a taxable supply but subsequently does apply due to a later appropriation Act being enacted that specifically covers the earlier payment. This is because the payment may initially be consideration for a taxable supply, but cease to be consideration when paragraph 9-15(3)(c) is satisfied due to the later appropriation Act being enacted.

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

Redirection of funding

111. At the Commonwealth, State and Territory levels, payments originally authorised under appropriation Acts are sometimes redirected for various reasons, for example:[40]

- 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.

112. The appropriation Act giving authority to make payments may also provide for the redirection of funds.

113. Paragraph 9-15(3)(c) is satisfied in respect to a payment of redirected funds if the recipient of the payment under the terms of the appropriation Act can only be a government related entity (see Example 6 of this Ruling).

114. In addition, 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 a supply.[41]

115. However, paragraph 9-15(3)(c) does not apply where the funds are redirected under a service agreement made between government related entities, as opposed to under the authority of an appropriation Act (see Example 7 of this Ruling). In these circumstances it is necessary to determine whether the payment is consideration for a supply under the basic GST rules.

[40] This is not an exhaustive list of events.
[41] See subsection 9-10(4).

Appendix 2 – Detailed contents list

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References

Previous draft:

GSTR 2006/11DA

Related Rulings/Determinations:

GSTR 2000/11
GSTR 2006/9
TR 2006/10

Previous Rulings/Determinations:

GSTR 2000/4; GSTR 2004/5;
GSTR 2006/11

Subject references:

- appropriations under an australian law
- consideration
- goods and services tax
- government entities
- gst consideration
- gst special rules
- gst supplies & acquisitions
- gst supplies without consideration
- taxable supply

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