



GSTD 2002/5 - Goods and services tax: is a token of appreciation given to a speaker consideration for the supply of the speaking services?

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Goods and Services Tax Determination

Goods and Services Tax: is a token of appreciation given to a speaker consideration for the supply of the speaking services?

Preamble

This document was published prior to 1 July 2010 and was a public ruling for the purposes of former section 37 of the Taxation Administration Act 1953 and former section 105-60 of Schedule 1 to the Taxation Administration Act 1953.

From 1 July 2010, this document is taken to be a public ruling under Division 358 of Schedule 1 to the Taxation Administration Act 1953.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you - provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

Date of effect

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

1. Where a conference organiser presents a speaker with a token of appreciation, our general presumption is that the token of appreciation is not consideration for the supply of the speaker's services for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act).
2. All legislative references in this Determination are to the GST Act.

Tokens of appreciation

3. It is common practice for conference organisers to give gifts to speakers as a gesture of thanks. Where the speaker has not asked for a gift and has no expectation nor entitlement under any agreement to a gift, the gift is a token of appreciation for the purposes of this Determination.

4. Typically, a token of appreciation may take the form of a book, a bottle of wine, a bunch of flowers or similar item.
5. Whether receiving a token of appreciation has GST consequences for a speaker depends on, amongst other things, whether the token of appreciation is consideration for the supply of the speaking services.

Consideration

6. An essential characteristic of a taxable supply is that the supply is made for consideration.¹ A payment will be consideration for a supply if the payment is 'in connection with', 'in response to or for the inducement of' the supply.² A payment is not limited to a payment of money.³ It does not matter whether the payment is voluntary.⁴ Even a gift may be consideration for a supply where the recipient of the gift is not a non-profit body.⁵
7. A payment is consideration for a supply if there is sufficient nexus between the supply and the payment made.⁶ The test as to whether there is a sufficient nexus is an objective test. The motive of the supplier and the recipient may also be relevant in determining whether the supply was made for consideration, if a reasonable assessment of the evidence supports that motive.⁷

Tokens of appreciation as consideration

8. As stated in paragraph 1 of this Determination, our general presumption is that a token of appreciation is *not* consideration for a supply of the speaker's services. Because a token of appreciation is given merely as a gesture of thanks, we presume that an objective assessment of such a transaction will result in a view that there is not sufficient nexus between the token of appreciation and the supply made.
9. However, exceptions to our general presumption may arise where an objective assessment of the evidence shows a token of appreciation given to a speaker to be a payment for services rendered, rather than a mere gesture of thanks.
10. In determining whether a sufficient nexus exists between supply and consideration, regard needs to be had to the true character of the transaction. An arrangement between parties will be characterised not merely by the description that parties give to the arrangement, but by looking at all of the transactions entered into and the circumstances in which the transactions are made.⁸

¹ Paragraph 9-5(a).

² Subsection 9-15(1), as explained at paragraph 67 of Goods and Services Tax Ruling GSTR 2001/6, which is about non-monetary consideration.

³ GSTR 2001/6 at paragraph 12.

⁴ Subsection 9-15(2).

⁵ Paragraph 9-15(3)(b). See also paragraph 69 of Goods and Services Tax Ruling GSTR 2000/11, which is about grants of financial assistance.

⁶ GSTR 2001/6 at paragraph 68.

⁷ GSTR 2001/6 at paragraph 72.

⁸ GSTR 2001/6 at paragraph 71.

11. Looking at the true character of the transaction will involve considering all relevant factors. Factors that will assist in determining whether a token of appreciation given to a speaker has the character of a payment for speaking services include:

- whether other speakers at the same conference receive similar tokens of appreciation. For example, a significantly different token of appreciation given to a particular speaker may indicate that it is consideration to that speaker;
- the character of the token of appreciation, where the agreed payment takes a non-monetary form. For example, a token of appreciation that complements the non-monetary payment may be characterised as additional consideration, rather than as a mere gesture of thanks;
- the motive of the organiser in giving the token of appreciation, if a reasonable assessment of the evidence supports that motive; and
- the value of the token of appreciation may also point to it being consideration for the supply of speaking services, where its value exceeds what is reasonable, relative to, for example:
 - the fee paid to the speaker;
 - the fee paid to other speakers at the same conference;
 - the fee paid to other speakers in similar circumstances at other conferences;
 - the fee that the speaker receives for similar presentations; or
 - the fee that the speaker has foregone in agreeing to speak.

In relation to the value of a token of appreciation exceeding what is reasonable, the public or professional profile of the speaker is relevant. For example, a value that would be consistent with a token of appreciation being consideration for a supply by a less well known speaker, may be a mere gesture of appreciation for a high profile speaker.

Accommodation, transport and meals

12. Conference organisers will often make things available to speakers to enable them to attend conferences. Examples of this are accommodation, transport, meals and admission to the rest of the conference. The provision of these things will not necessarily form consideration for the supply of the speaker's services. Where things such as accommodation, transport and meals are merely provided to enable a speaker to make a supply of speaking services, they will not be consideration for the supply by the speaker. They are not provided to the speaker in connection with, in response to or for the inducement of the speaker's services.⁹

⁹ GSTR 2001/6 at paragraphs 90 to 94.

13. However, where accommodation and meals are provided outside the period of the conference, it is likely that this will be consideration for the supply of the speaker's services. This is because the provision of the extended accommodation and meals is not something that is necessary for the speaker to supply the services. It is something of economic value¹⁰ to the speaker, which suggests that 'a reasonable assessment of the evidence'¹¹ may point to the accommodation and meals being given in connection with, in response to or for the inducement of the speaker's services.

14. Similarly, if additional accommodation or transport is provided for the speaker's family to accompany him or her during the conference, it is likely that this will be consideration for the supply of the speaker's services.

Example 1: Token of appreciation

15. *Liam and Tess are lawyers who are each invited to address the Society's annual conference. Both are registered for GST. Liam does so under an agreement with the Society whereby he will receive a fee for his services. Tess agrees to supply her services for no consideration.*

16. *At the end of the conference, the Society presents each speaker with a bottle of wine as a gesture of thanks. As neither speaker had an entitlement to, nor an expectation of receiving the bottle of wine under their agreements with the Society, the bottles of wine are tokens of appreciation. On a reasonable assessment of the evidence, the bottles of wine are not consideration for the supplies of speaking services by Liam or Tess.*

17. *Liam has made a taxable supply to the Society for consideration of the agreed fee. As Tess has not made a supply for consideration, she has not made a taxable supply of her services.*

Example 2: Provision of accommodation, transport and meals

18. *In example 1, the annual conference is held over two days at a coastal location. To enable Liam and Tess to attend the conference, the Society pays for their accommodation and meals at the resort where the conference is being held. The provision of the accommodation and meals is not a payment to Liam or Tess for their services, but rather is made to enable them to provide their speaking services. The accommodation and meals are not in connection with, in response to or for the inducement of their supplies.*

19. *However, Liam is also provided with accommodation at the resort for two weeks following the end of the conference. In addition, the Society pays for Liam's wife and children to fly to the resort and stay with him for this period. These extra things will be non-monetary consideration for Liam's supply. This will be in addition to the fee he is to receive under the agreement with the Society.*

¹⁰ GSTR 2001/6 at paragraph 81.

¹¹ GSTR 2001/6 at paragraph 72.

Example 3: Token of appreciation is consideration for a supply

20. Barry is a high profile personality known for his involvement in adventure projects. Barry also speaks professionally and agrees to appear and speak at a conference about his forthcoming project.

21. At the end of the conference, the conference organiser presents him with an expensive and state of the art item of equipment that he would otherwise have needed to acquire for his project. Although Barry is not being paid a fee for supplying his speaking services, the value of the equipment approximates the fee he would normally charge.

22. The character of the thing given is also not what would typically be considered a token of appreciation. A reasonable assessment of the evidence supports the conclusion that the item of equipment is consideration for Barry's supply of his speaking services. The equipment is provided in connection with and in response to the supply and is consideration for the supply.

Example 4: Token of appreciation is consideration for a supply

23. Margaret is an accountant who also speaks professionally on occasions at various conferences. She agrees to speak on accounting practices at a large computer company's annual conference. Under the terms of her agreement with the company, Margaret will be provided with a laptop computer in return for her speaking services. The computer is consideration for the supply of Margaret's speaking services.

24. After Margaret has spoken, the conference organiser also gives her a range of accounting software as a token of appreciation. No other speakers receive software from the conference organiser. In addition, the character of the software complements the computer Margaret receives as consideration.

25. A reasonable assessment of the evidence supports the conclusion that the provision of the software is additional consideration for the supply of speaking services. The software is provided in connection with and in response to the supply.

Commissioner of Taxation

23 October 2002

Previous draft:

- taxable supplies

Previously released as GSTD 2002/D2

- token of appreciation

Related Rulings/Determinations:

GSTR 1999/1; GSTR 2000/11; GSTR 2001/6

Legislative references:

- TAA 1953 37

- ANTS(GST)A 1999 9-5(a)

Subject references:

- ANTS(GST)A 1999 9-15(1)

- consideration

- ANTS(GST)A 1999 9-15(2)

- GST

- ANTS(GST)A 1999 9-15(3)(b)

- supply

ATO references:

NO: 2002/009300

ISSN: 1443 - 5179