GSTR 2000/11 - Goods and services tax: grants of financial assistance

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Goods and Services Tax Ruling
Goods and services tax: grants of financial assistance

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Preamble

This document is a public ruling for the purposes of section 37 of the ***Taxation Administration Act 1953*** *and 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 the Goods and Services Tax ('GST') to grants of financial assistance and funding. The Ruling provides guidelines for working out when grants of financial assistance and funding constitute consideration for a taxable supply. The Ruling applies to grants made by governments and the private sector.

2. The Ruling also deals with the application of the *A New Tax System (Goods and Services Tax Transition) Act 1999* ('the Transition Act') to grants.

3. All legislative references in this Ruling are to the *A New Tax System (Goods and Services Tax) Act 1999* ('the GST Act') unless otherwise specified. References to 'GST Transition Act' are references to the *A New Tax System (Goods and Services Tax Transition) Act 1999.*

Date of effect

4. This Ruling applies on and from 8 July 1999 (the date of Royal Assent to the 'Goods and Services Tax' ('GST') legislation) and may be relied upon immediately.

Context for grants ruling

5. This Ruling will assist grantees and grantors in determining whether GST applies to a grant.

6. One entity may provide financial assistance to another by means of direct grants, contributions, subsidies, co-payments and similar means. Both government and private organisations make such payments, sometimes referred to as transfer payments, for many

reasons. These range from money given out by a charity for food or clothing to major government-funded projects. Many such payments are made between government organisations as part of the flow of such funding from consolidated revenue funds to consumers.

7. In this Ruling we refer to such payments of financial assistance as grants[1].

8. The term 'grantor' is used in this Ruling to refer to the entity that makes a grant. The term 'grantee' refers to the entity to which a grant is made.

Ruling

9. The GST treatment of grants depends primarily on whether the grant represents consideration that has the relevant connection with a taxable supply as set out in this Ruling[2]. This will depend on the particular facts and circumstances of each grant program. The term grant is not defined and the general principles of the GST Act apply in determining whether GST is payable on a grant transaction.

10. GST is payable in respect of taxable supplies[3]. Supplies made in connection with the receipt of a grant will be subject to GST where the grant represents *consideration* for a supply which is a *taxable supply*[4].

Is there a taxable supply?

11. In determining whether a taxable supply is made, all of the following tests need to be satisfied:[5]

- is there a *supply* for *consideration;*
- is the supply made in the course or furtherance of an *enterprise* that is carried on by the supplier;
- is the supply *connected with Australia*; and
- is the person making the supply *registered* for GST, or required to be registered for GST?

[1] In some cases, a payment will be consideration for a supply other than one from grantee to grantor. This issue is discussed at paragraphs 103 to 106 of this Ruling.
[2] Consideration and taxable supply are defined in sections 9-15 and 9-5 of the GST Act respectively (refer to paragraphs 14 to 70 of this Ruling)
[3] GST is also payable in respect of taxable importations, but this aspect of the GST law is irrelevant to grants.
[4] Where a grant is made in kind, the grant itself may be a taxable supply. This is discussed at paragraphs 37 to 38.
[5] Section 9-5 of the GST Act

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

13. This ruling primarily deals with whether there is a supply for which a grant is consideration. However, such a supply will not be subject to GST unless the other requirements of the definition of taxable supply are met.

Is there a supply made for consideration?

14. A taxable supply cannot exist unless there is a *supply for consideration.*[6] There are three questions that are relevant to determining this question:

- is there a supply;
- is there consideration; and
- does the necessary relationship exist between supply and consideration?

Is there a supply?

15. Essentially, a supply is something which passes from one entity to another. The supply may be one of particular goods, services or something else which is reflected in an agreement by one party to do something for another.

Supply in the GST Act

16. Supply is defined as 'any form of supply whatsoever'[7]. In other jurisdictions the term 'supply' has been held to take its ordinary and natural meaning, being 'to furnish or to serve'[8]. Similarly, the definition of 'supply' in the Macquarie Dictionary is 'to furnish or provide (something wanting or requisite: *to supply electricity to a community*)'. The term refers to things passing from one party to another.

17. Subsection 9-10(2) expands on the meaning of supply. That subsection provides that supplies include, but are not limited to:

(a) a supply of goods;

(b) a supply of services;

(c) a provision of advice or information;

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[6] Paragraph 9-5(a).
[7] Subsection 9-10(1).
[8] *Carlton Lodge Club Ltd v. C & E Commrs* [1974] 3 All ER 798. at 801; *C & E Commrs v. Oliver* [1980] 1 All ER 353, at 354-355.

(d) a grant, assignment or surrender of *real property;

(e) a creation, grant, transfer, assignment or surrender of any right;

(f) a *financial supply;

(g) an entry into, or release from, an obligation:

(i) to do anything; or

(ii) to refrain from an act; or

(iii) to tolerate an act or situation;

(h) any combination of any 2 or more of the matters referred to in paragraphs (a) to (g).

18. These expressions refer to two aspects of supply; the thing which passes, such as a right, obligation or information; and the means by which it passes, such as its provision, creation, grant, assignment, surrender or release[9].

19. Subsection 9-10(2) makes it clear that things supplied need not only be goods and services, which are included as examples of the things that can be supplied. Rights, obligations and information may also be supplied.

20. The explanatory memorandum to the GST Act comments that the GST is a 'broad based indirect tax [that]… taxes the consumption of most goods, services and anything else in Australia'[10]. In relation to the definition of supply, the explanatory memorandum comments that the term 'is defined broadly and is intended to encompass supplies as widely as possible'[11].

Supplies to the world at large

21. As a goods and services tax is a tax on transactions[12], it will be necessary for the transaction to involve an identified recipient of the supply. A supply cannot be made to the world at large, so that there must be identifiable consumers of the supply[13].

[9] This distinction is particularly important in applying the *GST Transition Act 1999.*
[10] Explanatory memorandum, Executive Summary.
[11] Explanatory memorandum, paragraph 3.6.
[12] cf [New Zealand] *Commissioner of Inland Revenue v. Databank Systems Ltd* [1989] 1 NZTC 6093.
[13] In *New Zealand Refining Co. Ltd v C. of IR* (1995) 17 NZTC 12307, at 12314-12315, Henry J commented that the New Zealand GST imposes tax against payments which go to make up the value of identifiable supplies, rather than against all payments received in the course of carrying on a taxable activity. See also *Mohr v. Finanzamt Bad Segeberg* [1996] BVC 293: Opinion of Advocate General Jacobs at paragraph 27

22. A grant agreement may involve the grantee entering into an obligation to supply services to others. The relevant supply in such a situation will not be the supplies made to unspecified parties using the granted money. However, the undertaking itself may constitute a supply to the entity to whom the undertaking is given.

Supplies of services

23. In other jurisdictions, supply is also broadly defined, by treating services as anything that is not goods. For example, in the Sixth VAT Directive of the European Council[14] ('the Sixth Directive'), a supply of services is defined as 'any transaction which does not constitute a supply of goods', and the term includes 'obligations to refrain from an act or to tolerate an act or situation'[15]. In Canada, supply is defined to mean 'the provision of property or a service in any manner, including sale, transfer, barter, exchange, license, rental, lease, gift or disposition'[16].

24. In New Zealand, GST is imposed on supplies of goods and services[17]. Services is defined as 'anything which is not goods or money'[18]. The term supply is defined as 'all forms of supply'[19], and the succeeding subsections specify particular rules relating to supplies of goods or services[20].

25. Many grant arrangements will involve the supply of a service. For example, in the Canadian decision *Meadow Lake Swimming Pool Committee Inc. v. The Queen* [1999] 2970 ETC, a non-profit corporation received consideration from a municipal council in return for operating a swimming pool that was owned by the municipality. The consideration was in the form of a grant which covered operating losses. It was held that the Committee supplied a service which consisted of operating, maintaining and regulating the swimming pool.

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[14] *EC Council Directive 77/388 of 17 May 1977 on the harmonisation of the laws of the member states relating to turnover taxes—Common system of value added tax: uniform basis of assessment.*
[15] Sixth Directive, Article 6(1).
[16] *Excise Tax Act 1985* subsection 123(1).
[17] *Goods and Services Tax Act 1985* (NZ), section 8.
[18] *Goods and Services Tax Act 1985* (NZ), subsection 2(1).
[19] *Goods and Services Tax Act 1985* (NZ), subsection 5(1).
[20] Note that subsection 5(6D) of the New Zealand *Goods and Services Tax Act 1985* deems any payment which is in the nature of a grant or subsidy to be consideration for a supply of goods or services by the person to whom the payment is made. The Australian GST Act does not contain any similar provision to subsection 5(6D), which was added in New Zealand in response to some of the cases considered in this Ruling.

Transactions which are supplies of rights or obligations

26. The term supply includes the grant or assignment of a right, and the entry into, or release from, an obligation[21]. In some cases, the transaction between grantor and grantee will merely involve the granting of a right or the entry into an obligation. For example, where a person acquires an option to purchase a property for consideration, the substance of the transaction is the supply of a right, which is a separate transaction from the exercise of the option. The acquisition of the property will involve another supply (which may be a taxable supply if further consideration is provided).

27. In overseas jurisdictions, the issue in a grants context is generally whether grant transactions involve supplies of services for the grant, under a broad definition of services. Such transactions have often been held not to be the supply of services. For example, in *Landboden-Agrardienste GmbH & Co. KG v. Finanzamt Calau* [1998] BVC 70, the issue was whether the 'supply of services', within the meaning given by the Sixth Directive, extended to an undertaking given by a farmer to reduce its harvest of a potato crop[22]. In his opinion, Advocate General Jacobs commented that 'Any payment, except perhaps a gift, will have conditions attached to it whose performance might, by creative use of language, be described as a service'[23]. It was held that for an undertaking to be covered by the common system of VAT it must imply consumption[24], and that by undertaking to reduce production the farmer did not provide either services to an identifiable consumer or some benefit capable of being a cost component of another person in the commercial chain[25].

28. Subsection 9-10(2) places supplies of goods and services alongside rights, obligations and the like. Consequently, under the Australian GST legislation there is no need to resort to a 'creative use of language' to attempt to describe a transaction such as an undertaking to reduce production for consideration as involving a service; hence there is no need to fit grant cases into the concept of supply of services. The differences in the structure of the legislation mean that the overseas cases should be considered with some caution. For example, we consider that the undertaking to reduce production

[21] Paragraphs 9-10(2)(e) and (g).
[22] Article 6(1) of the Sixth Directive provides that a supply of services means any transaction that does not constitute a supply of goods. It also provides that such transactions could be obligations to refrain from an Act or to tolerate an Act or situation.
[23] Opinion, paragraph 24.
[24] Judgement, paragraph 20. Article 2 of the First VAT directive (*Directive 67/227/EEC* : *First Council Directive of the European Economic Community of 11 April 1967 on the harmonisation of legislation of member states concerning turnover taxes*) provides that the common system of value added tax involves the application to goods and services of a general tax on consumption.
[25] Judgement, paragraph 23.

dealt with by *Landboden-Agrardienste GmbH & Co. KG v. Finanzamt Calau* would be a supply that would be caught by paragraph 9-10(2)(g), and the relevant grant would be subject to GST.

29. Consumption must always be present but the nature of the consumption depends on the nature of what is consumed. The explanatory memorandum to the GST Act commences with the proposition that 'the GST is a broad based indirect tax', and it provides that while the GST is effectively a tax on final private consumption in Australia, 'GST taxes the consumption of most goods, services, *and anything else* …'. In the case of a transaction which is in substance the supply of a right or obligation, the thing consumed may be the right or obligation itself, by its exercise or discharge.

Supplies of rights and obligations as part of a larger transaction

30. Not every grant of a right or entry into an obligation will establish a supply that is subject to GST. Many business dealings involve the exchange of rights and obligations over time. However, these rights and obligations will merely form part of a larger transaction.

Example

31. Rick contracts with Con, a car repairer, to have Rick's car serviced. At the time the contract is made, Rick acquires a right to have the service performed and Con assumes the obligation to service the car. However, the true character of the transaction is the supply of the service of vehicle maintenance by Con to Rick. The exchanges of rights and obligations over time form part of that transaction and are not separate supplies.

Agreement which is binding where the transaction is a supply of a right or obligation

32. It is common for a grantor and grantee to enter into a grant agreement which establishes rights and obligations between the parties. Often the grant agreement will provide for the grantee to be obliged to make supplies to third parties, rather than the grantor. That obligation to make supplies to others may itself be a supply to the grantor.

33. For there to be a supply of rights or obligations, such rights or obligations must be binding on the parties. The creation of expectations among the parties does not establish a supply. An agreement that does not bind the parties in some way would not be sufficient to establish a supply by one party to the other unless there is

something else, such as goods or some other benefit, passing between the parties.

34. Examples of arrangements that will indicate an agreement binds the parties include:

- a contract, such as a purchaser-provider agreement;
- a provision providing that the money granted must be repaid in specified circumstances;
- a guarantee or lien over property of the grantee; or
- an agreement such as a deed that is enforceable on its own terms even without specific remedies being provided for in the event of a breach.

35. This requirement was emphasised by the New Zealand Court of Appeal in *C of IR v. New Zealand Refining Co. Ltd*[26]. The case concerned certain payments made by the New Zealand Government to the New Zealand Refining Company that were only to be made on condition that the refinery remained operational. Blanchard J referred to Richardson J's dictum in the *Marac* cases that the nature of the legal arrangements entered into needed to be considered, and noted that there was an expectation among the parties that the refinery would continue to operate, but there was no contractual requirement to that effect[27]. The government's only recourse in the event that the refinery ceased to be operational was to stop making payments. In *New Zealand Refining*, the court held:

> 'In terms of any binding commitment between the parties, there was to be little or no linkage between the Crown's payments and the making of particular (or any) supplies of goods or services'[28].

36. We consider that the requirement that a transaction needs to bind the parties in some way before it will involve a supply has application in Australia where the transaction is the supply of a right or obligation.

Grants in kind are supplies

37. Where a grant is provided in a form that falls outside the definition of money, such as a grant of property or other goods, the grant itself will be a supply. As grants in kind may be made in return for another supply, there may be a 'supply' by grantor and grantee to each other.

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[26] (1997) 18 NZTC 13187.
[27] (1997) 18 NZTC 13187 per Blanchard J, at 13192.
[28] (1997) 18 NZTC 13187 per Blanchard J, at 13193.

38. Where both supplies are taxable supplies, each party will be liable to GST on the supply it makes. The amount of GST is based on the *GST inclusive market value* of the consideration[29], which is the market value of the consideration without any discount for GST payable on the other supply. Where there is an arm's length transaction between the parties, the value of each consideration will be the same unless the things swapped as part of the transaction have an unequal market value. No net GST will be payable where the consideration for the relevant supplies are made in the same tax period and have the same GST inclusive market value.

Grants of money are not usually supplies

39. The definition of supply specifically excludes most 'supplies' of *money* from being a supply[30]. Consequently, the provision of a grant of money is not generally a supply.

40. The above principle applies to a grant of money in any form. Money is defined broadly in the dictionary to the GST Act.[31] For example, a payment made by cash, by cheque, by credit card, or by a transfer to a deposit or loan account is encompassed by the definition of money.

Financial supplies

41. While a payment of money will usually be consideration for a supply rather than a supply, a financial supply, as defined in the GST regulations, is specifically made a supply under paragraph 9-10(2)(f). A financial supply involves the provision, acquisition or disposal of an interest of a type mentioned in the regulations, such as the provision of a debt, if the provision, acquisition or disposal is for consideration[32]. For example, a loan provided for consideration in the form of interest will be a financial supply. Financial supplies are input taxed[33].

42. Some grant-like transactions are made in the form of a loan, with a suspension of the liability to make repayments under the loan provided certain conditions are met. Such transactions may involve the making of a financial supply where provided for consideration such as interest, even where the terms of the loan allow for that debt to be waived in the event of something occurring. Labels such as 'grant'

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[29] Paragraph 9-75(1)(b).
[30] Subsection 9-10(4).
[31] Section 195-1.
[32] Subregulation 40-13 and 40-14 define what supplies are financial supplies. The regulations provide additional requirements that are to be met before a transaction will involve a financial supply.
[33] Subdivision 40-A and the regulations made thereunder.

or 'loan' are not conclusive. If the transaction is in substance a loan made for consideration, then it will be an input taxed financial supply.

43. In addition, many grants are made on the condition that they become repayable in the event of some specified default of the grantee, such as a failure to meet milestones, or to spend the granted funds in the agreed manner. If, in the event of a default, an amount becomes payable to the grantor with interest, then this may be a further supply at that time, being the provision of a debt for interest consideration.[34] This is a financial supply, which is input taxed. If there is no interest or other consideration in addition to the obligation to repay the amount, then there is no financial supply.

Is there consideration?

44. A supply is a taxable supply, if, among other things, the supply is made for *consideration.*[35] Thus, there must be some nexus or connection between a particular supply and particular consideration which is provided for that supply.

45. The definition of consideration in section 9-15 extends beyond payments to include such things as acts and forbearances to act.[36] It may include voluntarily made payments, and payments made by persons other than the recipient of a supply.[37]

46. A payment will be consideration for a supply if the payment is 'in connection with', 'in response to' or 'for the inducement' of a supply[38].

47. The definition of consideration in the New Zealand GST Act[39] is similar to the Australian definition. In *C of IR v. Databank Systems Ltd* (1989) 11 NZTC 6093, at 6102, Richardson J commented that the New Zealand definition of consideration 'breathed comprehensiveness'. In *New Zealand Refining Co Ltd v. C of IR* (1995) 17 NZTC 12307, at 12314, Henry J commented that the definition was wide, and that 'in response to' and 'for the inducement of' added little to 'in respect of', given the breadth of the latter term.

48. In Australia, the definition of consideration is similarly wide. To the extent that 'in connection with' may be narrower in scope than

[34] Subregulation 40-13(1) of the GST Regulations provides that the provision, acquisition or disposal of certain interests is a financial supply if, among other things, it is made for consideration. Item 2 in the table in subregulation 40-13(2) provides that one of those interests is a debt.
[35] Paragraph 9-5(a).
[36] Subsection 9-15(1).
[37] Subsection 9-15(2).
[38] Subsection 9-15(1).
[39] *Goods and Services Tax Act 1985* (NZ).

'in respect of', the phrases 'in response to' and 'for the inducement of' may assume added stature.

Gifts to non-profit bodies are not consideration

49. Paragraph 9-15(3)(b) specifically excludes a gift made to a non-profit body from being consideration for a supply. 'Gift' and 'non-profit body' are the essential terms in this paragraph. It follows that if there is a gift to a non-profit body there will not be a taxable supply, unless there is other consideration for the supply.

Meaning of non-profit body

50. 'Non-profit body' is not defined in the GST Act. There are two elements to the definition. Firstly the entity must be a body, and secondly the body must have the characteristic of being a 'non-profit body'.

51. The term 'body' is a term of wide import, defined in the Macquarie dictionary with many different meanings including '16. The physical person of an individual. 17. A collective group; or an artificial person: *body politic, body corporate*'.[40]

52. We consider that a non-profit body is a body which is not carried on for the purpose of profit or gain to its individual members.

53. We accept a body as being non-profit where, by operation of law (for example, a statute governing a body's activities) or by its constituent documents, the body is prevented from distributing its profits or assets amongst its members while the body is functional and on its winding-up[41]. The body's actions must, of course, be consistent with the prohibition.

54. Where the law or the constituent documents do not prohibit distributions, it is a question of fact in each case as to whether the body is not carried on for purposes of profit or gain to the individual members. Factors that we consider relevant include whether distributions have been made, whether there is a stated or demonstrated policy to make or not to make such distributions and whether winding-up is contemplated. Where it is clear from the objects, policy statements, history, activities and proposed future directions of the body that there will be no distributions to members, we accept that the non-profit test has been satisfied.

55. Some guidance as to the meaning of 'non-profit body' is also provided in Sales Tax Determination STD 97/4, which dealt with a

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[40] The Macquarie Dictionary (The Macquarie University, 3rd Ed 1998).
[41] Examples of suitable clauses in constituent documents are outlined in Taxation Ruling TR 97/22 at paragraph 22.

definition of 'non-profit body' in the Sales Tax context[42]. The Determination states that a non-profit body is an organisation that prevents the distribution of its profits or assets among [its individual members] while it is operating or on its winding-up, either by its constituent documents or by operation of law (for example, a statute governing the organisation). However, the fact that a non-profit body may make a profit does not negate its non-profit status so long as the profit is applied to the non-profit purposes of the body and the profit does not accrue to the benefit of identifiable [individual members] either directly or indirectly[43].

56. In a similar context under the income tax legislation it has been held that even though a company may be stated to be formed for the benefit of non-members, it will not be established for a non-profit purpose where the shareholders are able to control the distribution of profits through their power to change the terms of the company constitution[44].

Meaning of gift

57. The term 'gift' is not defined in the GST Act, and thus takes on its ordinary meaning. The ATO considers that for the purposes of the GST guidance is provided in income tax cases relating to gifts. The income tax similarly gives special treatment to gifts to some charitable and non-profit type bodies.

58. *FC of T v. McPhail* (1968) 117 CLR 111 is the leading income tax case on the test of what a gift is. There are two limbs to the *McPhail* test. If either of the two limbs is not established the grant will not be a gift. Whether or not this is the case will depend on the particular circumstances and the individual facts surrounding the grant.

59. The first limb of the test is that the grant is transferred voluntarily by the grantor to the grantee. To be a gift, a grant would not be the result of a prior contractual obligation to transfer the grant.

60. The second limb of the test is that the grantor may not receive an advantage of a material character by way of return in making the grant. It does not matter if the advantage returned is of less than equal

[42] *Sales Tax (Exemptions and Classifications) Act 1992*; subsection 3(2).
[43] The determination uses the term 'individual', as the definition of non-profit body in the *Sales Tax (Exemptions and Classifications) Act 1992* refers to 'not carried on for the profit of individuals'. Other similar definitions use the term 'individual members' which is not restricted to members of a body who are individuals: See *FC of T v. Cappid Pty Ltd(1971) 2 ATR 319.*
[44] *Luceria Investments Pty Ltd v. FC of T* 75 ATC 412; (1975) 5 ATR 3380.

value to the grant[45]. An advantage of a material character would not include mere recognition for making the grant.

61. A further characteristic of a gift is that it essentially arises from benefaction, and the gift proceeds from the detached and disinterested generosity of the grantor[46]. A grant that is made as a function of government, and does not have the characteristics of benefaction and detached, disinterested generosity, is not a gift.

62. A grant may have conditions attached to it that flow from the grantor's right to regulate the disposal of the grant and still be a gift[47]. Such conditions reflect the terms on which the donor intends to make the grant and the grantee's understanding of the terms on which the grant will be made[48]. Such conditions create equitable rights that are enforceable by equitable remedies. Nevertheless, the grant may still be a gift where the equitable rights arise as part of the grant transaction and do not directly or indirectly provide a material benefit to the grantor or an associate.

Example 1—material benefit to the giver

63. Arthur is the owner of a yacht, the 'Southern Cross', who wants to enter it into the 'Australia Cup', a prestigious yachting race. Arthur makes a donation of $100,000 to the Australian Sports Foundation (ASF), a non-profit organisation. In making his donation, Arthur expresses a preference that the $100,000 be forwarded to the Australian Yachting Club (AYC). The AYC is a body that organises the management, sponsorship and entry into the 'Australia Cup' of all competitors. Prior to making the donation, Arthur had entered into an agreement with AYC which places a positive contractual obligation on Arthur to indemnify AYC against Arthur's costs in entering the race. The agreement provides a choice to Arthur of either making a direct payment to AYC or of making a tax deductible donation to the ASF with a preference that it be passed on to AYC.

64. The donation of $100,000 is not a gift. This is because there is a direct link between the payment of the $100,000 and Arthur's contractual liability to AYC. Arthur has a positive obligation to pay AYC to fund his yachting expenses one way or the other. The material advantage received by Arthur in making the donation is the

[45] *FC of T v. McPhail* (1963) 117 CLR 111, at 116 per Owen J.
[46] *Leary v. FC of T* 80 ATC 4438; (1980) 11 ATR 145.
[47] *Muschinski v. Dodds* (1984-1985) 160 CLR 583, per Brennan J dissenting judgement at p.604. For more detail on the nature of the rights and obligations flowing see *Countess of Bective v. FC of T* (1932) 47 CLR 417 per Dixon J.
[48] *Muschinksi v. Dodds* supra, at p 604 per Brennan J.

relief from his liability under the indemnity to AYC. Consequently, neither limb in the *McPhail* test of what is a gift is satisfied[49].

Example 2—material benefit to the giver

65. A grant is made to a non-profit body for the purpose of the non-profit body conducting specific research and providing a report on the results of that research to the grantor, which the grantor intends to use in its business. The report may be expected to provide a material benefit to the grantor. In this situation the grant does not have the characteristics of a gift. Notwithstanding that the recipient of the grant is a non-profit body, a supply is made by the grantee in the provision of the report. The grant will be consideration for the supply of the report.

Example 3—mere recognition of the gift

66. Bruce Michael, a wealthy philanthropist, decides to make a gift of $5,000,000 to the public hospital in his area for the purpose of building a new wing on the hospital to deal with people suffering from alcoholism. As part of the gift Bruce gives the money to the hospital with the stipulation that the money must be used for the purpose of constructing the new wing.

67. In order to recognise Bruce's generosity, the hospital will name the new wing in his honour. In further recognition, the hospital will also acknowledge the gift by placing a plaque in the foyer of the new building. These acts by the hospital would not affect the status of the donation as it still possesses the characteristics of a gift, i.e., the grant was made voluntarily and no material benefit accrued to the grantor. The fact that public recognition is obtained by Bruce or was a condition of the gift does not constitute a material benefit. Thus, as the public hospital is a non profit body, the donation will not be the provision of consideration in respect of the supply pursuant to paragraph 9-15(3)(b).

Example 4—acquittal report that is not a material benefit

68. Bruce donates money to a university to conduct cancer research and to disseminate the results in the usual way by publication in academic journals. An agreement is entered into between Bruce and the university under which the university will account for the expenditure of the gift on cancer research. If the university is a non-profit body then the gift will not be the provision of consideration,

[49] *Klopper v. FC of T* 97 ATC 4179; (1997) 34 ATR 650 per RD Nicholson J.

because the supply of information in accounting for the grant does not provide a material benefit to the grantor[50].

Gifts may be consideration for a supply

69. As outlined above, a gift is excluded from the definition of consideration only if it is made to a non profit body. A voluntarily made payment may be consideration for a supply[51], and where the payment is a gift but is not made to a non profit body it may be in connection with a supply, in response to a supply, or for the inducement of a supply. For example, an ex-gratia payment that is made to a supplier by a business in recognition of the quality of a particular supply of goods may be consideration that is in response to the supply of goods.

Appropriations are not consideration

70. A payment made by a *government related entity* to another such entity which is specifically covered by an appropriation under an Australian law is not consideration for any supply made by the payee.[52] Any GST on the supply will not take into account such a payment[53]. This question is only relevant to government related entities, which are Commonwealth, State, and Territory governments, the organisations they establish, and local governing bodies.[54]

Is the supply made for consideration of the grant?

71. It will not be sufficient for there to be supply and consideration. GST is not payable on supplies unless they are made *for* consideration[55], and the other tests in section 9-5 are satisfied[56]. There must be some nexus between supply and consideration. In *C of IR v. New Zealand Refining Co. Ltd* (1997) 18 NZTC 13187, at 13193 Blanchard J commented:

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[50] In many cases the grant would not be consideration for the supply of information even if the grantee was not a non-profit body. Whether a grant is consideration for a supply of information is further discussed at paragraphs 89 to 100 of this ruling.
[51] Subsection 9-15(2).
[52] Paragraph 9-15(3)(c).
[53] In the event that there is other consideration for a supply that is in connection with an appropriation, that other consideration will form the total consideration.
[54] Section 195-1. The definition of 'government related entity' builds on the definition of 'government entity' in section 41 of the *A New Tax System (Australian Business Number) Act 1999*. The question of whether a payment is covered by paragraph 9-15(3)(c) is dealt with by Goods and Services Tax Ruling GSTR 2000/4.
[55] Paragraph 9-5(a).
[56] The tests for what is a taxable supply are discussed in paragraphs 11 to 12 of this ruling.

> 'It can be seen that … a linkage between supply and consideration is requisite to the imposition of the tax … There is a practical necessity for a sufficient connection between the payment and the supply. The mechanics of the legislation will otherwise make it impossible to collect the GST'.

The test in Canada and the European Community

72. The GST law in the European Community uses the expression 'supply effected for consideration'[57], with no elaboration on what 'for' means in this context. The Canadian legislation uses the expression 'consideration for the supply'[58]. The Courts have adopted a 'direct link' test in determining whether consideration is 'for' a supply in those jurisdictions[59].

The test in New Zealand

73. While European and Canadian authorities demonstrate the need for a link between supply and consideration for a GST or VAT liability to arise, in New Zealand the definition of consideration itself describes the link. The term 'consideration' is defined in relation to supplies of goods and services. The definition includes any payment, act or forebearance in respect of, in response to, or for the inducement of, the supply of any goods and services[60].

74. In the High Court of New Zealand decision of *New Zealand Refining*, Henry J commented in relation to the application of European Authorities to New Zealand's GST Act:

> 'I do not think there is any principle of construction relevant to the present issue to be discerned from a review of the authorities cited in argument. It can be said they demonstrate the need for a link or nexus between a payment and the identified service, but I doubt whether there is any call to go beyond an application of the statutory words defining the term "consideration" in reaching a decision in any particular case'[61].

75. In the Court of Appeal decision of *New Zealand Refining*, Blanchard J noted the absence of a binding commitment to make particular supplies, and stated that a sufficient connection between the payment and a supply was necessary. The court concluded that the

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[57] Sixth Directive, article 2(1).
[58] In Canada, tax is payable on "the value of the consideration for the supply *Excise Tax Act. R.S., c.E-13* subsection 165(1).
[59] See, for example, *Apple and Pear Development Council v. Customs and Excise Commissioners* [1988] BTC 5116.
[60] *Goods and Services Tax Act 1985*, subsection 2(1).
[61] (1995) 17 NZTC 12307, at 12314.

payments which were made conditional on the refinery remaining operational were not consideration for any supply, as there was no binding commitment to make particular supplies. The only recourse the government had was to cease making payments once the condition failed to be met. The payments were directed to maintaining the structural framework within which supplies of services were expected to be made. The purpose that the refinery remain operational was distinct from any supply of services to be made. Thus, on the particular facts of this case the requisite link between a supply of particular services and consideration was not established.[62]

The test in Australia

76. A supply is not subject to GST in Australia unless it is made *for consideration*[63]. Consideration 'for a supply or acquisition' is defined in section 195-1 as any consideration, within the meaning given by section 9-15, which is 'in connection with the supply or acquisition'.

77. We consider that, in the context of the GST Act, the expression 'you make the supply for consideration' in paragraph 9-5(a) means the same as 'there is consideration for the supply that you make'[64]. The references in the GST Act to 'supply for consideration'[65] and more commonly to 'consideration for a supply'[66] underscore the close coupling between the supply and the consideration that is necessary before a payment will be consideration for a supply that will make the supply subject to GST[67].

78. In a similar fashion to the New Zealand GST Act, the nature of the link required between supply and consideration is specified in the definition of consideration. A payment will be consideration for a supply if the payment is 'in connection with', 'in response to' or 'for the inducement' of a supply[68].

79. In determining whether a payment is in connection with the supply of an obligation, we consider that the test is whether there is a link or nexus that provides a substantial relation between the substance of the obligation and the grant. This test may establish a

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[62] (1997) 18 NZTC 13187, at 13193 - 13194 per Blanchard J.
[63] Paragraph 9-5(a).
[64] Compare section 11-5(c), which provides that a creditable acquisition is one where you provide consideration for the supply. In addition, the definition of 'supply' itself adopts the expression 'consideration for a supply'.
[65] For example paragraph 9-5(a).
[66] The term 'consideration for a supply' appears in, for example, paragraph (a) of the definition of 'price' in section 9-75(1), in subsection 9-85(2) in relation to the value of a supply, and in paragraph 11-5(c) in defining a creditable acquisition.
[67] Subject to the other requirements of the GST Act, particularly the requirements in section 9-5.
[68] Subsection 9-15(1).

link between consideration and supply in a broader range of cases than the 'direct link' test which applies in the European Community and in Canada. While caution needs to be exercised in applying decisions on connective terms in other contexts, the term 'in connection with' has been held to be broader in scope than 'for'[69]. The meaning given to the term 'in connection with' in *Berry's Case* is similar to that which was described by the Court of Appeal in *New Zealand Refining*[70], but needs to be applied with regard to the structure of the definition of supply in the GST Act.

80. Consideration for a supply need not be in connection with the supply. It may be 'in response to' or 'for the inducement of' a supply[71]. Consideration which has these characteristics will usually also be in connection with the supply.

81. In determining whether consideration is in connection with, in response to, or for the inducement of a supply, regard needs to be had to the true character of the transaction. An arrangement between parties will be characterised not merely by the description which parties give to the arrangement, but by looking at all of the agreements entered into and the circumstances in which the agreements are made[72].

82. Where the grant involves a supply of only a right or obligation, there needs to be some binding commitment supplied by the grantee which goes to the substance of the grant transaction. In determining what the substance of the transaction is where the transaction is an exchange of a grant for a right or obligation, the key consideration will be the object or purpose which the grant is intended to achieve. Things supplied as part of such a grant agreement that are merely incidental to the purpose for which the grant is made will not be supplies for which the grant is consideration.

Nexus where grantee supplies rights

83. In many cases, the grantor will derive a direct and specific benefit in the form of a right from the making of the grant. Examples of such situations include:

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[69] For example, in the High Court decision in *Berry v. FC of T* (1953) 89 CLR 653, Kitto J considered the meaning of consideration 'for or in connection with' in the context of former section 84 of the *Income Tax Assessment Act 1936*, a provision which included consideration for or in connection with goodwill in a lease premium. Kitto J held that 'in connection with' was a broader test than 'for'. At p. 659 he commented that consideration will be in connection with property where 'the receipt of the payment has a substantial relation, in a practical business sense, to that property'.

[70] (1997) 18 NZTC 13187, at 13193-13194 per Blanchard J.

[71] This does not mean that consideration that seeks to induce a supply is taxed. There must be a supply induced by the consideration for the tax liability to crystallise.

[72] *Marac Finance Ltd v. Virtue* [1981] 1 NZLR 586.

- the grantor's right to use the results of a project that is funded by the grant; and
- the right to income from the sale of results of the project. For example, the grantee may agree to pay the grantor a certain portion or percentage of income.

84. However, some rights will not establish any supply made to the grantor, for example, where the grant agreement specifies rights to retain title already possessed by grantor or grantee to property used in respect of the grant. Such an agreement effectively specifies rights that are to be retained by the parties rather than rights supplied by one party to the other.

Nexus where grantee supplies obligations

85. Many grants are paid in exchange for the grantee's entry into an obligation to the grantor to do something with the grant. The grant is sufficiently connected with the supply of such an obligation if the obligation is something which goes to the purpose for which the grant is made.

86. Conditions that a grantee may enter into include a requirement to use the granted funds in a particular manner, such as to deliver specified services to the community in furtherance of an objective of the grants program. Provided that the grant is made for the purpose of those services being delivered, the acceptance by the grantee of an obligation to fulfil such conditions will establish a supply to the grantor in connection with the grant.

87. Where the grant is made to a non-profit body and the only conditions attached to the grant relate to the disposition of the funds the question of whether the grant is a gift is also relevant. This is discussed at paragraphs 49 to 69 of this Ruling.

Example

88. A Justice Department of a state establishes a legal aid program that funds legal firms and non-profit legal centres. Quillick and Melley, a firm of solicitors, is one of the program participants. The terms of the participants' agreement with the Justice Department provide that Quillick and Melley will provide legal advice to citizens of Dandy Creek in exchange for a grant to finance the provision of those services. The firm is only required to show that it has made a lawyer available during certain hours for consultation with the public. The grant thus provides a 'bucket of funds', and is not a payment for particular supplies made to identifiable individuals. The undertaking establishes a supply made to the Justice Department, as it assists the department in furthering its program objective of providing legal

advice and has a substantial nexus with the grant as the supply goes to the purpose of the grant program.

Supplies of information and other peripheral things

89. Things will often be supplied by the grantee to the grantor which do not go to the purpose for which the funds were granted, but which are merely part of the mechanism of making or accounting for the grant.

90. For example, paragraph 9-10(2)(c) specifically includes a provision of advice or information in the meaning of 'supply'. However, a grant will not be consideration for such a supply unless the grantor derives some benefit from the information or the grant is made for the purpose of obtaining such information.

91. Grants are not normally made for the purpose of the grantee accounting for the expenditure of the grant. A requirement to account for the grant is merely incidental to the making of the grant. The grantor uses this information to maintain accountability over the funds disbursed, and to assist in evaluating the effectiveness of the program in meeting its objectives.

Example—Direct benefit to the grantor

92. A government agency makes a grant to a market research company for the purpose of undertaking specific research which will be used by the grantor in its business. The grant is made so that the agency can obtain the benefit of the market research. Such a grant will be consideration for the supply of market research information.

Example—Supply of information is the purpose of the grant

93. Another government agency makes a grant to a market research company for the purpose of undertaking specific research which will be made public. The object of the grant is to improve the international competitiveness of organisations in a particular industry, and the grantor is obliged to undertake the relevant research and publish a report of the research on the internet in return for the grant.

94. While the government agency does not derive a direct benefit from the making of the grant, the provision of the information in the report goes to the purpose for which the money is granted, and the grant is consideration for the obligation to supply information to the public. The obligation is something that bears a substantial relationship to the grant, in that the grant was made for the purpose of the information being supplied to the public.

95. The result would be the same if the information was to be supplied to the grantor, rather than to the public at large.

Example—Supply of information is peripheral to the grant

96. A third government agency makes a grant to businesses to purchase computer equipment. The business is required to provide a report outlining the particular items of equipment it acquired using the grant money.

97. The grant is not consideration for the supply of information, because obtaining the supply of information in the report is not the reason for which the grant was made. However, if the business is obliged to purchase computers with that money, it will be consideration for that obligation, which is a supply under paragraph 9-10(2)(g).

Applications for grants

98. It is common for a grantee to submit an application for the grant to the grantor, and for the application to contain information which the grantor will use to determine whether or not to make a grant. The provision of information in such an application is a supply to the grantor. However, the grant will not be consideration for the supply, as the grant is not made for the purpose of receiving applications for grants. The submission of the application, together with the information required to consider it, is merely a mechanism to establish whether a grant will be made.

99. It will not matter whether the entitlement is automatic where the grantee establishes the conditions, or the grantor has some discretion over whether to approve the application.

100. This will be a common situation in the case of a reimbursement grant, being a grant made to reimburse particular expenses of the grantee. The dealing between the grantee and grantor will be a separate GST transaction to any dealings between the grantee and third parties. It is common for the grantee to make an application for such a grant after it has incurred the relevant expenses. The grant will not be consideration for the supply of information in the application.

Grants to make GST free supplies

101. A distinction needs to be made between a supply of particular services and the supply of an obligation to provide services to other

people. GST is a tax that applies to transactions[73], and the application of GST to one transaction is not dependent on the way GST applies to other transactions.

102. The application of Divisions 38 and 40 to a grant which is used to make GST free or input taxed supplies to third parties, in addition to any supply to the grantor, must be considered independently from the application of those divisions to the GST free or input taxed supplies themselves.

Which supply is the consideration for?

103. In some cases a payment may be made by way of consideration provided by one party for a particular supply to an identified third party. Where that supply is GST free or input taxed, the payment will attach to that transaction and no GST will be payable.

104. Examples may be found in the medicare arrangements. A 'pay doctor' cheque may be provided as a co-payment for a particular GST-free medical service, and a bulk billing arrangement provides a third-party payment by medicare for such a service.

105. However, it will be necessary to identify the individual recipient, and the supply to that recipient, before a payment will be consideration from a third party for such a supply. The mere provision of funding on a per-capita basis will not ordinarily establish that the funding is consideration for supplies made to others.

106. If you are unsure of the GST consequences of an arrangement which may be a co-payment or third party payment, you should seek a ruling from the ATO in relation to the arrangement.

Examples of grant situations

107. The following examples illustrate the application of the principles set out in this ruling to particular situations.

Example 1 – Reimbursement grant

108. Vacuum Australia administers a scheme to encourage the use of vacuum cleaners to keep Australia's footpaths clean. It provides subsidies for the costs of vacuum cleaners acquired by businesses. The Agency has discretion as to whether it approves claims. Alana, who operates a greengrocery, acquires a vacuum cleaner for use in the business and makes an application for reimbursement. The application contains information about how she will use the vacuum

[73] *Commissioner of Inland Revenue v. Databank Systems Ltd* [1989] 1 NZTC 6093.

cleaner. The grant is approved after the grantor considers the application for reimbursement.

109. The reimbursement grant is not subject to GST. There is nothing given up by Alana in exchange for the grant. The information in the application for reimbursement merely establishes Alana's entitlement to claim the reimbursement, and the grant is not consideration that is sufficiently connected with the supply of information by Alana to Vacuum Australia.

Example 2 – Obligation to do something

110. Snake Glass Jugglers is a commercial dance troupe that develops and presents performance art. While its performances are popular and critically acclaimed, their continued presentation is not viable given increasing production costs. In order that the troupe can continue its work, and in recognition of the organisation's contribution to the arts, it receives a grant of financial assistance from the Gooseville Arts Foundation, a body that is established for the purpose of fostering the arts.

111. In exchange for the grant, the troupe enters into a written agreement to continue to develop and present its innovative performances. The agreement provides that the grant is to be repaid if the grantee fails to do this. The entry into the agreement will create an obligation that binds the grantee to do something. The obligation goes to the purpose for which the funds are granted. This obligation to the arts foundation is a supply for the purposes of paragraph 9-10(2)(g) for which the grant represents consideration that will be subject to GST.

Example 3 – Expectation but no obligation

112. The Jasonush foundation makes a grant to the Wallflower Dance Company to provide dancing classes for children in the town of Mattargot. The grant agreement provides that the grantee will receive periodic funding if it is continuing to provide dancing classes for children in the town of Mattargot on specified dates.

113. In this case, there is no supply by the grantee because there is no binding commitment to provide classes in exchange for the money.

Example 4 – Binding obligation

114. The Jasonush foundation makes a further grant to the Flybynight Circus. The grant agreement is similar in its terms to the agreement with the Wallflower Dance Company above, but the agreement also includes a provision requiring repayment of the grant

if the Circus ceases to provide its performances. In this case, there is a supply by the grantee to the grantor for which the grant is consideration. The provision requiring repayment goes to the purpose for which the money was granted and establishes the supply by the Flybynight circus of an obligation to provide performances.

Example 5 – Payments that are not GST-free to fund GST-free supplies

115. The South Queensland Education Department makes grants to Amanda Winter's Finishing School for Ladies. The funding is a subsidy for the cost of adult and community education courses that the academy provides. The School enters into an obligation to provide the courses at a reduced rate in exchange for the funding. The amount of the subsidy is not tied to the provision of particular courses to particular students, or to particular administrative services.

116. As the grant is not consideration in connection with any particular course, or any particular administrative service, it is not consideration for the GST-free supply of the courses[74]. Assuming the other requirements of section 9-5 are met, it is consideration for the taxable supply of the entry into the obligation to provide GST-free courses at a reduced rate. While the Education Department may not directly benefit from the courses, the grant is made for the purpose of supplying education.

Example 6 – Per capita funding that is not GST-free

117. The VicWales Education Department provides funding for schools which is provided on the basis of the number of pupils at the school during the year. The funding mechanism provides for some adjustment during the year on the basis of changes in enrolments.

118. The funding does not represent consideration for supplies of education to individual students. Such funding is not identifiable to supplies of specific courses to individual students.

Registration

119. A supply will not be subject to GST merely because it is made for consideration. The other requirements of the definition in section 9-5 also need to be met. These are the enterprise[75], connected with Australia[76], and registration requirements.

[74] Section 38-85 provides that supplies of education courses and directly related administrative services are GST free.

[75] The supply to which the grant relates must be made in the course or furtherance of an enterprise that is carried on by the supplier. Taxation Ruling MT 2000/1

Is the supplier registered or required to be registered?

120. GST is a value added tax that is paid by entities which are required to be registered, or who choose to register for GST. A registered entity is liable for GST on supplies, to the extent that they are taxable, and entitled to claim input tax credits for acquisitions, to the extent that they are creditable. An unregistered entity will bear GST in the price of goods, services and other supplies, but cannot claim input tax credits.

121. Before a supply that is made in connection with the receipt of a grant will be subject to GST, the person making the supply, that is the grantee, must be registered, or required to be registered.[77] Further guidance on this question can be found in the registration guide issued by the ATO.

Registered grantee

122. If the grantee is registered for GST, or required to be so registered, the grant may be consideration for a taxable supply if the other requirements of the taxable supply definition in section 9-5 are met.

123. A registered grantee will be required to remit GST payable on the supply to the ATO with the Business Activity Statement for the tax period to which the grant is attributable.

124. Registration for GST will often provide an advantage to a grantee. It is likely that most grantors will be registered for GST. Where the grantee is liable for GST on the grant, the grantor can claim an input tax credit for the GST if it is a creditable acquisition, which will normally be the case.

Registered grantor

125. A registered grantor may be entitled to claim an input tax credit in respect of the GST payable on the grant. This is further discussed under the heading 'Input tax credits for grants' at paragraphs 147 to 152 below.

126. A grantor who can claim an input tax credit may be in a position to 'gross up' the grant by the amount of the GST on the

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explains the definition of 'enterprise' under section 38 of the *A New Tax System (Australian Business Number) Act 1999* will reflect our interpretation of the definition of 'enterprise' under section 9-20.

[76] GST is only payable in respect of supplies that are 'connected with Australia', as defined in section 9-25. Draft Ruling GSTR 2000/D7 is about supplies connected with Australia.

[77] Paragraph 9-5(d).

grant[78]. The 'gross up' of the grant is funded by the grantor's input tax credit entitlement. Such an increase would offset the grantee's liability to GST.

127. Grossing up a grant means increasing the amount of a grant in order to cover the GST liability of the grantee who is making a taxable supply. The Ruling does not cover whether or not grants should be grossed up to allow for GST, nor does it cover the timing of such payments. This is a matter for the grantor to determine, having regard to matters such as how GST applies to the grant, and other effects of Tax Reform on prices.

Example- registered grantee and grantor

128. The Battlers' Foundation provides money for the needy. However, it is not a non-profit body as its constitution does not prohibit it from distributing funds to its members in the event of it being wound up.

129. The Foundation applies for a grant from a state Community Services Department to purchase computer equipment costing $11,000, undertaking to use the computer in the course of delivering assistance to the needy. The Foundation is eligible for a grant of $10,000, but the Department's funding guidelines permit it to increase the grant in anticipation of input tax credits, if the grantee supplies evidence of registration and undertakes to provide a tax invoice.

130. As the organisation is registered, the department grosses up the grant and the foundation can claim an input tax credit on the computer equipment used in its enterprise.

Cost of grant to department:		Value of grant to foundation:	
Gross grant paid	$11,000	Grant received	$11,000
less Input tax credit	($1,000)	less GST payable	($1,000)
Net cost	$10,000	Net receipt	$10,000

Cost of computers to foundation:	
Computer (+GST)	$11,000
less input tax credit	($1,000)
Net cost	$10,000

Unregistered grantee

131. If the grantee is not required to be registered for GST, and does not choose to be registered, any supply for which the grant is consideration is not subject to GST.

[78] The grantor can only claim an input tax credit if the grantee is registered and the other conditions in section 9-5 are met in relation to any supply for which the grant is consideration.

132. If the grantee is not registered, the grantee is treated as a consumer, and GST is ultimately borne by consumers. The grantor is less likely to be in a position to gross up a grant to an unregistered grantee. In addition, the unregistered grantee is not in a position to claim input tax credits for acquisitions that include GST in their price.

Example

133. In this example, the facts are the same as in the example at paragraphs 128 to 129 but the Foundation is neither registered nor required to be registered.

134. As the organisation is not registered, it will not be able to claim input tax credits on any acquisitions it makes. The unregistered enterprise ultimately bears the GST payable on the computer equipment, as a consumer.

Cost of grant to department:		Value of grant to foundation:	
Gross grant paid	$10,000	Grant received	$10,000
less Input tax credit	(Nil)	less GST payable	(Nil)
Net cost	$10,000	Net receipt	$10,000

Cost of computers to foundation:	
Computer (+GST)	$11,000
input tax credit	(Nil)
Net cost	$11,000

135. The example is not intended to indicate that grantors will 'gross up' grants for GST as a matter of course. The amount of a grant is a matter for the grantor to determine. However, in many cases, the grantor will only gross up the grant where the grantee is registered for GST and the grantor is assured of entitlement to an input tax credit in respect of any taxable supply made by the grantee.

Timing rules

136. GST and input tax credits are accounted for on a periodic basis, and the 'attribution' rules determine the tax periods in which GST is payable on particular transactions. These rules also determine the tax periods in which input tax credits may be claimed.

137. This section merely provides an overview of the attribution rules. Further information relating to the attribution of GST to tax periods can be obtained from information available from the ATO[79].

[79] GST Ruling GSTR 1999/D7 provides guidance on how to attribute GST payable, input tax credits and adjustments to tax periods.

Attribution of GST relating to grants

138. 'Attribution' is the term used in the GST law to describe the way you account for GST payable, input tax credits, and adjustments in order to work out your net amount of GST for a tax period. GST payable, input tax credits and adjustments are attributed to particular tax periods.

139. The tax period to which consideration is to be attributed for GST purposes depends on the nature of the supply for which the grant is consideration, and the basis on which the grantee accounts. The general attribution rules apply to supplies made for which grants are consideration.

140. The attribution of taxable supplies to particular tax periods depends on whether a grantee who makes a supply in exchange for a grant accounts for GST on a cash basis, or on a basis other than cash[80].

141. A grantee or grantor may choose to account for GST on a cash basis if its annual turnover is $1 million or less, or if it properly accounts for its income tax on a receipts basis. The Commissioner may also determine that particular types of enterprises may account for GST on a cash basis[81].

142. If the grantee accounts for GST on a cash basis, the GST on the grant is attributable to the tax period in which the grant is received[82].

143. If the grantee accounts for GST on a basis other than cash, the GST on the grant is attributable to the tax period in which the earlier of the following events occurs:

- the grant is received; or
- an invoice is issued relating to the supply for which the grant is consideration[83].

Grants that are consideration for periodic or progressive supplies

144. Many grants are provided as consideration for a supply that is made over a period or progressively over a period, and are made by way of periodic payments. The timing of payment of a money grant will not determine when GST is payable on the grant.

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[80] Section 29-5. Draft Goods and Services Tax Ruling GSTR 2000/D5 explains when you can account for GST on a cash basis.
[81] Section 29-40.
[82] Subsection 29-5(2).
[83] Subsection 29-5(1).
[84] Section 156-5.

145. Where the supply for which a grant is consideration is made on a periodic or progressive basis, and the grant is paid periodically or progressively, Section 156-5 deems each of the periodic or progressive components of that supply to be treated as a separate supply. Where this is the case, the attribution rules will apply GST to each component of the supply separately at the time each grant payment is made.

146. Where a grant is paid over a period, and each grant payment is dependent on the notification of a particular milestone in the project or activity for which the grant provides funding, the achievement of each milestone will be attributable on the basis that each achievement marks a separate component of the supply, and each milestone notification is an invoice[85] for that component where that notification is the document that effectively notifies the grantor's liability to make the next grant payment. Each grant payment will be separately attributed to the appropriate supply on that basis.

Input tax credits for grants

147. Where both grantor and grantee are registered, or required to be registered, a grantor will be able to claim an input tax credit for the grant if the supply is a *creditable acquisition* of the grantor[86].

148. Whether a grantor is able to obtain an input tax credit for a payment made as consideration for a supply, will primarily depend on the nature of the supply to which the grant relates, and whether the grantor and grantee are registered, or required to be registered.

149. If the grantor is neither registered, nor required to be registered, for GST it will not be entitled to claim an input tax credit. This is the case even if the grant is subject to GST in the hands of the grantee.[87] Similarly, if the grantee is neither registered nor required to be registered, any supply made by the grantee is not a taxable supply and the grantor cannot claim an input tax credit in relation to the supply.

150. A registered grantor will be able to claim an input tax credit if the grant gives rise to a creditable acquisition of the grantor. This will occur if the supply to the grantor in exchange for the grant is a taxable supply for which the grant is consideration, and the thing supplied is acquired for a creditable purpose.[88]

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[85] Section 195-1 provides that an invoice is a document that notifies a liability to make a payment.
[86] Section 11-5.
[87] Paragraph 11-5(d).
[88] Section 11-5.

151. A taxable supply made by a grantee in return for a grant will be acquired by the grantor for a creditable purpose if the grantor acquires it in carrying on its enterprise.

152. However, a thing supplied in connection with a grant is not acquired for a creditable purpose to the extent that:

- the acquisition is of a private or domestic nature; or
- the acquisition relates to input taxed supplies, apart from some financial supplies.

Tax invoice generally required

153. Even though an acquisition is a creditable acquisition, the grantor will not generally be able to claim an input tax credit for the acquisition until the grantor obtains a tax invoice for the supply. In certain circumstances the Commissioner may determine that the requirements for a tax invoice do not apply[89].

154. In some cases, the grantor will be able to issue its own tax invoices in order to claim input tax credits. Such *recipient created tax invoices* may be issued by the entity to whom the taxable supply is made if the Commissioner has issued a written determination in respect of the relevant class of invoices[90].

Attribution of input tax credits for creditable acquisitions

155. Where the acquisition of the grantor is creditable, the grantor is entitled to an input tax credit for the GST payable by the grantee on the grant.

156. As with the attribution of GST on taxable supplies, the tax period to which an input tax credit for the grant is to be attributed for GST purposes depends on the nature of the relevant supply. The general attribution rules apply to input tax credits on grants.

157. The attribution of input tax credits for grants to particular tax periods depends on whether the grantor accounts for GST on a cash basis, or on a basis other than cash. A grantor who accounts for GST on a cash basis claims an input tax credit in the tax period in which the grant is paid[91]. A grantor who accounts for GST on a non-cash basis claims an input tax credit in the tax period in which the earlier of the payment of the grant or the issue of the invoice occurs[92].

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[89] Section 29-10(3).
[90] GST Ruling GSTR 2000/10 deals with the circumstances in which the Commissioner will permit the issue of recipient created tax invoices.
[91] Subsection 29-10(2).
[92] Subsection 29-10(1).

Application of GST Transition Act

158. As many government grants programs apply to particular financial years, we expect the transitional rules in the GST Transition Act to have limited operation. However, in some cases a grant agreement that is entered into before 1 July 2000 will involve the making of a supply or supplies that are subject to GST.

159. The GST is only payable on a taxable supply or taxable importation to the extent that it is made on or after 1 July 2000[93]. The general rules for determining whether a supply or importation is made on or after 1 July 2000 are to be found in section 6 of the GST Transition Act.

160. The application of section 6 of the GST Transition Act will depend on the nature of the supply or supplies for which the grant is consideration.

Supply of goods, services or real property to the grantor

161. Where goods are supplied to the grantor in exchange for the grant, the goods will be subject to GST to the extent that the goods are removed or made available to the grantor on or after 1 July 2000[94]

162. If a supply of real property[95] is made in exchange for the grant, the supply is made when the property is made available.

163. Where a grant is paid in exchange for the supply of services the supply of those services will be subject to GST to the extent that the services are performed on or after 1 July 2000.[97]

164. Where a supply of goods or services is made for a period that begins before 1 July 2000 and ends on or after 1 July 2000, section 12 of the GST Transition Act treats the supply as having been made continuously or uniformly over the period. GST will be payable in respect of the proportion of the supply made on or after 1 July 2000.

Supply of things other than goods, services or real property

165. A supply of something other than goods, services or real property will be made when the thing is 'performed or done'.[98]

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[93] GST Transition Act, subsection 7(1)
[94] GST Transition Act, subsection 6(2).
[95] Subsection 195-1 real property includes any interest or right over land such as a lease or similar entitlement.
[96] GST Transition Act, subsection 6(3).
[97] GST Transition Act, subsection 6(4).
[98] GST Transition Act, subsection 6(5).

166. The expressions in subsection 9-10(2) refer to two aspects of a supply; the thing which passes, which can include a right, an obligation or some information; and the means by which it passes, which could be by its provision, creation, grant, assignment, surrender or release, or by some other means[99]. In many cases, a grant of funding will be made in exchange for a supply established by entering into an obligation to do something with the granted funds. However, while the entry into the obligation is the means by which the supply is made, the supply is the fulfillment or performance of the obligation and this will occur when the obligation is performed or done. When an obligation is performed or done will depend on the nature of the obligation entered into.

167. There may be situations where the supply will be made under an agreement or enactment for a period that begins before 1 July 2000 and ends on or after 1 July 2000. Section 12 of the GST Transition Act treats the supply as having been made continuously or uniformly over the period. GST will be payable in respect of the proportion of the supply made on or after 1 July 2000.

Several things supplied in exchange for a grant

168. Where a number of things are supplied for which the grant is consideration, the amount of the grant should be apportioned according to the value of the things that are supplied to the grantor for which the grant is consideration. Supplies for which the grant is not consideration may be ignored.

169. The question is one of what is the thing or things for which the supply is consideration, and what are the respective values of those supplies.

Example

170. Under an enrichment program, an Education Department makes a grant to the Debrowe Academy. In exchange for the grant, the academy enters into an obligation, on 1 April 2000, to provide remedial reading services to children in the town of Bambrenko for the period from 1 June 2000 to 30 May 2001. Debrowe also supplies information to the Department by providing periodic reports on the use of the funds in September 2000, December 2000, January 2001 and June 2001.

171. In this example the timing of the supply of reporting information is irrelevant, as it is not a supply for which the grant is

[99] This distinction is particularly important in applying the *GST Transition Act 1999*.
[100] GST Transition Act, section 12.

consideration. The grant is referable wholly to the obligation to provide community services.

172. For the purposes of the GST Transition Act, the fulfillment of this obligation to provide services is supplied when the obligation is performed or done, being when the services are provided. It is performed continuously and uniformly over the period that the services are provided, being 1 June 2000 to 30 May 2001, and 335/365 of the grant will be subject to GST.

173. Where the grant is consideration for the supply of a right that has been granted or is granted on or after 2 December 1998 but before 1 July 2000, which could reasonably be expected to be exercised on or after 1 July 2000, and section 13 does not apply, section 11 will apply.[101]

Supplies under existing agreements

174. Special rules in section 13 of the GST Transition Act may apply to make a supply, when it is specifically identified in a written agreement, GST-free until the earlier of 1 July 2005 or when a review opportunity arises.

175. For section 13 to apply the written agreement must be made before 8 July 1999 if the recipient would be entitled to a full input tax credit for the supply. Otherwise, the written agreement must be made before 2 December 1998.[102]

Detailed contents list

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

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[101] For further guidance on section 11 of the GST Transition Act refer to Goods and Services Tax Ruling GSTR 2000/7 'Transitional arrangements - supplies, including supplies of rights, made before 1 July 2000 and the extent to which supplies are taken to be made on or after 1 July 2000'

[102] For further guidance on section 13 of the GST Transition Act refer to Goods and Services Tax Ruling GSTR 2000/9 'Transitional arrangements - GST-free supplies under existing agreements'

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Commissioner of Taxation
12 May 2000

Previous draft:
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Related Rulings/Determinations:
GSTR 1999/D5; GSTR 1999/D7; MT 2000/1; GSTR 2000/10; GSTR 2000/4; STD 97/4; TR 97/22; GSTR 2000/D7

Subject references:
- attribution
- creditable acquisition
- discretionary payments
- grants
- GST
- GST-free
- GST return
- Input tax credit
- Input taxed supplies
- Input taxed

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- New Zealand Refining Co. Ltd v. C of IR (1995) 17 NZTC 12307
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