


# ***GIR/charities-consultative-committee-ch1 -***

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# Charities consultative committee resolved issues document

This issues register, originally published on our main website, provides guidance on issues identified during past consultation with industry participants.

Issues in this register that are a public ruling can now be found in the *Public Rulings* section of this Legal Database.

Issues in this register that have not been labelled as public rulings, constitute written guidance. We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information on these issues and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we must still apply the law correctly. If that means you owe us money, we must ask you to pay it but we will not charge you a penalty. Also, if you acted reasonably and in good faith we will not charge you interest. If correcting the mistake means we owe you money, we will pay it to you. We will also pay you any interest you are entitled to.

If you feel that the guidance in this issues register does not fully cover your circumstances, or you are unsure how it applies to you, you can seek further assistance from us.

For GST, Luxury Car Tax and Wine Equalisation Tax purposes, from 1 July 2015, where the term 'Australia' is used in this document, it is referring to the 'indirect tax zone' as defined in subsection 195-1 of the GST Act.

## Table of changes

Date	Description
19 August 2013	Update to <a href="#">Part 12 - Disability Services</a>
19 August 2013	Update to <a href="#">Part 11 - Aged Care</a>
29 May 2013	Update to part 3 - <a href="#">Section C, benchmark market values for charities</a>
8 March 2013	Update to part 1 - ABN and GST registration, Issue 2, specific questions and answers, <a href="#">questions 1</a> and <a href="#">12</a> .
8 March 2013	Update to <a href="#">Part 2 - Accounting and attributions</a> , Issue 1
28 March 2013	Update to part 2 - Accounting and attributions, specific questions and answers, <a href="#">questions 15</a> and <a href="#">20</a>
28 March 2013	Update to part 4 - Fundraising, gifts and donations, specific questions and answers, <a href="#">question 22</a>
18 January 2012	Update to part 3 - <a href="#">Section C, benchmark market values for charities</a>
5 January 2011	Update to part 3 - <a href="#">Section C, benchmark market values for charities</a>
4 January 2010	Update to part 3 - <a href="#">Section C, benchmark market values for charities</a>
17 November 2009	Update to <a href="#">Part 3 - Non-commercial activities of charities, cost of supply and market value tests</a>

<b>Date</b>	<b>Description</b>
1 January 2009	Update to part 3 – <a href="#">Section C, benchmark market values for charities</a>
24 December 2007	Update to part 3 – <a href="#">Section C, benchmark market values for charities</a>
16 July 2007	Update to <a href="#">part 9 – Vouchers, specific questions and answers, question 2</a>
23 December 2006	Update to part 3 – <a href="#">Section C, benchmark market values for charities</a>
21 December 2005	Update to part 3 – <a href="#">Section C, benchmark market values for charities</a>
27 October 2005	Update to <a href="#">Part 7 – Reimbursement volunteers and payments to contractors</a>
27 October 2005	Update to <a href="#">Part 6 – Second hand goods</a>
27 October 2005	Update to <a href="#">Part 3 – Non-commercial activities of charities, cost of supply and market value tests</a>
27 October 2005	Update to <a href="#">Part 1 – ABN and GST registration, Issue 2, specific questions and answers, question 6</a>
16 September 2005	Update to <a href="#">part 4 – Fundraising, gifts and donations, specific questions and answers, question 1</a>
16 September 2005	Update to part 3 – <a href="#">Section C, benchmark market values for charities</a>
16 September 2005	Update to <a href="#">part 1 – ABN and GST registration, Issue 2, specific questions and answers, question 11</a>
30 March 2005	Update to part 3 – <a href="#">Section C, benchmark market values for charities</a>
6 April 2004	Updates to <a href="#">part 3 question 7(B)</a> , <a href="#">part 8 question 1</a> , part 10 <a href="#">questions 4 and 8</a>
18 December 2003	Part 3 – <a href="#">Question 7(A)</a> example 2 has been added
4 July 2003	Part 3 – <a href="#">Question 7(A)</a> has been added. Question 7 is now known as question 7(B)
1 April 2003	Updates to part 3 <a href="#">questions 7</a> and 8, <a href="#">part 7 question 1</a> , <a href="#">part 8 question 1</a> , part 10 <a href="#">questions 4</a> and <a href="#">8</a>
12 February 2003	Part 3 – Updates to <a href="#">question 6</a> , new <a href="#">question 7</a> added
7 January 2003	<a href="#">Part 11 – Changes to aged care issues</a>
20 June 2002	<a href="#">Part 1 – 1. Who is required to be registered for GST?</a>
20 May 2002	<a href="#">Part 3 – G – Market value of a supply of accommodation</a>
3 December 2001	<a href="#">Part 7 – Reimbursements, volunteers and payments to contractors</a>
3 December 2001	<a href="#">Part 1 – ABN and GST registration</a>
20 September 2001	<a href="#">Part 3 – F. Supply of meals in boarding schools, university halls and colleges and other residential education settings – cost of supply</a>

Date	Description
2 July 2001	<a href="#">When a grant made by a philanthropic trust to a non-profit organisation may be considered a gift</a>
26 March 2001	<a href="#">ATO treatment of breaches of state and territory laws regarding raffles and bingo</a>
26 March 2001	<a href="#">Donations – what is a material benefit?</a>
26 March 2001	<a href="#">Fundraising events – how do the new provisions work?</a>
19 December 2000	<a href="#">Market value guidelines and benchmark market values</a>
7 August 2000	<a href="#">Benchmark market values for charities</a>
26 July 2000	<a href="#">Religious services – non-commercial activities GST-free?</a>

# Part 1 - ABN and GST registration

Issues on Australian business number (ABN) and goods and services tax (GST) registration.

## Issue 1: Who is required to be registered for the GST?

Non-interpretative – straight application of the law

### *Principle*

An entity is required to be **registered** if:

- it is carrying on an enterprise (an entity that performs activities in the form of a business is carrying on an enterprise. The activities of a religious institution, or a charitable institution or fund, also fall within the definition of an enterprise), and
- it has a GST turnover that meets a particular threshold. For non-profit bodies, this threshold is \$150,000. For other entities, the threshold is \$75,000.

An entity may **choose** to register for GST if it is carrying on an enterprise but its GST turnover does not meet the threshold.

If an entity is required to be registered because its GST turnover meets the threshold, it must make the application within 21 days of becoming required to be registered.

### *Meeting a turnover threshold*

An entity's GST turnover will meet a particular turnover threshold if:

- its current GST turnover is at or above the threshold and its projected GST turnover is at or above the threshold, or
- its projected GST turnover is at or above the threshold.

In other words, if an entity's current GST turnover is at or above the threshold, but its projected GST turnover is below the threshold, then it is not required to register for GST.

If an entity's projected GST turnover is at or above the threshold, then it is required to register for GST even if its current GST turnover is below the threshold.

### *Current and projected GST turnover*

Current GST turnover is the value (excluding GST) of all the supplies that an entity has made, or is likely to make, during the current month and the previous 11 months.

Projected GST turnover is the value (excluding GST) of all the supplies that the entity has made, or is likely to make, during the current month and the next 11 months.

For example, the current GST turnover of an entity as at the month of March 2002 is measured from the start of April 2001 to the end of March 2002. It is the sum of the values (excluding GST) of the supplies it has made, or is likely to make, during that time.

The projected GST turnover of an entity as at the month of March 2002 is measured from the start of March 2002 to the end of February 2003. It is the sum of the values (excluding GST) of the supplies it has made, or is likely to make, during that time.

When calculating current and projected GST turnover, an entity does **not** include:

- input taxed supplies (if a supply is input taxed, then no GST is payable on the supply and there is no entitlement to an input tax credit for anything acquired or imported to make the supply)
- supplies for which an entity does not receive any payment (except those supplies that are made to an associate of the entity that is not registered for GST or acquires the thing other than solely for a creditable purpose)
- supplies that are not made in connection with an enterprise that the entity carries on
- supplies that are not connected with Australia
- payments from insurers in settlement of an insurance claim, or
- the sale of capital assets (excluded from projected GST turnover only).

### ***How to register***

An entity can register for GST by:

- phoning **13 28 66** to obtain the appropriate form
  - [Application for ABN registration for individuals \(sole traders\)](#) (NAT 2938)
  - [Application for ABN registration for companies, partnerships, trusts and other organisations](#) (NAT 2939)
- asking your tax agent.

### ***Failing to register***

If you are required to be registered for GST, but fail to do so, penalties will apply.

## Specific questions and answers

### **We are a small not for profit charity (turnover under \$150,000). Is it worthwhile for us to register?**

Non-interpretative

Where an entity is not required to be registered for GST, the decision to elect to register is one that will be based on the administrative and business needs of the organisation.

If an entity is registered for GST, a credit can be claimed for the GST included in the price of purchases that are made by the organisation (this is called an input tax credit).

While the record keeping for GST and completion of the business activity statement (BAS) have been greatly simplified, it still is a business decision whether on balance it is better to forgo input tax credits that may be available, against the obligations that registration places on small entities such as:

- paying GST on memberships
- paying GST on other supplies (unless they are GST-free or input taxed),  
and
- completing the BAS and keeping accurate records.

## **Issue 2: What flexibility exists for non-profits in registering for GST?**

Non-interpretative – straight application of the law

### ***Principle***

The GST legislation allows organisations to either group or branch but not to do both. Organisations would need to look at their structural arrangements to determine what arrangements would best suit their operation with respect to the costs of compliance, particularly the costs of actioning internal transactions. Certain non-profit organisations may also form non-profit sub-entities.

### ***Grouping***

#### *GST groups – Division 48 and Section 63-50*

The GST legislation allows certain entities, including entities that are members of the same non-profit association, to form GST groups. When a GST group is formed, the group will effectively be treated as a single entity for GST purposes and transactions between group members will not be subject to GST. Thus, the ability to form a GST group enables grouped entities to obtain cash flow benefits by removing the need to charge GST and claim input tax credits on intra-group transactions. Also, grouping reduces GST compliance costs by removing the requirement to create tax invoices for supplies between grouped entities.

The requirements for non-profit bodies to apply to be treated as a group are that all members of the group:

- are non-profit bodies and are members of the same non-profit association
- are not members of any other GST group
- have the same tax periods and account on the same basis, and
- are all registered for GST.

#### ***GST religious groups – Division 49***

For many religious organisations use of the GST grouping provisions in Division 48 is administratively impractical because of the complexity of the structures of these organisations. Given the large number of entities involved in some religious organisations, it would be virtually impossible for a representative member of a group encompassing these entities to consolidate accounts within 21 days after the end of each tax period. Further, the size of the group would mean that even the smallest of entities within the group would be required to account for GST monthly.

Division 49 enables religious organisations to utilise the benefits of grouping, while alleviating some of the administrative difficulties that these organisations may experience with a GST group. Division 49 allows certain charitable bodies belonging to the same religious organisation to be approved as a GST religious group, enabling transactions between members of that group to be excluded from GST.

The Commissioner will approve two or more entities as a GST religious group if those entities apply in the approved form. Each applicant must satisfy the membership requirements of a GST religious group and must nominate one of the entities (which must be an Australian resident) to be the principal member for the group.



### **What are the requirements for forming a GST religious group?**

An entity satisfies the membership requirements of a GST religious group if:

- it is registered for GST
- it is endorsed as an income tax exempt charity under Subdivision 50-B of the *Income Tax Assessment Act 1997* (ITAA 1997)
- all other members of the GST religious group are so endorsed
- it is part of the same religious organisation as all other members in the same GST religious group, and
- it is not a member of any other GST religious group.

### **Branching**

The Commissioner may register a branch of a registered entity if:

- the entity applies, in the approved form, for registration of the branch
- the entity has an ABN or has applied for one, and
- the Commissioner is satisfied that the branch maintains an independent system of accounting, and can be separately identified by reference to
  - the nature of the activities carried on through the branch, or
  - the location of the branch, and
- the Commissioner is satisfied that the entity is carrying on an enterprise through the branch or intends to carry on an enterprise through the branch, from a particular date specified in the application.

A branch that is so registered is a 'PAYG withholding branch'.

**Note:** A branch may be both

- a PAYG withholding branch under Subdivision 16-BA, *Income Tax Assessment Act 1997* (ITAA 1997), and
- a GST branch under the *A New Tax System (Goods and Services Tax Act) 1999* (GST Act).

### **Non-profit sub-entities**

An entity choosing to apply Division 63 to create a non-profit sub-entity **must be registered** and must be:

- an endorsed charity, a gift deductible entity which is a non-profit body or a government school, or
- a non-profit body that is exempt from income tax under any of these provisions of the
- *Income Tax Assessment Act 1997*
- (ITAA 1997)
  - section 50-5 (charity, education and science)
  - section 50-10 (community service)
  - section 50-15 (employees and employers)
  - section 50-40 (primary and secondary resources, and tourism),

- item 9.1 or 9.2 of section 50-45 (sports, culture and recreation).

These organisations with small independent branches (units) have the option of treating their units as if they were separate entities for GST purposes and not part of the main organisation.

A unit will be considered to be independent if it:

- maintains an independent system of accounting, and
- can be separately identified by the nature of its activities or by its location.

If an entity chooses this option it must record each unit that is being treated as a separate entity for the purposes of GST.

It means that where the non-profit sub-entity turnover is less than a \$150,000 it can choose whether it registers or not. Where the non-profit sub-entity has a turnover of \$150,000 or more it will be required to register separately for GST and will have the same rights and obligations as other GST registered entities, except for the ability to form other non-profit sub-entities.

The liability for all GST obligations of the unit will be imposed on the persons responsible for the management of the non-profit sub-entity.

Other important points:

- Non-profit sub-entities are separate entities for GST purposes.
- Non-profit sub-entities are for GST purposes but not pay as you go (PAYG), fringe benefits tax (FBT) or income tax.
- An organisation cannot create a non-profit sub-entity for its core activities such as membership of the main organisation.
- Where an organisation creates multiple non-profit sub-entities and the turnover of the main organisation is reduced to below \$150,000 the main organisation cannot elect to cancel their registration. In order to enjoy the flexible options under Division 63 the main organisation must remain registered for GST
- non-profit sub-entities are able to access the same GST concessions available to their parent entity (other than the ability to create further non-profit sub-entities).

Section 63-50 will allow a non-profit sub-entity to be a member of a GST group provided:

- it is registered
- it accounts on the same basis and has the same tax periods as all other members of the group
- it is not a member of another GST group, and
- the other members of the group are the parent entity or another branch of the parent entity that are non-profit sub-entity.

### ***Fundraising events***

The second option is to allow endorsed charities, government schools and gift-deductible entities to treat certain fundraising activities as input taxed. These fundraising events may include a fete, ball, gala show, dinner, performance or similar event. The event must be separate from and not forming any part of a series, or regular run, of like, or similar events. It may also include an event that involves the sale of small fundraising items such as flowers, confectionery and chocolates (not alcoholic beverages or tobacco products), provided the charitable entity is not in the business of making such supplies. It will also include events such as 'Red Nose Day' and 'Daffodil Day'.

Where the fundraising event does not meet this description, a charitable entity may make a request to the Commissioner to apply his discretion to allow the charitable entity to treat the activity as input taxed. In applying his discretion the Commissioner would need to have broad regard to whether the charitable entity is in the business of making such supplies. Given the difficulty of establishing whether a particular activity or series of activities constitutes a business, it is appropriate to leave this matter for the Commissioner to decide on a case by case basis. In addition, the Commissioner must be satisfied that the proceeds of the fundraising are for the direct benefit of the charity.

## Specific questions and answers

### **Question 1. If a number of non-profit organisations apply to be treated as a group can they use the ABN of the nominated representative member of the group on all the tax invoices they issue?**

Non-interpretative – other references (see paragraph 24 of [GSTR 2013/1](#) - Goods and services tax: tax invoices)

Subsection 29-70(1) provides the requirements for a tax invoice. In particular, subparagraph 29-70(1)(c)(i) provides that the identity and ABN of the supplier must be able to be clearly ascertained from the document. The entity providing the supply therefore must use their own ABN on their tax invoices. The GST grouping provisions do not mean that the grouped entities lose their own status as an entity and form one larger entity. For this reason the ABN of the nominated group representative cannot be used by the other entities in the group.

### **Question 2. Will parishes (or their equivalent) be able to register as branches (section 54-5) while behaving as a group such as a diocese (or their equivalent) in order to minimise the number of internal transactions attracting GST? Could this approach be applied more broadly across the charitable sector?**

Non-interpretative – straight application of the law

Section 54-5(3) precludes registering a branch separately if the branch is a member of a GST group. Members of a group are required to charge GST on supplies made to entities external to the group and the representative member completes the business activity statement on behalf of the group. Branches are required to charge and complete individual business activity statements.

### **Question 3. There are numerous transactions occurring between bodies of a charity that are separately incorporated and registrable for GST purposes. Often sales between entities within a charity constitute a taxable supply between the bodies, with the purchaser entitled to an input tax credit. Given there is no risk to the revenue in these cases and higher compliance costs there should be provision to allow entities to be grouped.**

Non-interpretative – straight application of the law

Entities can group subject to section 48-10, charities will need to examine their own structural arrangements in order to ascertain what level best suits the organisation to register as entities.

An entity means any of the following:

- an individual
- a body corporate
- a corporation sole
- a body politic
- a partnership
- any other unincorporated association or body of persons
- a trust
- a superannuation fund.

**Question 4. Can overseas organisations, which give grants for conservation in Australia, form a GST group with the Australian organisation?**

Non-interpretative – straight application of the law

A non-profit body can apply to the Commissioner to form a GST group with other non-profit bodies that belong to the same non-profit association. If the bodies do not belong to the same non-profit association, they cannot form a GST group.

The Commissioner must approve the application provided that:

- the entities apply in the approved form
- each of the entities satisfy the membership requirements for the group, and
- the application nominates one of the entities, which must be an Australian resident, to be the representative member for the group.

To satisfy the membership requirements, a non-profit body must:

- be registered for GST
- have the same tax periods applying to it as the tax periods applying to all those other members
- account for GST on the same basis as all those other members, and
- not be part of another GST group.

A non-profit body must be registered if it carries on an enterprise and its GST turnover meets the registration turnover threshold, currently \$150,000. A non-profit body which carries on an enterprise but does not meet the registration threshold can still choose to register if desired.

Therefore, if the overseas organisations belong to the same non-profit association as the Australian organisation, all the organisations are registered for GST, have the same tax periods and method of accounting for GST, and are not part of another GST group they will be able to form a GST group. If any of the requirements discussed above are not met, they cannot form a GST group. The representative member of the group must be an Australian resident.

**Question 5. What is required for an independent system of accounting for Division 63?**

An independent system of accounting does not necessarily require that a separate bank account be kept or that a separate set of books be kept. It is essential however that the records of the non-profit sub-entity can be clearly and easily distinguished from the records of the parent entity. They should be easy to access and extract. It is recommended that the best means of maintaining clearly identifiable records is to establish separate cash receipts and cash payments books and possibly a separate bank account. Please note that a separate bank account is not essential.

**Question 6. Can a non-profit sub-entity of an entity that is endorsed as a tax concession charity apply the GST concessions that the parent entity has access to?**

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

**Question 7. What is the impact of PAYG as a result of creating a non-profit sub-entity?**

Non-interpretative – straight application of the law

Where a non-profit sub-entity is created it only exists for GST purposes. As such all PAYG withholding will be conducted by the parent organisation not by the non-profit sub-entity.

The exception to this would be where a non-profit sub-entity has been created and it has all the attributes required for a PAYG branch. In this case it is possible for the non-profit sub-entity to choose to be treated as a PAYG branch at the same time. If this is the case the sub-entity will account for PAYG withholding under the requirements for a PAYG branch.

The requirements to create a PAYG branch are contained in section 16-142 of Schedule 1 to the *Taxation Administration Act 1953*.

**Question 8. What is the position with regard to joint ventures and the charitable sector?**

Non-interpretative – straight application of the law

The basic features of a joint venture are explained in [GSTR 2004/2](#) - Goods and services tax: What is a joint venture for GST purposes?

There are now regulations (51-5.01(m)) which allow charities to form joint ventures if they should wish to do so. To take advantage of the joint venture provisions an organisation undertaking charitable activities would need to satisfy the following participation requirements:

- participate or intend to participate in a joint venture
- be party to a joint venture agreement with the other participants or intended participants of the joint venture
- be registered, and
- use the same accounting basis as all other participants.

One participant (the joint venture operator) of the joint venture would be responsible for paying the GST and would be entitled to the input tax credits that relate to supplies, acquisitions and importations it makes for the purposes of the joint venture on behalf of the other participants of the GST joint venture. Supplies made by the joint venture operator to another participant of the GST joint venture would not be treated as being subject to GST. The joint venture operator would make the GST return of the GST joint venture on behalf of the participants of the joint venture.

**Question 9. Community rents and tenancy schemes – Do private individuals leasing residential premises to providers of community housing need to have an Australian business number (ABN)? Will organisations leasing premises from private individuals have to withhold 46.5% of rental payments if these landlords do not have an ABN?**

Non-interpretative – other references

- paragraph 22 of [GSTD 2000/9](#) - Goods and services tax: if you let out a residence do you need to get an ABN for PAYG purposes or register for GST? and
- paragraph 3 of [MT 2000/2](#) The New Tax System: the requirement to get an ABN for PAYG purposes if you let out a residence.

Residential landlords do not require an ABN when they are making supplies that are predominantly residential accommodation. In a press release dated 29 May 2000 the Commissioner said.

'Clearly, renting out a commercial property falls within the ABN quotation requirements, but some confusion has arisen where a rental agreement is predominantly for residential purposes and there is some business use of those premises – for example, a freelance journalist working from home.'

'I want to make it clear that where the basis of the arrangement is a residential rental agreement, owners will not have to quote an ABN to their tenant even if there is some minor business use of the property by the tenant.'

'There will also be no requirement for residential rental property owners to quote an ABN to an organisation that is providing residential accommodation for its own employees – for example, through the Defence Force Housing Authority.'

This treatment will extend to situations where the landlord is leasing residential premises to organisations that will use the premises to provide low cost housing. The organisation providing the housing is providing low cost residential accommodation and as such is using the premises predominantly for residential purposes.

### **Question 10. Will the definition of turnover include donations received by a charitable institution?**

Non-interpretative – other references (see paragraph 15 of [GSTR 2001/7](#) - Goods and services tax: meaning of GST turnover, including the effect of section 188-25 on projected GST turnover).

Turnover is the sum of the values of all the supplies that a charitable institution has made within a 12 month period. It does not include input taxed supplies or supplies for no consideration. If a payment of money or goods is truly a gift the charitable institution is not providing a supply in return for the payment. The gift is not included in GST turnover (See [part 6](#) for more information on 'what is a gift or donation').

### **Question 11. How do the associate provisions work?**

Non-interpretative – straight application of the law

Special rules can apply to supplies between associates. These rules ensure that:

- supplies to, and acquisitions from, an organisation's associates for no consideration are brought within the GST system, and
- supplies to an organisation's associates for inadequate consideration are properly valued for GST purposes.

These special rules apply only where the associate receiving the supply is not entitled to a full input tax credit. This is the case where the associate is:

- acquiring something partly or wholly for private use
- acquiring something that will be used to produce input taxed supplies, or
- not registered, or required to be registered, for GST.

If the associate receiving the supply is entitled to a full input tax credit, the general GST rules will apply.

What is the definition of 'associate'?

Whether a person or organisation is an associate of your non-profit organisation depends on how your organisation is structured.

In general terms, if your organisation is a company or unincorporated association, your associates are:

- other organisations (companies or unincorporated associations) that are effectively under the direction or control of your organisation
- other persons or organisations that effectively have direction or control of your organisation
- a relative of any person that effectively has direction or control of your organisation
- a trustee of a trust where your organisation benefits under the trust, and
- a partner of your organisation if your organisation is in a partnership.

An associate of a non-profit organisation also includes:

- a GST branch, and
- a GST non-profit sub-entity.

A GST branch is considered to be an associate of:

- the parent organisation
- any other GST branch of the parent organisation, and
- any other associate of the parent organisation.

A GST non-profit sub-entity is considered to be an associate of:

- the parent organisation
- any other non-profit sub-entity of the parent organisation, and
- any other associate of the parent organisation.

If you make a supply to an associate for no, or inadequate, consideration, and the associate is not entitled to a full input tax credit, the value of the supply for working out the GST payable will be its market value (excluding GST).

***Question 12. Where one entity purchases items as an agent of a group of legally separate entities with whom they are co-located what is the situation with regards to claiming input tax credits and holding a valid tax invoice?***

Non-interpretative

The entity that purchases the items is acting as an agent for the other members of the group. Each member of the group makes a creditable acquisition and is entitled to claim input tax credits but only to the extent that the supply relates to them.

In order to claim an input tax credit you must hold a valid tax invoice. In this case this requirement is satisfied if either the entity claiming the input tax credit or their agent holds a valid tax invoice for a supply.

Where the total price for the supply is at least \$1,000, the tax invoice needs to contain enough information to enable the recipient's identity or ABN to be clearly ascertained.

***Question 13. GST grouping – how exactly will it work?***

Non-interpretative – straight application of the law

The effect of forming a GST group is that transactions between entities within the group are not treated as taxable supplies, that is, no GST is payable and no input tax credit can be claimed.



One entity, known as the 'representative member' manages the GST affairs of the group and is responsible for lodging the business activity statement on behalf of all members.

The representative member is also responsible for all the GST payable and is entitled to all input tax credits that the members of the group are entitled to for supplies and acquisitions made outside the GST group.

While the representative member is responsible for paying GST, the members of a GST group are jointly and severally liable to pay any amount payable under the GST law by the representative member.

Companies can form a GST group if each company:

- is a member of the same 90% owned group as all other members of the GST group or proposed GST group
- is registered for GST
- has the same tax periods
- accounts for GST on the same basis (that is, cash or non-cash), and
- does not belong to any other GST group.

A GST group can also be formed by some or all of the non-profit bodies that are members of the same non-profit association. The 90% beneficial ownership requirement does not apply to GST groups formed by non-profit bodies.

#### ***Question 14. What is the effect of forming a GST religious group?***

Non-interpretative - straight application of the law

A GST religious group is effectively treated as a single entity. A supply that one member of a GST religious group makes to another member of the same group is treated as though it is not a taxable supply. Similarly, an acquisition that a member of a GST religious group makes from another member of the same group is treated as though it was not a creditable acquisition.

A member of a GST religious group will be entitled to claim input tax credits on acquisitions from entities outside the group where those acquisitions relate to supplies made to members within the group. In determining the amount of input tax credits a member is entitled to, the GST religious group is treated as a single entity. The effect is that each member would look at the creditable purpose of the group as a whole in making the acquisition to determine the extent to which it is creditable.

It should be noted that unlike the grouping rules in Division 48 a GST religious group does not have to lodge GST returns. Individual members of a GST religious group (not the principal member) will be responsible for GST transactions outside the group. Each member will be required to lodge a GST return each tax period for its own external transactions. Internal transactions between members of a GST religious group will not have to be included in their GST returns.

#### ***Question 15. Can an entity that is a member of a GST religious group be a member of another GST religious group?***

Non-interpretative – straight application of the law

No. The entity would not satisfy one of the membership requirements, which requires the entity not be a member of any other GST religious group.

**Question 16. Can an entity that is a member of a GST religious group be a member of a GST group?**

Non-interpretative - straight application of the law

Yes, although this would be an unlikely situation given the purpose of GST religious groups. Division 49 enables religious organisations to utilise the benefits of grouping, while alleviating the difficulties they may experience with forming a GST group. The membership requirements for a GST religious group and a GST group would still apply but the requirements for membership of a GST religious group does not specifically exclude an entity that is a member of a GST group.

**Question 17. Can an entity that is a member of a GST religious group utilise the GST branching provisions of Division 54?**

Non-interpretative - straight application of the law

Yes, similarly the requirements for membership of a GST religious group do not specifically exclude an entity that has a branch that is registered under Division 54.

**Question 18. Does a non-profit sub-entity satisfy the membership requirements of a GST religious group?**

Non-interpretative - straight application of the law

Division 63 allows certain non-profit entities to treat separately identifiable units or activities of their organisation as though they are separate entities for GST purposes.

*An unregistered non-profit sub-entity*

Many eligible organisations choose to treat certain activities of the organisation as non-profit sub-entities to effectively take them out of the GST system. Generally these non-profit sub-entities are not required to register and choose not to register for GST. Unregistered non-profit sub-entities do not meet the membership requirement that an entity must be registered and thus would not be eligible to be a member of a GST religious group.

*A registered non-profit sub-entity*

A non-profit sub-entity is treated as though it were a separate entity for GST purposes only. A registered non-profit sub-entity would not meet the membership requirements for a GST religious group because although it is treated as an entity for GST and is registered it is not an entity that is endorsed as exempt from income tax. Notwithstanding the fact that its 'parent entity' is an entity that is endorsed as exempt from income tax under Subdivision 50-B of the ITAA 1997.

**Question 19. When must an entity apply for cancellation of GST registration?**

Non-interpretative – straight application of the law

An entity must notify the Commissioner, in the approved form, to cancel its registration where it is registered but has ceased carrying on an enterprise. This notification must be lodged with the Commissioner within 21 days of the cessation of the enterprise.

The Commissioner **must** cancel the registration of an entity where:

- the entity has applied for cancellation in the approved form
- the entity has been registered for at least 12 months, and

- the Commissioner is satisfied that the entity is not required to be registered.

The Commissioner must also cancel an entity's GST registration (even if the entity has not applied for cancellation of its registration) if:

- the Commissioner is satisfied that the entity is no longer carrying on an enterprise, and
- believes that on reasonable grounds it is unlikely to do so for at least 12 months.

The Commissioner **may** cancel the GST registration of an entity that has been registered for less than 12 months where:

- the entity is not required to be registered, and
- the entity has applied to the Commissioner in the approved form.

The guide: [Leaving the GST system](#) (NAT 14829).

This guide provides further information on:

- circumstances in which the Commissioner may cancel a GST registration
- deciding the date of cancellation
- how to apply for cancellation, and
- where to obtain more information.

An entity can apply for cancellation of its registration using the [Application to cancel registration](#) (NAT 2955).

#### *The date of effect of cancellation of the GST registration*

The date of effect of the cancellation may be any day occurring before, on or after the day on which the Commissioner makes the decision. When applying for cancellation, an entity can nominate the date from which it would like its GST registration cancelled. However, the Commissioner has decided that when retrospectively cancelling an entity's voluntary GST registration before the entity has been registered 12 months or more, he will only choose a date of cancellation that falls on the start of a tax period (that is, 1 July, 1 August, 1 October etc).

#### ***Question 20. What is the effect of cancellation of GST registration?***

Non-interpretative – straight application of the law

The general effects of the cancellation of GST registration are:

- the entity has a concluding tax period that ceases at the end of the day on which the cancellation takes effect
- the entity must include in its business activity statement (BAS) for the concluding tax period any GST payable, any claims for input tax credits and any adjustments that have not been attributed to an earlier tax period
- the entity may be liable for increasing adjustments in its concluding tax period where it retains assets for which input tax credits have been claimed, (see below for further detail on this aspect)
- supplies made by the entity after the cancellation date are not subject to GST
- there is no entitlement for an input tax credit for the GST paid on acquisitions made by the entity after the cancellation date, and

- the entity will not be required to lodge further BAS for tax periods after its concluding tax period.

**Question 21. What is meant by the terms increasing adjustments and the concluding tax period?**

Non-interpretative – straight application of the law

As mentioned above, the cancellation of an entity's GST registration triggers a 'concluding tax period' for that entity that finishes at the end of the day on which the cancellation takes effect. The entity must include in its BAS for this concluding tax period any GST payable, any claims for input tax credits and any adjustments that have not been attributed to an earlier tax period.

The entity may also be required to effectively repay some or all of any input tax credits previously claimed on assets retained by the entity at the time it ceases to be registered. This is done by making an increasing adjustment to the net amount on its BAS for the concluding tax period. The adjustment operates to draw back input tax credits that have previously been claimed by the entity on assets, but takes account of any decrease in the value of the assets that may have occurred while they were used by the entity for a creditable purpose.

The increasing adjustment is calculated as follows:

$$1/11\text{th} \times \text{the actual application of the asset} \times \text{applicable value}$$

The actual application of the asset is the extent – expressed as a percentage – to which the entity has applied the asset for a creditable purpose between when the entity acquired or imported it and the end of the concluding tax period.

For example, if the asset was acquired solely for a creditable purpose and the extent of the creditable purpose had not changed, the actual application of the asset would be expressed as one hundred percent business use.

The applicable value is the GST inclusive value of the asset immediately before the cancellation takes effect. If the entity purchased the asset for less than the current market value, (for example, where the asset has appreciated over time), the applicable value is the actual consideration the entity paid.

**Example**

*A community group registered for GST on 1 July 2001 and has its GST registration cancelled on 31 December 2001. The only asset remaining at this date is a bus that the community group acquired for \$55,000 (including \$5,000 GST). The community group purchased the bus on 17 August 2001, and used the bus exclusively for the purposes of the group. The group claimed a full input tax credit of \$5,000. At the time of cancellation of the registration, the GST inclusive value of the bus was \$44,000.*

*The amount of the increasing adjustment is \$4,000.*

*That is, one-eleventh  $\times$  100% (actual use by the group)  $\times$  \$44,000 (GST inclusive market value).*

An increasing adjustment is required for all assets for which the entity has received an input tax credit entitlement, irrespective of the value of the adjustment. (The threshold test (\$1,000) where an entity has adjustments for a change in creditable purpose does not apply where the entity is ceasing registration.)

***Question 22. When an adjustment does not arise on cessation of GST registration?***

Non-interpretative – straight application of the law

Where an entity that is registered for GST makes a creditable acquisition it is entitled to an input tax credit depending on the intended extent of the creditable purpose. Over time the actual extent of the entity's use of the acquisition may have changed resulting in a change to the extent of creditable purpose of the acquisition and thus the entitlement to an input tax credit.

Where the extent of creditable purpose is changed by later events the entity may be required to make an adjustment. The entity may be required to make one or more adjustments depending on the value of the acquisition. Adjustments are made in adjustment periods and they are generally made once per year.

In situations where an entity has made adjustments to allow for a change in creditable purpose, an adjustment does not arise in respect of an acquisition on cancellation of registration where:

- there were one or more adjustment periods for the acquisition of the asset, and
- the last of those adjustment periods has ended before the cancellation of the entity's registration takes effect.

***Question 23. What are the record keeping requirements in relation to the GST?***

Non-interpretative – straight application of the law

An entity needs to retain records relating to the calculation of the increasing adjustment for the later of five years after the completion of the transaction or when the period of review in relation to the adjustment ceases. The records must be such as to enable your liability under the GST Act to be readily ascertained.

## Part 2 - Accounting and attributions

Issues on accounting and attributions.

### Issue 1: What should non-profits be aware of in accounting for GST?

Non-interpretative.

#### ***Principle***

The GST legislation allows for two alternative tax periods; one of three months and the other of one month. If a non-profit entity has a GST turnover of \$20 million or more it has monthly tax periods under section 27-15. All non-profits entities with a turnover below \$20 million can elect whether to account monthly or three monthly.

The GST legislation allows for entities to account for GST on either a cash or non-cash basis. Endorsed charitable institutions, endorsed trustees of charitable funds, gift deductible entities and government schools may choose to account on a cash basis regardless of turnover under Division 157.

**Note:** A gift deductible entity that operates a fund, authority or institution which can receive tax deductible gifts or contributions is only entitled to account for GST on a cash basis if it meets one of the general eligibility criteria. Those criteria are:

- the entity's GST turnover does not exceed the cash accounting threshold, or
  - for income tax purposes the entity correctly accounts for income using the receipts method.

The GST legislation states that certain information must be specified on tax invoices in order to make them valid tax invoices. This information can be found in various ATO publications including the industry booklets. You should also be aware of the Ruling [GSTR 2013/1](#) on tax invoices.

## Specific questions and answers

### ***Question 1. Is there potential for a hybrid accounting approach that incorporates both cash and accruals for processing GST payments and refunds?***

Non-interpretative – **other references** (see [GSTR 2000/13](#) Goods and services tax: accounting on a cash basis)

There is no provision to allow a hybrid form of accounting; an organisation must choose either cash or accrual. The legislation makes concessions to allow charitable institutions to account on a cash basis even if their turnover exceeds the cash accounting turnover. The accounting method chosen by an entity may be different for GST from their established accounting method.

### ***Question 2. What tests will be applied to 'input tax credits'?***

Non-interpretative – straight application of the law

Entities making taxable or GST-free supplies will be able to claim input tax credits for any purchases that are creditable acquisitions which are made as part of their enterprise. Where the acquisitions relate to supplies that are input taxed the entity is not entitled to input tax credits on those acquisitions.

If you are exempt from income tax, an acquisition that you make that would be a non-deductible expense under the Income Tax Assessment Act is not a creditable acquisition, for example, entertainment, club and leisure facilities (see Division 69).

### ***Question 3. Will lease rentals charged to charities on motor vehicles be subject to GST, or will this depend upon the use to which the vehicle is put?***

Non-interpretative – straight application of the law

Lease rentals will be subject to GST. Normally the charity will be entitled to an input tax credit if the vehicle is used in its enterprise.

### ***Question 4. Where you have an entity registered for GST offering goods and/or services that are GST free, GST taxable and GST input taxed, do you have to identify which inputs relate to which outputs?***

Non-interpretative – straight application of the law.

A registered entity will be entitled to input tax credits in respect of GST paid, provided what was acquired was used in carrying on their enterprise. The only exceptions to this are where the acquisition relates to the provision of input taxed supplies, or where the acquisition is of a private or domestic nature.

Accordingly, it is not necessary to distinguish between acquisitions utilised in making taxable supplies and those utilised in making GST free supplies. In either case, input tax credits are allowable provided the above conditions are met.

It **will** be necessary, however, to identify any acquisitions that were wholly or partly used in the making of input taxed supplies. Where an acquisition was wholly utilised in generating input taxed supplies, no part of the GST paid in respect of the acquisition may be claimed as an input tax credit. Where an acquisition was partly used for making input taxed supplies, it will be necessary to apportion the use between taxable/GST free supplies on the one hand and input taxed supplies on the other. The extent to which the acquisition relates to the provision of input taxed supplies would not give rise to an input tax credit.

Goods and Services Tax Ruling [GSTR 2006/3](#) sets out the apportionment methodologies which the ATO considers are acceptable for calculating input tax credits where an

acquisition or importation is used partly for a creditable purpose and partly in the provision of input taxed financial supplies.

***Question 5. Are there any advantages in non-cash accounting for GST versus cash accounting to the smaller operator? Is it necessary for an organisation to change their accounting system?***

Non-interpretative

Any advantage of one accounting method against the other would be dependent on the type of organisation, its structure and the accounting system it currently has in place. Endorsed charities, gift-deductible entities (subject to the condition for those gift deductible entities that operate a fund, authority or institution under issue 1 above) and government schools may choose to account on a cash basis whether or not their turnover exceeds the cash accounting turnover threshold of \$2 million. Charities registered for GST will be able to choose the accounting method that best suits the requirements and circumstances of the organisation.

***Question 6. Can the return be missed one month if there was not much to claim back and added to the next month to avoid a claim for what might be only a small amount?***

Non-interpretative

There is no provision for such an arrangement. If you are registered you must give the Commissioner a BAS for each tax period. You must provide a BAS whether or not your net amount is zero for the tax period or whether or not you are liable for GST on any taxable supplies in that period. However, if during a particular tax period you are not liable for any GST or entitled to a refund, you may only be required to provide information in a modified form (see subsection 31-15[2]).

***Question 7. What is the likelihood of there being simplified accounting for charities?***

Non-interpretative

Currently there are no simplified accounting methods specifically for charities. Division 123 of the GST Act provides that the Commissioner may make a determination for retailers who make supplies under Subdivision 38-G of the GST Act. A retailer is defined as someone who supplies goods. Consequently, endorsed charities, government schools and gift deductible entities that make non-commercial supplies of goods under sections 38-250 or 38-255 may be able to take advantage of the provisions in Division 123.

***Question 8. An organisation undertaking a wide range of service delivery may have to deal with a variety of GST treatments. Given that organisations within this sector have limited resources what options are available to help reduce the cost of compliance for these different treatments?***

Non-interpretative

Compliance costs for such organisations should only be marginally higher than for those organisations that attract only one kind of GST treatment. Once market value is determined (and hence what is commercial/non-commercial) then for the purposes of claiming input tax credits there is only a need to apportion where a charity makes input taxed supplies. Where an entity makes a combination of GST-free and taxable supplies the entity is entitled to full input tax credits for all their acquisitions that relate to taxable



and GST-free supplies and there would not be any need to match inputs to the different supplies. The charity would need to record the GST collected in making taxable supplies.

**Question 9. To larger charitable organisations the cost of tracking internal transactions for GST purposes will be substantial. Are there options available that might reduce this compliance cost?**

Non-interpretative

Complex organisations will need to think carefully as to the best way to structure their operations in order to minimise their overall compliance cost. Where organisations have a large volume of internal transactions they may decide to group for GST in order to minimise the cost of accounting for these transactions. Alternatively, using the GST branch option may be more appropriate where the entity operates through a divisional or branch structure.

**Question 10. What about increased costs incurred as a result of loss of sales tax exemption especially in the purchase of motor vehicles?**

Non-interpretative

Currently wholesale sales tax (WST) exempt organisations are not completely free from WST because there is a degree of imbedded WST in the goods and services they purchase. Also, the cost of motor vehicles should decrease as a result of the introduction of GST, so it is unlikely there will be an increase in costs as a result of a loss of the WST exemption. Entities will pay GST on vehicle purchases and where they are a registered entity they may claim an input tax credit on their creditable acquisitions. While there will be a phasing in of input tax credits for motor vehicles, WST exempt organisations, will be able to claim full input tax credits from the date of implementation.

**Question 11. Compliance costs for community housing associations could be very high since there will need to be monitoring of income and expenditure across the three classes of transaction, taxable, GST-free or input taxed.**

Non-interpretative

There are a number of options by which community housing organisations can be examined to determine whether their operations are commercial or not. Each involves different compliance costs and varies depending upon location and movements in the rental markets. The options are:

- Examine each rental transaction on a case by case basis.
- Average the total number of rents for that organisation and determine the overall 'commerciality' by comparison with the 75% rule.
- Assess the overall operations of the entire community-housing sector and determine the commerciality of the sector as a generality.

What is the position of the ATO with regard to these three options?

The GST is a transaction-based tax. It applies each time a thing is supplied. Compliance costs associated with the nature of the tax cannot be addressed by allowing averaging of the consideration of supplies. It is important to recognise that input tax credits will be available regardless of whether the supply is commercial or non-commercial provided the supply is not input-taxed. A concession of averaging would allow commercial supplies to become GST-free which is not appropriate.

**Question 12. Will organisations which provide both GST-free and input taxed services need to use full cost allocation systems for all their overheads to ensure they are not claiming input tax credits on that proportion associated with input taxed activities?**

Non-interpretative

An organisation providing both GST-free and input taxed supplies would be required to allocate overheads between these types of supplies. Where acquisitions or overheads cannot be directly attributed to supplies then they would need to apportion on a reasonable basis.

**Question 13. It is our understanding that transactions that are less than \$75 may not be required to have a tax invoice. If no tax invoice is provided on transactions such as petrol purchases and such transaction relates to religious services, how can credits be claimed?**

Non-interpretative

Under subsection 29-80, it is not necessary to have a tax invoice in order to claim input tax credits where the tax exclusive value of the acquisition does not exceed \$75.

Despite this, it is still necessary for the recipient to be able to verify purchases made. For example, a standard cash register receipt or hand written receipt should be retained.

**Question 14. What will happen if one part of the organisation makes an error? Will there be a penalty for the entire organisation, the Chief Executive Officer (CEO)/public officer or the Managing Director?**

Non-interpretative

Generally, the organisation is responsible for the errors made by its officers and employees. For example, if an employee who is responsible for issuing tax invoices has failed to do so, then the organisation is liable to penalty under the *Taxation Administration Act 1953*.

An organisation may consist of a number of discrete parts. Those parts may elect to be members of a GST group. The members of a GST group are jointly and severally liable to pay any amount that is payable under the GST law by the representative member of the group. Any offence against the GST law that is committed by the representative member of the group is taken to have been committed by each of the members of the group.

Where a GST branch has been established, liability for GST errors made by officers in that branch remains with the parent entity.

Where a non-profit sub-entity has been established, the liability for GST errors by officers in that non-profit sub-entity rests with those individuals responsible for the non-profit sub-entity.

**Question 15. Where a 'GST tax invoice' is not received from the supplier, are there any circumstances where I can still claim the input credit?**

Non-interpretative

Other references: [GSTR 2013/1](#): Goods and services tax: tax invoices

You may be able to treat a document issued by the supplier that does not meet all of the tax invoice requirements as a tax invoice because information is missing, if that document would be a tax invoice but for the missing information and all of that missing information can be clearly ascertained from other documents given to you by the supplier.

You may also request the Commissioner to exercise the discretion to treat a document that does not satisfy the tax invoice requirements as a tax invoice. The Commissioner will exercise this discretion on a case by case basis.

**Question 16. Where a supplier fails to provide a tax invoice what documentation will need to be maintained for compliance purposes? What will the audit procedures be?**

Non-interpretative

Every taxpayer that makes a taxable supply, taxable importation, creditable acquisition or creditable importation, must keep records that record and explain all transactions and other acts engaged in by the taxpayer that are relevant to that supply, importation, acquisition or dealing.

Taxpayers must maintain their records for the longest of

- five years after the end of the transaction, and
- the length of the period of review on the assessment.

If input tax credits have been claimed records should be retained for at least 5 years after the return was lodged.

**Question 17. Is it true that we can lodge our GST return by the first of the month and the ATO must pay our refund within fourteen days or pay interest?**

Non-interpretative

If the amount of input tax credits owed to you is greater than the GST on your supplies you will receive a refund. Any refund due will be applied against your other tax liabilities before an amount is refunded. The Commissioner must pay the refund within 14 days of you lodging your business activity statement (GST return) for that tax period. Interest is payable under the *Taxation (Interest on overpayment and early payments) Act 1983*. The Commissioner may offset your refund against other liabilities you may have that are due and payable.

**Question 18. Is an insurance claim when made by a charitable institution registered for GST considered to be a taxable supply?**

Non-interpretative – other reference (see [GSTR 2006/10](#) Goods and services tax: insurance settlements and entitlement to input tax credits)

Settlements made under insurance policies are not subject to GST as long as the insured entity has informed the insurer of the extent of input tax credit it is entitled to on the premium. If the insured entity, such as a charitable institution, does not inform its insurer of its extent of input tax credit, or understates the extent, it will have a GST liability on a settlement to the extent of the understatement.

**Question 19. How is interest treated on deposits made by financial institutions under GST?**

Non-interpretative – other reference (see [GSTR 2002/2](#) Goods and services tax: GST treatment of financial supplies and related supplies and acquisitions)

A supply is a taxable supply if it is made for consideration, it is made in the course of or furtherance of an enterprise that the supplier carries on, it is connected with Australia and

the supplier is registered (or required to be registered). However, a supply is not a taxable supply to the extent that it is GST-free or input taxed.

A supply of money is not a supply for GST purposes unless that money is provided as consideration for a supply that is a supply of money.

The payment of interest by a financial institution is not a supply by the institution because it is a supply of money. However, the interest is consideration for a financial supply made by the depositor, being an interest in a debt.

Therefore, it is possible that a depositor who is registered for GST who makes a deposit of money into a financial institution and receives interest in return is making a supply for which consideration is payable. That supply would be then considered to be a taxable supply but for the fact that financial supplies are deemed to be input taxed. The supply is a financial supply and no GST is payable on the transaction. Equally, a depositor who is not registered for GST cannot make a financial supply and therefore the transaction is excluded from the GST system.

In the case of a registered depositor, the issue of entitlement to input tax credits may arise given that the enterprise has made a financial supply. Normally, an entity that makes input taxed supplies cannot claim input tax credits for its acquisitions or importations to the extent that it relates to making input taxed supplies. However, where the annual turnover of the financial supplies made does not exceed the lesser of \$150,000 or 10% of the entity's GST turnover (including the financial supplies), the entity will still be entitled to full input tax credits. GST turnover does not include the value of supplies that are input taxed (Division 188-15).

***Question 20. Will purchasers be able to find out which foods on a supermarket tape have a GST component in their price? This would be required for claiming input tax credits on function refreshment expenses***

Non-interpretative – other reference (refer to [GSTR 2013/1](#): Goods and services tax: tax invoices (As at 27 March 2013))

If the value of a sale is more than \$75, a supplier must prepare and issue a tax invoice within 28 days of being requested to do so. The invoice will show the items subject to GST, and the total amount of GST payable.

If the value of a sale is less than \$75 a supplier does not have to issue a tax invoice and the customer does not need one to claim the input tax credit. However, documentary evidence (for example, cash register receipts) must be retained. To claim credits in this situation, the customer should ascertain from the shopkeeper whether a) the business is registered for GST and b) which item(s) and amount(s) were subject to GST. Most supermarkets will provide this information on their receipts.

***Question 21. How do we deal with non-registered clients over small consultant payments (only a few hundred dollars)?***

Non-interpretative – straight application of the law

Under the pay as you go legislation, where one business acquires goods or services from another business, it is required to deduct 46.5% of the payment if:

- the supplier does not quote an ABN
- the amount of the payment is greater than \$75, and
- the amount received by the supplier is not exempt income.

Any consultants who intend to provide their services to other businesses should therefore obtain an ABN so that their business customers are not required to withhold tax.

**Question 22. When can input tax credits be claimed?**

Non-interpretative – straight application of the law

An entity operating on the cash basis may claim an input tax credit to the extent that consideration is paid to its suppliers in the tax period. However, it must hold a tax invoice at the time the credit is claimed.

An entity operating on the non-cash (accruals) basis may claim an input tax credit in the tax period corresponding to the earlier of:

- receiving an invoice from a supplier, or
- paying any part of the consideration to the supplier.

However, it must hold a tax invoice at the time the credit is claimed.

**Question 23. What means are available to alleviate the lack of capacity of smaller community groups to deal with the GST (for example: regarding start-up and ongoing compliance).**

Non-interpretative.

The ATO has field officers available to visit charities and other non-profit entities. Each ATO has field officers that have received specialised training in the issues confronting charities etc.

Assistance is also available from the non-profit enquiries line, **1300 130 248**. If rulings are required in respect of specific issues, refer to [How to apply for a private ruling](#).

**Question 24. Embedded cost savings – how will the ATO require that they be calculated?**

Non-interpretative

It is not an ATO requirement that embedded cost savings be taken into account in setting prices. The Australian Competition and Consumer Commission (ACCC) and some funding bodies may require you to identify these savings.

## Part 3 - Non-commercial activities of charities, cost of supply and market value tests

In part 3, the word 'charity' refers to an entity that is:

- an endorsed charitable institution
- an endorsed trustee of a charitable fund
- a gift-deductible entity, or
- a government school.

These terms are defined in [section 195-1](#) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). All legislative references made in this issue are to the GST Act unless otherwise stated.

**Issue 1: How does an entity make a distinction between 'commercial' and 'non-commercial' activities using the 'cost of supply' and 'market value tests'?**

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

## Part 4 - Fundraising, gifts and donations

**Issue 1: How will revenue-raising activities such as sponsorships (including 'in kind' sponsorships and 'contras'), gala events and membership fees be treated?**

Non-interpretative – straight application of the law

### ***Principle***

There is a need to differentiate between the different types of revenue raising activities.

**Sponsorships** usually require the recipient to do something, for example, provide advertising. The provision of these rights is a taxable supply. The sponsor will generally be entitled to input tax credits where it has been made as part of carrying on their enterprise.

**Membership fees** and **gala events** are generally payments in return for services or rights and therefore will be subject to GST.

**Other revenue raising events** by a charity which is registered for GST and where the supplies are for nominal consideration or a supply of second hand goods will be GST-free. Raffles and bingo conducted by charities are GST-free. Most other supplies made by charities will be taxable. Charities will be able to claim input tax credits for acquisitions used to make taxable or GST-free supplies.



## Issue 2: How will gifts and donations be treated under GST?

Non-interpretative – straight application of the law

### ***Principle***

#### *Gifts to non-profit bodies are not consideration*

For a payment to be considered a **gift** it must be unfettered, that is, there must be no obligations to do anything in recognition of the gift and no expectation on the part of the donor to receive anything in return for donation. The definition of a gift is contained in Division 30 ITAA 1997.

Paragraph 9-17(2) 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 another supply made for the consideration (gift).

A payment will not be a gift where there is a contractual obligation on the part of the charity or non-profit organisation to use the funds in a specified way or the provision of a material benefit to the donor.

A payment made in return for a material benefit or an enforceable obligation to use the funds for a specified purpose is consideration for a supply. The organisation receiving the payment has supplied something in return for the payment.

## Specific questions and answers

### **Question 1. How are tokens given in return for donations treated under GST?**

Non-interpretative – straight application of the law

Fundraising activities by charities will not be subject to GST where the charity is receiving gifts. Many charities give a token to a donor in return for the donation. Providing the donor is not receiving a material benefit in return for the payment, there are no GST consequences.

A donor does not receive a material benefit if the token given in return for the payment is an item that merely promotes the charity or advertises its activities. Such items include lapel badges, bumper stickers, red noses, Legacy pins, or daffodils on Daffodil Day. Information received about the charity and its activities is unlikely to be a material benefit.

Where the token received has utility and value, the donor receives a material benefit. Items such as pens, calendars, chocolates, key-rings and mugs are usable items which provide a benefit to the donor. This means the donation is not a gift and will be subject to GST (unless the item is GST-free or input taxed).

However, if the value of the useable item is insignificant in comparison with the amount of the donation, then the donation will be a gift and will not be subject to GST. For example, a benefit in the form of a key-ring might be immaterial when considering a transfer of \$400 but significant for a \$4 payment.

Other circumstances – such as whether the useable item merely promotes the charity or is provided to the donor irrespective of the amount donated – may also indicate that the useable item does not provide a material benefit to the donor and is therefore a gift and not subject to GST.

If the donation is not a gift and is subject to GST, the charity must remit to the ATO 1/11th of the donation as GST. The donor will be entitled to claim a GST credit for the GST included in the amount paid, provided they are registered for GST, and the donation has been made as part of the donor's business activities.

For more information of the meaning of a gift refer to Taxation Ruling [TR 2005/13](#).

### **Question 2. When is a payment considered sponsorship rather than a gift or donation?**

Non-interpretative – other reference (see [TR 2005/13](#) Income tax: tax deductible gifts - what is a gift)

Where money is provided in return for a supply of advertising a registered organisation receiving the funds will be required to remit 1/11th of the amount received as GST. The organisation making the payment can claim an input tax credit for the GST paid provided they are also registered for GST. Where both parties are registered for GST the organisation making the payment can increase the amount to take the GST into account, thereby making the overall impact of the GST nil for both parties.

#### *Contra sponsorship*

Where goods or services are provided in return for advertising this is a contra sponsorship arrangement. Assuming both organisations are registered for GST they are making taxable supplies to one another. Each party will have a GST liability for the supply they have made and an input tax credit entitlement for the acquisition they have made (assuming it is a creditable acquisition). Where the value of the supplies is equal the net amount of GST for the whole transaction is zero. This is because each party makes a taxable supply and a creditable acquisition of the same value – the GST collected and the input tax credit

entitlement are the same. Each party would however need to record both the supply and the acquisition.

### **Question 3. Fundraising events – How do the provisions work?**

Non-interpretative – straight application of the law

An endorsed charity, a gift deductible entity or a government school may choose to treat certain types of fundraising events as input taxed.

If an organisation chooses to treat a fundraising event as an input taxed fundraising event, it treats all sales it makes in connection with the event as input taxed. That is, the organisation will not be required to charge GST on the sales it makes and will not be entitled to claim GST credits for any acquisitions in relation to the event.

An organisation must make its choice to treat all sales in connection with a fundraising event as input taxed prior to any transactions in relation to the fundraising event taking place.

For more information on fundraising events that are treated as input taxed events refer to [Fundraising](#) (NAT 13095).

### **Question 4. What is the definition of a raffle?**

Non-interpretative – straight application of the law

A raffle is a game of chance where the prizes are either goods or cash or a combination of the two. Where the prize is cash only the charity must be careful that they do not contravene state lottery laws. A supply of a raffle that contravenes the state lottery laws will not be GST free.

### **Question 5. How will the ATO deal with minor or unintended breaches of state and territory law with regards to raffles and bingo?**

Raffles or bingo run by charities will be GST-free if conducting the raffle or bingo does not contravene a state or territory law.

Generally each state or territory has enacted law to regulate the conduct of lotteries, gaming, art unions, bingo and so on. The relevant State or territory law ('the law') may provide rules which the operators must comply with. If an operator breaches any of those rules, it may be guilty of an offence under the law.

The law may require an operator to hold a licence or an authority before it may conduct a raffle or bingo. For example, Regulations under the *Lottery and Gaming Act 1936* (SA) provides that an operator must hold a lottery licence if the prizes of the raffle exceed \$2,000 in value or a bingo licence if the gross proceeds of the bingo session exceed \$200. It is an offence to conduct the raffle or bingo if the operator does not hold a licence. Therefore, for GST purposes, if a South Australian charity conducting such a raffle or bingo has not obtained the relevant licence under the law, the supply of the raffle or bingo will not be GST-free.

A charity holding the required licence or authority for running a particular raffle or bingo may commit an offence if it breaches a rule under the law. For example, the grant of a licence under the South Australian law may be subject to certain conditions. In the event of or failure to comply with any of the conditions, the charity is guilty of an offence. However, for GST purposes, such a breach or failure will not cause the supply of a raffle or bingo to stop being GST-free and to become taxable. For as long as the charity holds a licence for a particular event the supply will be GST-free.

The ATO does not plan to issue any regulations with respect to raffles and bingo run by charities at this time.

**Question 6. How wide will be the definition of raffle and bingo as GST-free activities? Are lotteries, art unions and lucky wheels considered to fit within these definitions?**

Non-interpretative – straight application of the law

Supplies of raffles and bingo by charitable institutions are GST-free if they do not contravene state or territory law. Generally, when activities require the purchase of a ticket and are liable to chance then they will be considered GST-free.

**Question 7. Under what circumstances will memberships be subject to GST? Is there a clear distinction that can be drawn between membership fees and donations?**

Non-interpretative - straight application of the law

Generally, membership fees are payments in return for services or rights and will be subject to GST. Membership bestows rights to members even where nothing tangible is supplied.

Gifts are considered under Taxation Ruling [TR 2005/13](#). Paragraph 13 of this ruling states:

Rather than attempting a definition of gift, the courts have described a gift as having the following characteristics and features:

- there is a transfer of the beneficial interest in property
- the transfer is made voluntarily
- the transfer arises from benefaction, and
- no material benefit or advantage is received by the giver by way of return.

Given the view above regarding gifts, memberships would not be treated as gifts.

The commercial activities of charities will be taxable but the supplies made for nominal consideration by charities will be GST-free. Anything supplied by an endorsed charity (if registered for GST) is GST-free if the consideration is less than either 50% of the GST inclusive market value or less than 75% of the 'cost of supply'. It is open for a charity to demonstrate that the membership fee is less than either 50% of the GST inclusive market value of the membership or 75% of the cost of providing the membership rights.

**Question 8. How will basic fundraising ventures such as chocolate drives, book clubs, trivia nights and fetes be treated?**

Non-interpretative – straight application of the law

Unless the endorsed charity, gift deductible entity or government school chooses to treat the fundraising event as input taxed under Subdivision 40-F, the supply of new goods at these activities is generally taxable. Where the supply is by a charity and is for consideration less than 50% of the GST inclusive market value or 75% of the 'cost of supply' it will be GST-free. Where the supplies are taxable or GST-free the GST registered charity is entitled to full input tax credits for all their acquisitions that relate to these supplies.

**Question 9. A significant amount of fundraising activities includes the sale of donated food that is sold in its donated form or is reprocessed to form a suitable product for sale (for example, making scones or cakes from donated goods and to be sold at a charity stall)? What will be the GST treatment on the sale of such things as cakes, scones, etc. in these circumstances?**

Non-interpretative – straight application of the law

Unless the endorsed charity, gift deductible entity or government school chooses to treat the fundraising event as input taxed under Subdivision 40-F, the supply of donated new goods at a fundraising activity (where the organisation is registered for GST) would be taxable. A supply of donated second hand goods is generally GST-free provided there is no change in the original character of the goods (for example material made into stuffed dolls and sold would not be GST-free). Cakes that are sold at fetes for greater than 50% of the GST inclusive market value would be subject to GST even though the materials for those cakes were donated.

Where the supply is by a charity and is for consideration less than 50% of the GST inclusive market value or 75% of the 'cost of supply' it will be GST-free. Where the supplies are taxable or GST-free the charity is entitled to full input tax credits for all their acquisitions that relate to these supplies.

**Question 10. In regard to the price of a fundraising dinner, can the price be considered to have a donation component thereby bringing down the cost to less than 50% market value and therefore no longer considered to be a taxable supply?**

Non-interpretative – straight application of the law

Unless the endorsed charity, gift deductible entity or government school chooses to treat the fundraising event as input taxed under Subdivision 40-F, the price charged for a fundraising dinner is consideration for a taxable supply where the organisation running the event is registered. The person attending is receiving material benefit and therefore no part of the price paid can be considered a gift.

The donation component of a fundraising dinner **would not** be considered to be a gift.

**Question 11. Fundraising events such as dinners, auctions and the like, involve the sale of donated goods. What is the treatment of inputs and outputs in these circumstances?**

Non-interpretative – straight application of the law

Unless the endorsed charity, gift deductible entity or government school chooses to treat the fundraising event as input taxed under Subdivision 40-F, the supply of new goods at fundraising events which are donated by a business that originally purchased it for manufacture, sale or exchange will be subject to GST.

For details regarding the GST treatment of the sale of donated second hand goods by charities see Part 6 of this document and our publication [Fundraising](#) (NAT 13095).

**Question 12. For those organisations with gift deductibility status, how will fundraising activities based on the concepts inherent in the Donor Club model be treated?**

Non-interpretative –straight application of the law

Generally, where the item received by the person is of insubstantial value and in the nature of a receipt and the intention of the person was to donate money rather than purchase an item the activity would be considered to be a donation.

**Question 13. With regard to donations, what is a material benefit? When is there a contractual agreement? How does the grants' ruling affect the treatment of donations by charitable trust foundations?**

Non-interpretative -other references. See:

- [TR 2005/13](#) Income tax: tax deductible gifts - what is a gift
- [GSTR 2012/2](#) - Goods and services tax: financial assistance payments.

*Material benefits*

The following are not considered to be a material benefit in relation to the making of a donation:

- Listing of donors on a donor board. That is, a mere acknowledgment and not advertising.
- The provision of a gift which is directed towards a specific benefit to a person who is not an associate of the donor. For example, 'this donation is to be used to provide braille books for children undertaking studies towards the NSW Higher School Certificate'.
- The provision of a gift in response to a specific or general appeal for a specified purpose. An example of this is an appeal to help victims of a natural disaster.
- The provision of a mere acknowledgment or items of insubstantial value (for example a cup of tea) as the result of a gift.
- A thank you lunch or dinner to volunteers working for an organisation where there is no pre-existing agreement that such provision will be made.
- Membership of a donor club whether or not the member has any voting right provided the member receives no material benefit. This will be a matter of degree but an example would be a club where the donor receives things like a certificate and an infrequent newsletter or a report upon the progress of projects funded by the donations. The purpose of the newsletter or report is to encourage further donations by the members.

The following are considered to be a material benefit in relation to the making of a donation:

- Membership of a donor club where rights other than voting rights are bestowed on the member. An example is where a health promotion body provides to the member, amongst other things, advice about their symptoms and medication and a quarterly newsletter.
- The recipient of the donation confers an entitlement on the member to discounted prices at functions or events organised and goods or services supplied by it.
- The recipient of the donation confers an entitlement on the member to use its facilities.
- The donor provides advertising (rather than mere acknowledgment) to the member.

**Question 14. Can a receipt that is issued for another purpose (for example tax invoice) also be a gift receipt for the purposes of section 30-228 of the Income Tax Assessment Act 1997?**

Non-interpretative – straight application of the law

Section 30-228 requires that receipts issued by deductible gift recipients state:

- the name of the fund, authority or institution
- the ABN of the deductible gift recipient, and
- the fact that the receipt is for a gift.  
This is in addition to the usual information contained in a receipt – date, amount, payer's and payee's names, etc.

For a receipt issued for dual purposes, one of which is for a gift, to be acceptable under section 30-228 it must be issued by a deductible gift recipient and contain the information set out above. This means that a deductible gift recipient endorsed only in respect of a fund, authority or institution that it owns or operates must state the name of the fund, authority or institution and that the gift is to that fund, authority or institution. A receipt issued by an organisation that is not a deductible gift recipient is not issued in accordance with section 30-228.

**Question 15. Would the GST apply where a corporation makes a payment to a charity that offsets their costs on the basis the charity acknowledges the corporate sponsor some way? Would GST treatment be different if the 'in kind' sponsorship was provided for a specific activity conducted by the charity?**

Non-interpretative – straight application of the law

The payment to the charity (if registered for GST) would be consideration for a supply, for example, advertising and therefore subject to GST. The value of the 'in kind' sponsorship would be the basis for determining the consideration for the supply.

**Question 16. Are all donations to:**

- **a GST registered organisation, and endorsed as a deductible gift recipient (DGR) liable for GST?**
- **a GST registered organisation, and not endorsed as a DGR, liable for GST?**
- **an organisation not registered for GST, and endorsed as a DGR, liable for GST?**
- **an organisation not registered for GST, and not endorsed as a DGR, liable for GST?**

Non-interpretative – straight application of the law

As stated above, gifts are not subject to GST.

**Question 17. What is the effect of GST on tax-deductible donations?**

Non-interpretative – straight application of the law

The donating of monies has no GST consequences provided the payment is truly a gift.

**Question 18. When do tied donations cease to be GST-free?**

Non-interpretative – straight application of the law

The elements of a gift are discussed above. A 'tied' gift will generally have no GST implications provided the payment meets the requirements of a gift discussed earlier. If the recipient of the donation has called for donations for a specific purpose, this will not affect the nature of the payment. Importantly, there is no material benefit flowing back to the donor.

**Question 19. Are preference donations subject to GST?**

Non-interpretative – straight application of the law

Where a donor makes a donation and communicates a wish for the monies to be used for a specific purpose, this will not affect the nature of the payment. Provided the donor does not receive a benefit in return, and the recipient is not contractually obliged to spend the monies toward a specific purpose, the payment will constitute a gift. Gifts are not subject to GST.

**Question 20. What if a membership was granted prior to 1 July 2000 but extends beyond 1 July 2000?**

Non-interpretative – other reference (see [GSTR 2000/7](#) - Goods and services tax: transitional arrangements - supplies, including supplies of rights, made before 1 July 2000 and the extent to which such supplies are taken to be made on or after 1 July 2000)

Membership of a club or organisation is generally provided on a periodic or progressive basis. Where the supply of membership is for a specified period of time that commences on or before 1 July 2000 and finishes after that date, it will be taken as having been supplied continuously and uniformly over that period.

The following examples illustrate the treatment of memberships that span 1 July 2000.

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**Example 1**

*Jan pays her annual membership of the Australian Bushwalkers Association on 1 April 2000. As the membership is a supply for a period that spans 1 July 2000, it is taken to have been made continuously and uniformly over the period 1 April 2000 to 31 March 2001. That portion of the membership that relates to the period on or after 1 July 2000 will be subject to GST.*

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**Question 21. What if a life membership was sold prior to 1 July 2000?**

Non-interpretative – straight application of the law

The following table explains the treatment of life memberships.

If	Membership granted pre 2 December 1998	<b>and</b>	Payment in full made before 2 December 1998	<b>then</b>	Membership is GST-free forever.
If	Membership granted pre 2 December 1998	<b>and</b>	Member is not entitled to a full input tax credit	<b>then</b>	Payments are GST-free until earlier of first review opportunity or 1 July 2005.



If	Membership granted pre 8 July 1999	and	Member is entitled to a full input tax credit	then	Payments are GST-free until earlier of first review opportunity or 1 July 2005.
If	Membership granted after 1 December 1998	and	Member is not entitled to a full input tax credit	then	Fully subject to GST.
If	Membership granted after 7 July 1999	and	Member is entitled to a full input tax credit	then	Fully subject to GST.

**Question 22. What are the tax invoice requirements that must be satisfied in regard to memberships?**

Non-interpretative – other reference

- [GSTR 2013/1](#) - Goods and services tax: tax invoices

In some situations, you issue a document before it is certain that you will make a supply because the document is merely an offer. Examples are insurance renewal notices, motor vehicle registration and subscription notices. Supplies made by subscription include subscriptions to trade magazines, online legal research and subscriptions to professional associations. In these situations, there is no supply until the recipient accepts the offer. In many cases, the recipient accepts the offer by making a payment.

An offer of membership or renewal notice is not a valid tax invoice because the supplier cannot be certain that a taxable supply will occur when the document is issued.

**Question 23. What is the difference between raffles and lotteries?**

Non-interpretative – straight application of the law

A raffle is a game of chance where the prizes are either goods or cash or a combination of the two. Where the prize is cash only the charity must be careful that they do not contravene state lottery laws. A supply of a raffle that contravenes the state lottery laws will not be GST free.

## Part 5 - Grants

Non-interpretative – straight application of the law

### Issue 1: How will grants be treated under GST?

#### *Principle*

On 30 May 2012 the ATO issued a ruling on financial assistance payments – [GSTR 2012/2](#) - Goods and Services Tax: financial assistance payments.

For a financial assistance payment (formerly known as a grant of financial assistance) to be consideration for a supply there must be a sufficient nexus between the financial assistance payment made by the payer and a supply made by the payee. 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.

GST is payable in respect of taxable supplies. 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.

Conditional grants made to a GST-registered grantee will usually be subject to GST.

A grant will be subject to GST if the following four tests are satisfied:

- Is the grant consideration for a supply by the recipient to the grantor?
- Is the supply to which the grant relates made as part of the recipient's enterprise?
- Is the supply for which the grant is paid connected to Australia?
- Is the recipient of the grant registered, or required to be registered, for GST?

#### **Grant as consideration for a supply**

For the current ATO view about whether the financial assistance payment is consideration see paragraphs 100 to 114 of [GSTR 2012/2](#).

This part of the answer previously stated:

The first test can be answered by considering whether a grant is conditional or unconditional. If the recipient undertakes or is required to do something in exchange for the funds this is a supply by the recipient for which the grant is consideration. The grant would therefore represent consideration for that supply.

While a gift to a non-profit body is not consideration and so not subject to GST, most grants are not gifts. As mentioned above, a gift is something that is given by a donor out of generosity or benefaction, made voluntarily, and with no material benefit provided to the donor as a result of the gift. Funding grants do not generally have this character.

#### **Enterprise**

The second test asks whether the supply by the recipient is made in the course of the recipient's enterprise. Activities performed in the nature of a business, and all activities of a religious institution or a charitable institution or fund, satisfy this test. We would consider that the supply made by the Australian organisation under a conditional grant would be made in the course of its enterprise.

### **Connected with Australia**

The third test requires that the supply is connected with Australia. The supply of anything other than goods or real property is connected with Australia if the thing is done in Australia or is made through an enterprise carried on in Australia. See [GSTR 2019/1](#) *Goods and services tax: supply of anything other than goods or real property connected with the indirect tax zone (Australia)*.

### **Is the grantee registered?**

The last test requires the supplier to be registered, or required to be registered, for GST. It is assumed that the Australian organisation will be registered for GST.

Therefore, qualifying financial assistance payments made to a registered Australian organisation will be subject to GST provided the payments are connected with Australia.

## Specific questions and answers

### **Question 1. In what circumstances will a grant made to a non-profit organisation by a philanthropic trust be considered to be a gift rather than a grant of financial assistance? What type of conditions will and will not make it a taxable supply?**

Non-interpretative – straight application of the law

A gift to a non-profit body is specifically excluded as consideration for a supply. A grant by a philanthropic trust will be considered to be a gift where:

- the payment is made voluntarily, and not as a result of a prior contractual obligation
- the payer does not receive an advantage of a material character by way of return for making the payment, and
- the payment essentially arises from benefaction.

The fact that the grant has conditions attached which establish the terms on which the grant is made will not, by itself, preclude the grant from being a gift. For example, if the grant conditions:

- stipulate the project for which the funds are to be used
- establish a date of completion for the project
- require the grantee to maintain separately in its books of account, records on how the grant has been used, and
- require that the grantee acknowledge the assistance of the grantor in any published or display material.

The grant may still be a gift. If, however, the grant conditions provide the grantor with material benefits or impose a binding obligation on the grantee, the grant would not be considered to be a gift. The following are examples of such conditions:

- the grantor is given an interest in any resultant intellectual property that is generated from the research
- the grantor is provided with a share in the income from the commercial exploitation of the research results
- the grantor is allowed to determine how the grantee should acknowledge their assistance (which may extend beyond mere acknowledgment), or
- the grantee must repay the grant if the conditions of the grant are not satisfied.

In these cases, the grant would represent consideration for a supply by the grantee.

### **Question 2. Is the GST treatment the same for those grants that are made from trusts or foundations?**

Non-interpretative – straight application of the law

[GSTR 2012/2](#) deals with the treatment of financial assistance payments provided to private and community organisations. The principles enunciated in the Ruling would be applicable to grants that are made from trusts or foundations.

### **Question 3. Are grants that are used to provide GST-free goods and services GST-free?**

Non-interpretative – straight application of the law

No, the GST treatment of grants does not depend on the final purpose to which the funds received are applied. Some supplies are GST-free, such as most supplies of food and medical services. However, generally only the goods and services themselves are GST-free. Grants provided to an organisation that makes GST-free supplies will be subject to GST even though the funds were used to make GST-free supplies. Of course, a registered entity that makes the grant will be entitled to an input tax credit equal to 1/11 of the grant.

***Question 4. Will services provided to the community under CACP's, HACC or similar funding arrangements likely to be subject to GST?***

Non-interpretative – straight application of the law

Where a grant is consideration for a supply the grant will be subject to GST. Where the provision of a grant is based upon the charity entering into an obligation to do something the supply by the grantee will be the entry into the obligation. How the charity uses that grant money and whether the activities are then considered to be GST-free, taxable or input taxed supplies does not affect the provision of the grant as being consideration for a taxable supply.

***Question 5. Will the funding by auspice bodies to unincorporated organisations (if both are registered for GST) be taxable? Will the funding provided to auspices from government bodies be subject to GST?***

Non-interpretative – straight application of the law

The general principles set out above apply to grants that are made by auspice bodies and grants that are made to unincorporated organisations.

***Question 6. Is GST payable on grants provided by overseas organisations?***

Non-interpretative – straight application of the law

The general principles outlined above apply to grants to and from foreign entities. The relevant question is whether the supply for which the grant is received is connected with Australia.

***Question 7. Are grants made prior to 1 July 2000 but which provide payment for a 12 month period subject to GST under s12 of the A New Tax System (Goods and Services Tax Transition) Act 1999 (GST Transition Act) (namely should they be treated as periodic and progressive and the portion that relates to post 1 July be subject to GST)?***

Non-interpretative – straight application of the law

*Application of GST Transition Act*

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.

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.<sup>1</sup> The general rules for determining whether a supply or

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<sup>1</sup> GST Transition Act, subsection 7(1)

importation is made on or after 1 July 2000 are to be found in section 6 of the GST Transition Act.

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*

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.<sup>2</sup>

If a supply of real property<sup>3</sup> is made in exchange for the grant the supply is made when the property is made available.

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<sup>4</sup>

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*

A supply of something other than goods, services or real property will be made when the thing is 'performed or done'<sup>5</sup>.

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<sup>6</sup>.

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 fulfilment 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.

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*

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.

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.

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<sup>2</sup> GST Transition Act, subsection 6(2)

<sup>3</sup> Subsection 195-1 real property includes any interest or right over land such as a lease or similar entitlement

<sup>4</sup> GST Transition Act, subsection 6(4)

<sup>5</sup> GST Transition Act, subsection 6(5)

<sup>6</sup> This distinction is particularly important in applying the GST Transition Act 1999

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### **Example**

*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.*

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In this example the timing of the supply of reporting information is irrelevant, as it is not a supply for which the grant is consideration. The grant is referable wholly to the obligation to provide community services.

For the purposes of the GST Transition Act, the fulfilment 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.

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.<sup>7</sup>

### *Supplies under existing agreements*

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.

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<sup>8</sup>.

### **Question 8. How will devolved grants be affected by the GST? If a regional organisation gets \$500 000 and then distributes smaller grants – will the regional organisation or the recipients or both have to pay GST on the grants?**

Non-interpretative – straight application of the law

Where a GST-registered organisation supplies a binding undertaking, obligation or promise to do something, such as provide a range of services, in return for grant monies, they are making a taxable supply for which the grant is consideration, and will be required to remit 1/11th of the grant monies to the ATO. The payer of the grant (if registered or required to be registered for GST) is making a creditable acquisition, and may be entitled to claim an input tax credit for the same amount.

Where the recipient of the government grant in turn makes grants to smaller bodies, each grant is a separate transaction, and separate again to the transaction between the

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<sup>7</sup> 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'.

<sup>8</sup> For further guidance on section 13 of the GST Transition Act refer to Goods and Services Tax Ruling GSTR 2000/16 'Transitional arrangements – GST-free supplies under existing agreements'.

government agency and the recipient of the government grant. For each grant transaction the question posed in the above paragraph must be answered in determining the GST consequences. Each smaller body that is registered or required to be registered and makes a taxable supply to the payer for which the grant is consideration must remit 1/11th of the grant monies to the Commissioner of Taxation. If the payer of the grant monies is GST-registered, it may claim an input tax credit for the same amount.

***Question 9. How are grants treated that are for say a book or publication that are paid before 1 July 2000 but the publication is not completed and published until after this date?***

Non-interpretative – straight application of the law

The answer to this question depends on the terms of the grant agreement. Each agreement would have to be considered separately. The following examples provide guidance:

- If the monies were provided in return for a 'book' full stop, the supply of the book will be subject to GST if the book is removed (handed over to the grantor) on or after 1 July 2000. The date of payment will not be relevant.
- If the monies were provided in return for the carrying out of research over the period 1 July 1999 to 30 June 2000, and the research paper is merely an incidental outcome of this research activity, GST will not be payable. This is because the recipient of the grant is primarily providing services (in the form of research activities) over a specified period (ending 30 June 2000). The delivery of the research paper is merely an incidental product of this research.

***Question 10. How are grants treated where the grantee organisation has to 'match the grant'? That is say they get a grant for \$1000 and they have to agree to provide volunteer labour or other services worth \$2000.***

Non-interpretative – straight application of the law

The application of GST to grants depends primarily on whether the grantee is registered, and whether there is a supply for which the grant is consideration. The amount of GST on a taxable grant will depend on the amount of the grant.

A condition that the grantee has to provide resources of its own in proportion to the grant will not change the application of GST to the supply for which the grant is consideration. Generally the amount of the grant determines the amount of GST on the supply.

***Question 11. How are 'lumpy' grants treated in the transition?***

Non-interpretative – straight application of the law

In determining whether supplies are made before or after 1 July 2000, it is the timing of the supply of goods or services rather than the payment that is relevant. For 'lumpy' grants, it will still be necessary to determine whether the grant is for the provision of specific supplies or for supplies that are to be provided over a defined period. The general transitional rules discussed in question 7 of this part apply.

What is the position where an organisation applies for a grant for 1 July 1999 to 30 June 2000 but the grantor does not pay the grant until say January 2000? [Because of the absence of the funds, the organisation is not able to commence their work until payment date, in which case the work will be completed after 30 June 2000].



The application of the transitional rules will not depend on when the money is paid, but on what supply the grant is consideration for. The transitional timing rules discussed in question 7 of this part apply.

## Part 6 - Second hand goods

### Issue 1: How will second hand goods that are donated to a charity be treated under GST?

Non-interpretative – straight application of the law

#### ***Principle***

The donated second-hand goods rules provide that a supply of second hand goods is GST-free if:

- the organisation that is supplying the second hand goods is an endorsed charity, a gift-deductible entity (GDE) or a government school, and
- the goods were a gift to the organisation or were supplied by another GDE, endorsed charity or government school to which the goods were also donated.

However, the supply is not GST-free if the endorsed charity, GDE or government school has dealt with the goods in such a way that the goods no longer have their original character.

## Specific questions and answers

### **Question 1. What is the definition of a second hand good?**

Non-interpretative – straight application of the law

A second hand good is a good that has been used previously. However, a second-hand good also includes a new good that has been bought by an individual or organisation with the intention of donating it to an endorsed charity, GDE or government school. However, if the new good was originally bought for the purposes of manufacture, sale or exchange, it will not be considered as a second hand good for GST purposes.

### **Question 2. In practice, opportunity shops supplement their supplies from outside sources. At the point of sale, it will not be known which goods were donated second hand goods and which came from outside sources.**

Non-interpretative – straight application of the law

An endorsed charity must be able to distinguish its donated second hand goods from other goods in order to ensure that the donated second hand goods are supplied to its customers GST-free. The ATO recommends that a charity records whether a good is a donated second hand good at the time it is received.

### **Question 3. Where donated second hand goods are received by an endorsed charity, GDE or government school and sold without changing their character, the sale will be GST-free. What approach should an endorsed charity employ in distinguishing between 'new' and 'second hand' goods received as donations in collection bins?**

Non-interpretative – straight application of the law

Where donated goods are received by an endorsed charity in collection bins, the Commissioner will accept that all goods received in this manner are second hand, unless the charity has information to the contrary. For example, if a clothing manufacturer has advised the charity that it will be depositing 500 new shirts in their charity bin, and these shirts are identifiable because of their labelling, packaging etc., they would not be considered second hand goods. Where however an isolated shirt appears in a collection bin with labels attached and in its original packaging, this will still be considered second hand.

### **Question 4. Does the same rationale apply to donations of second hand goods made direct to the endorsed charity's premises?**

Non-interpretative – straight application of the law

Yes – unless the charity has information to the contrary, the donated goods would be considered second hand.

### **Question 5. Where an endorsed charity receives donated second hand clothing, removes the buttons and/or lace, and sells them, do the buttons and lace retain their original character?**

The content for this issue is a public ruling for the purposes of the <i>Taxation Administration Act 1953</i> and can be found <a href="#">here</a> .
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## **Part 7 - Reimbursements, volunteers and payments to contractors**

### **Issue 1: Organisations depend upon volunteers to maintain services. How are volunteers and organisations largely staffed by volunteers affected by the GST?**

Non-interpretative – straight application of the law

#### ***Principle***

Reimbursements to an organisation's employees, agents, partners and officers are not creditable acquisitions under Division 11 of the *A New Tax System (Goods and Services Tax) Act 1999* (the 'Act'), unless the relevant person is acting as an agent in making the acquisition. The organisation would therefore not be entitled to an input tax credit for such reimbursements. In some situations the organisation may reimburse the expenses of a person that were not incurred by the person whilst acting as an agent.

For example, if the person acting as agent acquires something for the organisation, that acquisition is effectively made by the organisation, and could therefore be a creditable acquisition. However, if the person, on his or her own behalf, incurs, for example, petrol expenses, in making that acquisition, and the organisation reimburses him or her for those expenses, the organisation has not made an acquisition. The organisation would therefore not be entitled to an input tax credit in relation to such a reimbursement.

Division 111 of the Act covers an organisation's entitlement to claim input tax credits where it reimburses an employee, agent, officer, partner or volunteer for expenses they incur in connection with carrying on the organisation's enterprise.

#### **Charitable institutions**

Where a GST registered endorsed charity, a gift-deductible entity (GDE) or a government school reimburses an individual for an expense he or she incurs that is directly related to their activities as a volunteer of that organisation, the organisation will be entitled to claim the input tax credits on these acquisitions.

To enable the organisation to claim the input tax credit, the volunteer will need to provide the organisation with the tax invoice for the acquisition they have made.

#### **Organisations that are not charitable institutions**

Where volunteers of organisations that are not endorsed charities, gift-deductible entities or government schools are reimbursed for expenses they incur in carrying out their activities as volunteers, the organisation will have no entitlement to claim the input tax credits. This will affect organisations such as sporting clubs and other non-profit organisations.

A non-profit organisation is entitled to an input tax credit where it makes a creditable acquisition. For example, an organisation may make a creditable acquisition where it purchases uniforms and provides the uniforms to its volunteers. However, the non-profit organisation would not be entitled to an input tax credit where it reimbursed the volunteer for cost of the uniform.

Note that if the organisation acquires something through an agent who was acting on its behalf in making the acquisition, the organisation is making that acquisition. The consideration an organisation pays through the agent for that acquisition is covered by the general rules about creditable acquisitions, not by Division 111.

For more general information on GST and volunteers please refer to the fact sheet [Volunteers and tax](#) (NAT 4612).

### **When can you claim the input tax credit?**

If you are an employer and are registered for GST, you can claim an input tax credit for reimbursed employee expenses if:

- Your employee incurred the expense in activities directly related to their employment or the reimbursement constitutes an expense payment benefit for FBT purposes.
- GST was payable when the employee incurred the expense.
- The employee is not entitled to an input tax credit for the expense you are reimbursing.
- The expense is not listed as a non-deductible expense.

### **What is a reimbursement?**

You can claim the input tax credit where you reimburse an employee but not where you pay an employee an allowance.

You make a reimbursement when you compensate an employee an exact amount for a specific purpose. If you reimburse an employee for a proportion of a purchase it may also be considered a reimbursement.

You can reimburse an employee for an expense they have incurred but not yet paid for. For example, you may reimburse an employee for a credit card purchase before they have paid their bill.

If you provide an employee with money for expenses they have not yet incurred, and the employee has to repay you any amount they do not use, you are considered to be reimbursing the employee.

### **Which reimbursements can you claim for?**

You are only entitled to an input tax credit where you reimburse an employee for an expense that is directly related to their duties as an employee or the reimbursement constitutes an expense payment benefit for FBT purposes.

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#### **Example**

*Helen employs Lee in her small software consultancy in Melbourne. She asks Lee to attend a business conference in Brisbane.*

*Helen tells Lee that she will cover his expenses up to a maximum of \$500. He will have to provide tax invoices for expenses of \$82.50 or more, and receipts for expenses of less than \$82.50.*

*Helen gives Lee \$500 in advance. When Lee returns from the conference he provides tax invoices for \$350 and repays Helen \$150. (All Lee's receipts were in the form of tax invoices.)*

*Helen has reimbursed Lee's expenses, so she is entitled to claim an input tax credit for any GST included in the price of the goods and services he paid for.*

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## What is an allowance?

If you pay an employee an amount to cover an estimated expense, and the employee does not have to repay any amount they do not spend, you are generally paying an allowance.

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### **Example**

*Helen asks Lee to go to Brisbane to attend another conference. This time she pays him a travel allowance of \$450.*

*Helen does not ask Lee to keep any receipts, but when he returns he gives her tax invoices for \$350. He does not have to repay any of the \$450 that he did not spend.*

*Helen has not reimbursed Lee's expenses. She has paid him an allowance. She is not entitled to an input tax credit for his expenses, regardless of the tax invoices she asked him to provide.*

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## What if an employee spends more than their allowance?

If the employee spends more than their allowance they have been given, and the employer pays the employee the amount they have overspent, the whole payment is still considered an allowance. This applies even if the employee is required to account for the extra expenditure with receipts or tax invoices.

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### **Example**

*Helen asks her employee Linda to go to Sydney for a conference. She pays Linda a travel allowance of \$450. Linda will not need to repay any of the allowance that she does not spend but she will have to provide receipts for her expenses. Helen tells Linda that she will top up the allowance if she needs to spend more than \$450.*

*When she returns, Linda gives Helen tax invoices for \$550 and Helen pays her an additional \$100.*

*The whole \$550 (\$450 plus the additional \$100) is an allowance. Helen is not entitled to any input tax credit in relation to Linda's expenses.*

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## What about payment for notional expenses?

If you make a payment to an employee based on a notional (rather than actual) expenses, you are not making a reimbursement.

For example, if you make 'a cents per kilometre' payment to cover work-related use of an employee's private car, you are paying an allowance, not making a reimbursement. You are not entitled to claim an input tax credit.

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### **Example**

*Syd uses his car on a regular basis for work purposes. His employer, Mel, requires Syd to keep a record and pays him a monthly amount based on the engine size of Syd's car and the number of kilometres he travel for work purposes.*

*Mel is not making a reimbursement and is not entitled to an input tax credit.*

## Specific questions and answers

### **Question 1. Are there GST implications when a hospital supplies its volunteers with light meals?**

Non-interpretative – straight application of the law

Where the supply of a light meal is not directly linked to the provision of the volunteer labour, namely there is no pre existing agreement or understanding that the volunteer will receive a meal in return for their labour the supply of the meal would not be subject to GST as there is no consideration for the supply. However, where a light meal is supplied as part of an agreement or understanding the hospital has with its volunteers it is a supply for consideration in that the volunteer provides labour which is in part consideration for the meal.

For more information on the provision of food to volunteers and the application of GST please refer to the fact sheet: [Volunteers and tax](#) (NAT 4612).

### **Question 2. Is GST payable on uniforms if:**

- the charity buys the uniform?
- the charity asks the recipient to make a contribution towards the cost of making the uniform that is less than 50% of the market value?
- the charity sells the uniform to the recipient?

Non-interpretative – straight application of the law

If a registered supplier makes a taxable supply of uniforms to a charity, then the price must include GST. The charity (if registered) is entitled to a credit for the GST included in the price if it buys the uniforms in carrying on its enterprise.

Where a recipient makes a contribution which is less than 50% of the GST inclusive market value of the uniform, the supply of the uniform by the charity is GST-free.

If a registered charity sells the uniform to the recipient for a price that is both 50% or more of the market value of the uniform and 75% or more of the consideration it provided in acquiring the uniform, the price to the recipient must include GST.

### **Question 3. Will the expenses which organisations incur to support their volunteer workforce be treated as legitimate input tax credits?**

Non-interpretative – straight application of the law

If charities are registered and they pay GST on acquisitions to support their volunteer workforce they will be entitled to input tax credits on those acquisitions.

### **Question 4. There will be an increase in 'out of pocket' expenses for volunteers. As volunteers are not 'entities' they cannot claim input tax credits. How will this be treated?**

Non-interpretative – straight application of the law

Subsection 111-18 has been added to the legislation to enable a charity to claim input tax credits for reimbursements to volunteers of expenses. These expenses must be directly related to the activities of the charity.

**Question 5. Are payments made by way of honorariums, such as guest speakers, be subject to GST?**

Non-interpretative – straight application of the law

Payments made to a guest speaker who is registered will be subject to GST where the activities are made in respect of the speaker's enterprise.

**Question 6. Will GST apply to contractors who are employed by a charitable or not-for-profit organisation? If so, would it therefore be better for organisations to hire on a permanent basis?**

Non-interpretative – straight application of the law

Contractor services are subject to GST and the entity is entitled to input tax credits. Organisations will need to consider whether to employ or use contractors, based on their own circumstances, the services required and balancing these with the costs associated with maintaining employees.

**Question 7. Do psychologists and social workers in government funded services have the same status as private professionals?**

Non-interpretative – straight application of the law

Where the psychology and social work is provided by a recognised professional and is recognised as being necessary as appropriate treatment then the supply would be GST-free. The supply of psychology and social work services are specifically covered by section 38-10.

**Question 8. Is a charity (or other non-profit body) required to deduct the 46.5% withholding tax from payments made to volunteers to reimburse them for their expenses (such as petrol money)?**

Non-interpretative

For information on volunteers and withholding tax refer to the fact sheet [Volunteers and tax](#) (NAT 4612).



## Part 8 - Motor vehicles and real property

**Issue 1: Charities were exempt from wholesale sales tax and with the introduction of the GST what impact will this have on charities selling cars? Is there any impact on charities in selling or purchasing property?**

Non-interpretative – straight application of the law

Wholesale sales tax was repealed in Australia upon the introduction on 1 July 2000 of the Goods and services tax. This section, Part 8, formerly stated:

### ***Principle***

Entities that are registered for GST and are currently exempt from sales tax on the purchase of motor vehicles will be able to claim full input tax credits from the 1 July 2000. The normal transition arrangements where input tax credits are phased in do not apply to entities that are currently sales tax exempt for motor vehicles.

The sale of real property when it is residential premises that is used predominantly for residential accommodation is input taxed under subsection 40-65(1). However the sale of commercial residential premises or new residential premises is a taxable supply under subsection 40-65(2).

## Specific questions and answers

Non-interpretative – straight application of the law

**Question 1. What happens where a school or a charity sells a motor vehicle two years after purchasing it for less than 75% of the consideration the supplier provided (the original price) – will it be GST free despite the fact that the selling price may not be less than 50% of the market value for a similar second hand vehicle?**

Assuming the school or charity supply the vehicle for less than 75% of the cost of acquiring the vehicle, the supply will be GST-free under section 38-250 of the GST Act. This is the case irrespective of whether the sale price is greater than 50% of the market value for a similar second hand vehicle.

Where the vehicle is sold to an employee, the GST consequences may differ. The sale of a vehicle to an employee at a discount to the market value would constitute the provision of a fringe benefit. Where a supply is subject to GST, the amount of GST payable is generally 1/11 of the price. The price of a taxable supply that is a fringe benefit is specifically defined. This amount corresponds to:

- the recipients payment (where the benefit is a car fringe benefit), or
- the recipients contribution (for any other benefit) that is made in a tax period.

But for this definition, the provision of goods or services by an employer to an employee or an associate of an employee would result in a GST liability regardless of the money and/or property contributed by the employee.

This is due to the broad definition of 'consideration' for GST purposes. This term will encompass services provided by an employee or some other service provider.

In determining the consideration for a supply of the car for the purposes of applying section 38-250 of the GST Act, consideration will include the services provided by an employee or any other service provider. Therefore, it will be rare for the supply of fringe benefits to employees or their associates to be GST-free under this provision.

[GSTR 2001/6](#) provides guidance on how non-monetary consideration should be valued. In most circumstances where the parties are dealing at arm's length, we are of the view that the goods, services or other things exchanged are of equal GST inclusive market value.

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### **Example**

*A charity buys a car for \$30,000. The charity subsequently transfers the car to an employee in return for a payment of \$15,000. The market value of the car at the time of transfer is \$24,000.*

*If the only consideration to be taken into account in applying the 'non-commercial' rules was the cash payment, the supply of the vehicle by the charity would be GST-free as the consideration received would be less than 75% of the original cost of the car.*

*The consideration, however, will include the services provided by the employee. The value of the services will equal the discount to the market value provided by the charity. The consideration for the supply will therefore be \$24,000 (\$15,000 + \$9,000) and the supply of the car by the charity will not be GST-free as the consideration is greater than both 75% of the original cost of acquiring the vehicle and 50% of the GST inclusive market value of the car.*

*Consequently, the charity is required to remit GST of \$1,364 (being 1/11 of \$15,000). The GST liability is calculated on the basis that the \$15,000 represents the recipient's contribution in respect of a property fringe benefit.*

**Question 2. Do company cars attract the full input tax credits regardless of any private use by employees of the company car? Does the organisation need to apportion any of the GST in the purchase of the car?**

Non-interpretative – straight application of the law

Where a company car is a creditable acquisition to the organisation then the organisation would be entitled to full input tax credits. Full input tax credits are available from 1 July 2000 where the organisation would have been entitled to an exemption from WST on the purchase of the vehicle, if it still applied.

There may be fringe benefit tax implications where employees use the company car for private use.

**Question 3. A charity sells a community hall. The hall has been used for both charitable activity and has also been hired out at commercial rates. How will the sale of the hall be affected by the introduction of the GST?**

Non-interpretative – straight application of the law

The sale of the hall will be subject to the normal rules, as it does not matter how the hall was used prior to its sale. A hall would be a supply and if it met all other tests then it would be treated as a taxable supply.

**Question 4. Will the sale of buildings owned by charities and organisations that use them for non-commercial GST-free activities be subject to GST? Is the sale of a gifted real property GST-free, regardless of changes made to that property or usage of that property?**

Non-interpretative – straight application of the law

The sale of buildings regardless of their prior use is generally a taxable supply. However, there are some exceptions to this principle.

If the premises are, or are intended to be used for residential accommodation, the sale will be input taxed, unless the sale constitutes the sale of new residential premises.

An example of a new residential sale would be a church that has been turned into a residence and is sold for the first time as a residence. In this instance, the sale would be taxable.

However, if the church had acquired a property as a residential property, any subsequent sale (provided it was still used for residential purposes) would be input taxed.

Sales of gifted real property will not be GST free. Such sales will be treated in the manner described above.

## Part 9 - Vouchers

**Issue: What is the effect where a charity provides vouchers for people in need or pays their bills directly?**

Non-interpretative – straight application of the law

### ***Principle***

In order for an entity to claim input tax credits it must have made a creditable acquisition. A creditable acquisition arises when the following are satisfied:

- there is an acquisition of a thing
- the thing is acquired by an entity that is registered for GST or required to be registered for GST
- there is consideration
- the supply was a taxable supply
- the acquisition of the thing was for a creditable purpose.

The ATO has issued ruling [GSTR 2006/4](#) on determining the extent of creditable purpose for claiming input tax credits and for making adjustments for changes in extent of creditable purpose.

### **What tests will be applied to 'input tax credits'?**

Entities making taxable or GST-free supplies will be able to claim input tax credits for any purchases that are creditable acquisitions which are made as part of their enterprise. Where the supplies are input taxed the entity is not entitled to input tax credits that relate to that supply.

If you are exempt from income tax, an acquisition that you make that would be a **non-deductible expense** under the Income Tax Assessment Acts is not a creditable acquisition, for example, entertainment, club and leisure facilities.

## Specific questions and answers

**Question 1. Vouchers are often provided for individuals and families who are in need of emergency assistance. Does the introduction of the GST mean that these vouchers will buy 10% less on some items? Is it better for the charity to purchase the items rather than give vouchers even though there will be an extra cost in areas such as storage, transport and administrative arrangements.**

Non-interpretative

The introduction of the GST may mean that a voucher will purchase less of some items. Many items will be cheaper after the GST has commenced. Charities will be able to claim input tax credits for the purchase of items as well as the costs associated with the storage, transport and administrative arrangements.

**Question 2. When a charity pays for electricity, phone bills and other things for people are they entitled to input tax credits for GST charged on the supplies?**

Non-interpretative – straight application of the law

When a charity pays a bill on behalf of a person in need, the charity is paying the account as a 'third party' and is not making an acquisition of anything. As the supply of the electricity or telephone service is made to the person and not to the charity, the charity is not entitled to an input tax credit.

Similarly, a charity is not entitled to an input tax credit where it purchases a voucher (with a stated money value) from a retailer and gives the voucher to someone for them to purchase goods or services. GST is not payable when the voucher is purchased and any taxable supply of goods or services on redemption of the voucher is made to the person using the voucher and not to the charity. If the charity gives the person cash as an alternative to a voucher any goods or services purchased by the person with the cash are also supplied to the person and not to the charity.

The case is different if a charity has an agreement with a retailer that **requires** the retailer to provide certain individuals with goods or services upon presentation by the individuals to the retailer of an appropriate authority from the charity. After provision of the goods (or services) to the individuals, the retailer sends the authority and the tax invoice to the charity for payment. Under the agreement the supply of the goods (or services) is made to the charity even though the agreement requires the goods (or services) to be provided to the individuals. As the charity makes an acquisition of the goods (or services) it will be entitled to an input tax credit for any GST payable on those goods (or services).

If the agreement between the charity and the retailer merely states that the charity will pay for some or all of the supply by the retailer to the individual, this is an example of a payment as a 'third party'. The charity would not make an acquisition of anything and would not be entitled to an input tax credit.

The issue of third party payments is covered in some detail in GST Ruling Supplies [GSTR 2006/9](#).

# Part 10 - Religious institutions and services

## Issue 1: What is a religious service?

Non-interpretative – straight application of the law

### *Principle*

A **supply of a religious service** is GST-free if it is a supply of a service that:

- is supplied by a Australian Charities and Not-for-profits Commission (ACNC) registered religious institution, and
- is integral to the practice of that religion.

The courts have determined that, for a body to be regarded as a **religious institution**:

- its objects and activities must reflect its character as a body instituted for the promotion of some religious object, and
- the beliefs and practices of the members of that body must constitute a religion.

The two most important factors for determining whether a particular set of beliefs and practices **constitute a religion** are:

- belief in a supernatural being, thing or principle, and
- acceptance of canons of conduct which give effect to that belief, but which do not offend against the ordinary laws.

Religious institution is not confined to the major religions.

Some examples of a religious service would include, worship, Sunday School, a wedding, funeral or baptism service, religious retreats, bible study groups etc.

The Vos report considered this issue and stated that 'where the services were purely religious and there is no commercial equivalent then it was appropriate for this to be GST-free'.

The following are examples of services that have a commercial equivalent and thus are not GST-free, provision of administrative and financial services, engagement of a minister of religion, the civil or secular elements of religious services etc. Civil or secular elements of a service would include, flowers, music, reimbursement of travel expenses, accommodation and food at a religious retreat, library loan or hire and items for private use in devotion.

Donations and offerings would not be subject to GST as the donation or offering is not payment in return for the supply of a good or a service.

## Specific questions and answers

### **Question 1. In what circumstances is the supply of the following religious services GST-free?**

- Spiritual retreats
- After school catechism
- Adult education in the faith

Non-interpretative – other reference (see [TR 92/17](#) Income tax and fringe benefits tax: exemptions for 'religious institutions')

Spiritual retreats, after school catechism and services with the purpose of religious devotion and instruction in the faith (for example bible studies and religious pre marital instruction) would be considered to be integral to the practice of that religion and would therefore be GST-free under section 38-220 if supplied by a religious institution.

Where these activities are not integral to the practice of a religion then they may still be GST-free where supplied by an endorsed charity or a gift deductible entity and for consideration (payment, act or forbearance) which is less than either 50% of the GST inclusive market value of that supply or 75% of the cost to the supplier of making the supply (section 38-250). Religious institutions are considered to be charitable under point three of the common law definition.

### **Question 2. To what extent will 'religious service' be applied where it occurs outside a place of worship? For example, would religious residential retreats be classified as GST-free?**

Non-interpretative – straight application of the law

If the residential retreat is considered integral to the practices of the religion and is supplied by a religious institution then it will be GST-free. It does not matter that those practices occur outside a place of worship.

### **Question 3. Does expenditure incurred have to be integral to the religious service to allow entitlement to an input tax credit? What supplies are considered to be integral to the provision of religious services like weddings and funerals and will therefore be GST-free?**

Non-interpretative – straight application of the law

Expenditure incurred does not have to be integral to the provision of a religious service to allow entitlement to an input tax credit. However the expense does have to be incurred in the course or furtherance of your enterprise, meeting the normal requirements for a creditable acquisition. Creditable acquisitions may include hymnbooks, candles, religious icons and flowers to decorate the church. Note: supplies of flowers or other goods by a religious institution will not be GST-free. Supplies of flowers etc are not supplies of 'religious services' integral to the practice or religion, they are supplies of goods.

**Question 4. Religious houses such as vicarages, monasteries and the like undertake a number of activities which are integral to the practice of that religion including the preparation of sermons, hosting bible study groups, meeting with confirmation candidates and new parishioners, etc. To what extent can these religious houses claim input tax credits? Would it be possible, for example, to allow GST credits to be claimed based on a percentage of total floor area which is considered to be used by clergy solely for the purposes of religious service related activities?**

Non-interpretative – straight application of the law

The supply of residential accommodation (other than commercial residential premises) is generally input taxed. This means that the supplier is not required to remit GST on the rent received, but is not entitled to input tax credits for the GST included in expenses incurred in providing the accommodation.

The supply of the accommodation is input taxed to the extent that it is used predominantly for residential accommodation. Therefore, if there are areas within these establishments which are devoted solely for these religious activities, a proportion of the input tax credits would be available. Apportionment of these input tax credits on a reasonable basis, such as floor area, would be appropriate.

Where the supplier of accommodation is an endorsed charity, a gift-deductible entity or a government school, the supply of accommodation may be GST-free under section 38-250 of the GST Act.

Where the supply of accommodation constitutes a fringe benefit (including exempt benefits), the consideration for the supply in determining whether it is GST-free under section 38-250 may include services provided by the employee. See question 7 in part 3 for further details on this issue.

**Question 5. How will the clergy be treated for PAYG purposes?**

Non-interpretative

From 1 July 2002, PAYG withholding has been extended to cover certain payments made to religious practitioners. For more information, refer to [Religious practitioners guide to PAYG withholding](#).

**Question 6. Will payments made for the accommodation and support of retired clergy within church owned aged care facilities be subject to GST?**

Non-interpretative – straight application of the law

The answer to this question depends on the type of accommodation and care provided, and the circumstances. Where the supply is made in the course of providing residential care (section 38-25), it would be GST-free. Where the accommodation is residential, it would generally be input taxed. Where the accommodation is supplied by an endorsed charitable institution for less than 75% of the market value, or less than 75% of the cost of supply, it will be GST-free (section 38-250).



**Question 7. How will GST apply for charities such as scripture unions and the like whose function it is to further the practice, study and teaching of religious beliefs and whose publications are sourced overseas but printed in Australia? These publications are either distributed as individual products or as annual subscriptions. Organisations also publish books and booklets printed in Australia and import books printed overseas for distribution in Australia and in the Pacific. How will GST apply when distribution occurs via churches and similar bodies?**

Non-interpretative – straight application of the law

Publications offered for sale by scripture unions and similar organisations will generally be considered taxable supplies. That is because the sale of the publications is considered to be a commercial activity. Therefore the normal GST rules will apply, that is:

- the organisation will pay GST on publications printed in Australia to the supplier, or to Customs in relation to books and other printed matter imported into Australia, and
- the organisation will be entitled to an input tax credit in relation to the creditable acquisition or importation provided that the organisation is registered for GST purposes.

If the scripture unions are endorsed charitable institutions (there is insufficient information to determine one way or the other) and sell the books for less than 50% of the GST inclusive market value, the supply would be GST-free. The market value could be determined from the cost of a similar publication in a bookshop. Alternatively the supply of the publications would be GST-free if sold for less than 75% of their cost of production.

The same principles would apply where the distribution is by churches or other charitable organisations registered for GST.

**Question 8. How would payments be treated under GST when made under maintenance contracts for the repair of sisters/nuns/convent or clergy houses?**

Non-interpretative – straight application of the law

If the contractor is registered, GST will be included on payments made under a maintenance contract. Where the supply of accommodation is input taxed, the religious organisation would not be entitled to claim the GST as an input tax credit. Where the supply of accommodation is GST-free under section 38-250, the input tax credits can be claimed.

If there are areas within these buildings that are used predominately for non-residential purposes such as meeting rooms or administration, a proportion of the input tax credits would be available. Apportionment of these input tax credits on a reasonable basis, such as floor area, would be appropriate. See question 7 in part 3 for more details on this issue.

**Question 9. Within diocesan operations activities are conducted that would possibly fall within the definition of financial supplies and as such would be Input Taxed. These activities occur to support parishes, clerics, parishioners and other Anglican entities. Activities include: Anglican Development Fund (equivalent to a small credit union), Investment funds management, Motor Vehicle loans for clerics, and Trust Management. Can guidelines be provided for what constitutes a financial supply and whether it is possible to use a proportional basis to determine what portion of GST paid is not eligible to be**

***claimed as credits? Are transactions internal to the diocese GST free, specifically relating to a financial supply and a non-financial supply activity?***

Non-interpretative – other reference (see [GSTR 2002/2](#) Goods and services tax: GST treatment of financial supplies and related supplies and acquisitions.)

The regulations list the categories of financial supplies that are to be input taxed.

It appears from the limited information supplied that the supplies mentioned in the above question would be considered financial supplies.

GST groups and GST religious groups are effectively treated as a single entity. Supplies and acquisitions made wholly within a GST group or a GST religious group are taken out of the GST system. Supplies and acquisitions that are made outside the GST group or GST religious group fall within the general rules. In determining the extent to which an acquisition or importation made by a member of a GST group or a GST religious group is for a creditable purpose, you look at the creditable purpose of the group as a whole.

In principle, where a supply is made by an endorsed charitable institution and is for consideration less than 50% of the market value or 75% of the 'cost of supply' it would be GST free and the charity would be entitled to full input tax credits for all its acquisitions that relate to that supply. However, in practice the 'non-commercial rule' for charities may not be easily applied to financial supplies because the predominant reason financial supplies are input taxed is that there is no readily agreed identifiable value for supplies consumed by customers of financial services.

You can be entitled to input tax credits for acquisitions relating to financial supplies (even though financial supplies are input taxed) provided you do not exceed the financial acquisitions threshold. You exceed the financial acquisitions threshold if either, or both of the following apply:

the amount of all the input tax credits to which you would be entitled to for those acquisitions is more than \$150,000;

the amount of the input tax credits for the financial acquisitions would be more than 10% of the total amount of input tax credits to which the entity would be entitled.

## Part 11 - Aged care

### Issue 1: When is a supply of residential care services GST-free?

Non-interpretative – straight application of the law

#### *Principle*

[Section 38-25](#) provides for the supply of residential care services to be GST-free.

## Specific questions and answers

The following questions explore what is within the concept of 'residential care' for the purposes of section 38-25. None of the questions and answers should be read in isolation, but rather as part of the whole of the information contained in this document.

### Care services supplied as part of residential care

#### **Question 1. Are supplies of residential care services to aged or disabled people in the following situations GST-free?**

Non-interpretative – straight application of the law

*(a) By a government funded supplier:*

The supply of residential care services to an aged or disabled person by a government funded supplier is GST-free where the requirements of subsection 38-25(1) or (2) are met.

Subsection 38-25(1) provides that the supply of services covered by Schedule 1 to the quality of care principles is GST-free if it is provided through a residential care service (within the meaning of the *Aged Care Act 1997*) and the supplier is an approved provider (within the meaning of that Act). This will generally be the case where the supplier receives a residential care subsidy under Part 3-1 of the *Aged Care Act 1997* for the supply of the services.

Subsection 38-25(2) provides that the supply of services which are covered by Schedule 1 to the quality of care principles to an aged or disabled person is GST-free where the supplier receives funding from the Commonwealth, a State or a Territory in connection with that supply.

*(b) By a non-government funded supplier:*

The supply of residential care services to an aged or disabled person by a non-government funded supplier is GST-free under subsection 38-25(3) where:

- the services are supplied in a residential setting,
- the Aged Care Minister has determined in writing that the services are of a kind covered by Schedule 1 to the Quality of Care Principles, and
- the services include, and are only provided to people who require, the services set out in
  - item 2.1 (daily living activities assistance) of part 2 of that Schedule (Item 2.1), or
  - item 3.8 (nursing services) of part 3 of that Schedule ([Item 3.8](#)).

Note: Some supplies of disability supports by a non-government funded supplier to disabled persons who are participants in the National Disability Insurance Scheme may be GST-free under section 38-38. For more information on section 38-38, see [Issue 2 in Part 12](#) below.

*GST-free Supply (Residential Care – Non-Government-Funded Supplier)*

*Determination 2000* has been made by the Aged Care Minister for paragraph 38-25(3)(b) purposes. This determination duplicates the services listed in Schedule 1 of the Quality of Care Principles and provides that these services are of a kind covered by Schedule 1 to the Quality of Care Principles if supplied in the circumstances mentioned in the determination.

The circumstances determined by the Aged Care Minister are:

- the resident has a continuing need for the services mentioned in Item 2.1 or Item 3.8, and
- the services are supplied, under a written agreement with the supplier, as a package made up of
  - the services mentioned in Item 2.1 or Item 3.8,
  - other services mentioned in Schedule 1 to the Quality of Care Principles that are needed by the resident, and
  - accommodation, and
- the charges for services and for accommodation are payable to the same entity.

For a detailed discussion of subsection 38-25(3), refer to [GSTR 2012/3](#) Goods and services tax: GST treatment of care services and accommodation in retirement villages and privately funded nursing homes and hostels

### **Meals supplied as part of residential care**

#### ***Question 2. Are supplies of meals to aged or disabled people in the following situations GST-free?***

Non-interpretative – straight application of the law

*(a) By a government funded supplier:*

The supply of meals, including those provided as part of a special diet, to an aged or disabled person by a government funded supplier is GST-free where the requirements of subsection 38-25(1) or (2) are met.

Under subsection 38-25(1), the supply of meals is GST-free if it is provided through a residential care service (within the meaning of the *Aged Care Act 1997*) and the supplier is an approved provider (within the meaning of that Act). This will generally be the case where the supplier receives a residential care subsidy under Part 3-1 of the *Aged Care Act 1997* for the supply of the meals.

Similarly, under subsection 38-25(2), the supply of meals to an aged or disabled person is GST-free where the supplier receives funding from the Commonwealth, a State or a Territory in connection with that supply.

*(b) By a non-government funded supplier:*

The supply of meals, including those provided as part of a special diet, to an aged or disabled person by a non-government funded supplier is GST-free under subsection 38-25(3) where:

- the meals are supplied in a residential setting
- the Aged Care Minister has determined in writing that the services are of a kind covered by Schedule 1 to the Quality of Care Principles, and
- the aged or disabled person requires and is also provided with, the services set out in:
  - item 2.1 (daily living activities assistance) of Part 2 of that Schedule ([Item 2.1](#)), or
  - item 3.8 (nursing services) of Part 3 of that Schedule ([Item 3.8](#)).

- Note: Some supplies of meals by a non-government funded supplier to disabled persons who are participants in the National Disability Insurance Scheme may be GST-free under section 38-38. For more information on section 38-38, see Issue 2 in Part 12 below.

*GST-free Supply (Residential Care – Non-Government-Funded Supplier)*

*Determination 2000* has been made by the Aged Care Minister for paragraph 38-25(3)(b) purposes. This determination duplicates exactly the services listed in Schedule 1 of the quality of care principles and provides that these services are of a kind covered by Schedule 1 to the quality of care principles if supplied in the circumstances mentioned in the determination. Meals are listed in Schedule 1 of the Quality of Care Principles.

The circumstances determined by the Aged Care Minister are:

- the resident has a continuing need for the services mentioned in Item 2.1 or Item 3.8, and
- the services are supplied, under a written agreement with the supplier, as a package made up of
  - the services mentioned in Item 2.1 or Item 3.8
  - other services mentioned in Schedule 1 to the Quality of Care Principles that are needed by the resident, and
  - accommodation, and
- the charges for services and for accommodation are payable to the same entity.

For a detailed discussion of subsection 38-25(3), refer to [GSTR 2012/3](#) Goods and services tax: GST treatment of care services and accommodation in retirement villages and privately funded nursing homes and hostels.

## **Respite care supplied as part of residential care**

### ***Question 3. Are supplies of respite care services to aged or disabled people in the following situations GST-free?***

Non-interpretative – straight application of the law.

*(a) By a government funded supplier:*

For the purposes of the GST Act, 'residential care' includes respite care. Accordingly, the supply of services made under a respite care arrangement is GST-free where the requirements of subsection 38-25(1) or (2) are satisfied.

For an explanation of the supply of services that is GST-free under subsection 38-25(1) or (2), refer to [question 1\(a\)](#) under the heading 'Care services supplied as part of Residential Care'.

*(b) By a non-government funded supplier:*

For the purposes of the GST Act, 'residential care' includes respite care. Accordingly, the supply of services made under a respite care arrangement is GST-free where the requirements of subsection 38-25(3) are satisfied.

For an explanation of the supply of services that is GST-free under subsection 38-25(3), refer to [question 1\(b\)](#) under the heading 'Care services supplied as part of Residential Care'.

## **Extra services supplied as part of residential care**

### ***Question 4. Are supplies of services covered by an extra services fee within the meaning of Division 35 of the Aged Care Act 1997 GST-free?***

Non-interpretative – straight application of the law

Under subsection 38-25(5) the supply of services covered by an extra services fee, within the meaning of Division 35 of the *Aged Care Act 1997*, are GST-free to the extent that the services are covered by Schedule 1 to the Quality of Care Principles.

## **Independent living units**

### ***Question 5. Are supplies of residential care services and accommodation to aged or disabled people in independent living units GST-free?***

Non-interpretative – straight application of the law

Generally, independent living units are non-government funded premises for residents who are able to care for themselves, but who can also choose to contract for services such as meals, cleaning and laundry. As we are not dealing with the government funded sector, the residential care provisions that need to be considered are subsections 38-25(3) and (4).

For a supply of care services to be GST-free under subsection 38-25(3), one of the requirements is that the services be provided to aged or disabled people in a 'residential setting'. Subsection 38-25(3A) provides that services provided to a resident of a retirement village are taken to be provided in a residential setting if:

- a. the resident is a resident of a serviced apartment in the retirement village, and
- b. there is a written agreement whereby the operator of the retirement village provides daily meals and heavy laundry services to all of the residents of the apartment.

However, services are not taken to be provided in a residential setting if the Aged Care Minister has made a determination specifying the levels of care services that residents must require and the Aged Care Secretary has not made an assessment of the resident that the resident requires that level of care services.

Further, for the supply of accommodation to be GST-free under subsection 38-25(4), it must be made to a person in the course of making a supply to that person that is GST-free under subsection 38-25(3).

If the supply of the care services do not satisfy the GST-free requirements under subsection 38-25(3), the supply of the accommodation cannot be GST-free under subsection 38-25(4).

Where a supply of care services and accommodation is not GST-free under subsections 38-25(3) and (4), the supply of the:

- services will need to be considered under subsection 38-30(3), and
- accommodation will need to be considered under sections 38-250 and 40-35.

In addition, some supplies of disability supports to disabled persons who are participants in the National Disability Insurance Scheme may be GST-free under section 38-38. For more information on section 38-38, see [Issue 2 in Part 12](#) below.

For further explanation of subsections 38-25(3) and (4), refer to [GSTR 2012/3](#) Goods and services tax: GST treatment of care services and accommodation in retirement villages and privately funded nursing homes and hostels.

## **Issue 2: When is a supply of home care services GST-free?**

### ***Principle***

[Section 38-30](#) provides for the supply of home care services to be GST-free.



## Specific questions and answers

The following questions explore what is within the concept of 'home care' for the purposes of section 38-30. None of the questions and answers should be read in isolation, but rather as part of the whole of the information contained in this document.

### Care services supplied as part of home care

(Note: Effective from 1 August 2013, subsections 38-30(1) and 38-30(3) of the GST Act were amended by *Aged Care (Living Longer Living Better) Act 2013* to substitute the term 'home care' for the term 'community care'.)

#### **Question 1. Are supplies of home care services to aged or disabled people GST-free in the following situations?**

Non-interpretative – straight application of the law

##### *(a) By a government funded supplier:*

The supply of care services to an aged or disabled person by a government funded supplier is GST-free where the requirements of subsection 38-30(1), (2) or (4) are met.

Subsection 38-30(1) provides that care services are GST-free where a home care subsidy is payable under Part 3-2 of the *Aged Care Act 1997* to the supplier.

Subsection 38-30(2) provides that care services are GST-free where the supplier receives funding under the *Home and Community Care Act 1985* in connection with that supply.

Under subsection 38-30(4) the supply of care services is GST-free where:

- the supplier receives funding from the Commonwealth, a state or a territory in connection with that supply
- the services are provided to a frail, older person or a younger person who
  - has a moderate, severe or profound disability (including addiction to a drug)
  - lives at home
  - would, in the absence of services of the kind mentioned in Schedule 1, be at risk of prematurely or inappropriately needing
    - long term care in a hospital or other institution, or
    - residential care within the meaning of the *Aged Care Act 1997*, and
- the care is of a kind mentioned in [Schedule 1 to GST-free Supply \(Care\) Determination 2000](#).

##### *(b) By a non-government funded supplier:*

The supply of home care services to an aged or disabled person, by a non-government funded supplier, is GST-free under subsection 38-30(3) to the extent that the services are of a kind covered by item 2.1 of Part 2 of Schedule 1 to the Quality of Care Principles (Item 2.1).

Services that are **not** covered by Item 2.1 include:

- assistance with housework
- assistance with gardening

- meal preparation services
- grocery shopping for individuals
- monitoring medication
- rehabilitation services
- assistance with writing cheques, letters, etc
- advocacy services
- provision of social and community activities, such as providing companionship, craft and reading activities to individuals, and
- driving individuals to and from appointments.

Where a non-government funded supplier provides a package of care services consisting of some Item 2.1 services and other services, the supply may be a mixed supply comprising a separately identifiable part that is the supply of home care (GST-free) and a part that is taxable.

If the supply is a mixed supply, the supplier will need to apportion the consideration between the component that is taxable and the component that is GST-free. Goods and Services Tax Ruling [GSTR 2001/8](#) 'apportioning consideration for a supply that includes taxable and non-taxable parts' explains a mixed supply and how to apportion the consideration between the GST-free and taxable parts of such a supply.

Note: Some supplies of supports by a non-government funded supplier to disabled persons who are participants in the National Disability Insurance Scheme may be GST-free under section 38-38. For more information on section 38-38, see [Issue 2 in Part 12](#) below.

### **Meals supplied as part of home care**

(Note: Effective from 1 August 2013, subsections 38-30(1) and 38-30(3) of the GST Act were amended by *Aged Care (Living Longer Living Better) Act 2013* to substitute the term 'home care' for the term 'community care'.)

### ***Question 2. Are supplies of meals as part of home care to aged or disabled people in the following situations GST-free?***

Non-interpretative – straight application of the law

#### ***(a) By a government funded supplier:***

The supply of meals to an aged or disabled person by a government funded supplier is GST-free where the requirements of subsection 38-30(1), (2) or (4) are met.

Subsection 38-30(1) provides that the supply of meals as part of the supply of home care is GST-free where a home care subsidy is payable under Part 3-2 of the *Aged Care Act 1997* to the supplier.

Subsection 38-30(2) provides that the supply of meals as part of the supply of home care is GST-free where the supplier receives funding under the *Home and Community Care Act 1985* in connection with that supply.

Under subsection 38-30(4) the supply of meals is GST-free where the supplier receives funding from the Commonwealth, a state or a territory in connection with the supply and it is made to a frail, older person or a younger person who:

- has a moderate, severe or profound disability (including addiction to a drug)

- lives at home, and
- would, in the absence of services of the kind mentioned in Schedule 1, be at risk of prematurely or inappropriately needing
  - long term care in a hospital or other institution, or
  - residential care within the meaning of the *Aged Care Act 1997*.

*(b) By a non-government funded supplier:*

No, supplies of meals by a non-government funded supplier are not GST-free under section 38-30. This is because meals are not covered by Item 2.1.

### **Respite care as part of home care**

(Note: Effective from 1 August 2013, subsections 38-30(1) and 38-30(3) of the GST Act were amended by *Aged Care (Living Longer Living Better) Act 2013* to substitute the term 'home care' for the term 'community care'.)

### **Question 3. Are supplies of respite care services to aged or disabled people in the following situations GST-free?**

Non-interpretative – straight application of the law

*(a) By a government funded supplier:*

Home care includes respite care. Accordingly, home care services supplied under a respite care arrangement are GST-free where the requirements of subsections 38-30(1), (2) and (4) are satisfied.

For an explanation of the services that are GST-free under subsection 38-30(1), (2) or (4), refer to [question 1\(a\)](#) under the heading 'Care services supplied as part of home care'.

*(b) By a non-government funded supplier:*

Home care includes respite care. Accordingly, home care services supplied under a respite care arrangement are GST-free where the requirements of subsection 38-30(3) are satisfied.

For an explanation of the services that are GST-free under subsection 38-30(3), refer to [question 1\(b\)](#) under the heading 'Care services supplied as part of Home Care'.

## **Part 12 - Disability services**

**Issue 1: How will the provision of specialist disability services by a government funded supplier be affected by GST?**

### ***Principle***

Section 38-40 provides that all services for which the supplier receives funding under the *Disability Services Act 1986*, or under a complementary state or territory law, will be GST-free.

## Specific questions and answers

**Question 1. Many disability services are specifically funded under a 'business model', where the government funds extra support staff to assist people with disabilities, but the organisation is responsible for running a business. How will this be treated?**

Non-interpretative – straight application of the law

If the disability service business produces commercial supplies then those supplies will be subject to GST and the entity will be able to claim input tax credits on any creditable acquisitions acquired to make the supply.

**Question 2. What will be the treatment of organisations with both 'commercial' and 'non-commercial' roles? The products produced from sheltered workshops will attract GST yet the employment assistance component will be GST-free. How will this be done?**

Non-interpretative – straight application of the law

Grants are consideration for supply and they will be subject to GST. The entity receiving the grant will need to remit 1/11 of the amount to the ATO. The entity that provides the grant will pay the GST inclusive price and will be entitled to an input tax credit.

**Question 3. Will disability organisations which produce goods for which there is not a traditional market be considered commercial and therefore be subject to GST? Braille books are a good example of this.**

Non-interpretative – straight application of the law

The grant from the government to the disability service business will be subject to GST, whereas the salary and wages paid by the disability service to its employees is not subject to GST. The government will be able to claim an input tax credit for 1/11 of the grant paid to the disability service business. Business enterprises that are registered for GST will be able to claim full input tax credits for creditable acquisitions that relate to taxable and GST-free supplies.

Braille books are a GST-free medical aid.

**Question 4. Is the treatment with respect to GST different for disability services that have different funding arrangements such as HACC or variations between the states?**

Non-interpretative – straight application of the law

Grants to the disability services will be subject to GST. The reason is that the government is purchasing a service from the organisation. The government will be able to claim an input tax credit for 1/11 of the grant paid to the disability service. Disability services that are registered for GST will be able to claim full input tax credits for creditable acquisitions that relate to taxable and GST-free supplies.

**Question 5. A supported service organisation undertakes two retail types of operations of which one is funded by a Commonwealth grant? Is there any difference in the GST treatment of these operations since one is supported by government funding?**

Non-interpretative – straight application of the law

Both types of retail operations will be considered commercial and therefore subject to GST where the normal rules apply.

**Question 6. How will cars for disabled people be treated during the transitional period for GST implementation?**

Non-interpretative – straight application of the law

The following table summarises the treatment of cars supplied to disabled persons and assumes that the person receiving the car meets the requirements in sections 38-505 and 38-510.

Purchase of car on or after 1 July 2000 (includes purchase under a hire purchase agreement)	GST-free if person intends to use car during all of the Subdivision 38-P period.
Lease of car on or after 1 July 2000	All lease payments GST-free if person intends to use car during all of the Subdivision 38-P period, ie the earlier of, a minimum two year lease or until the car has travelled 40,000 km.  Lessor can claim input tax credit for purchase of car, as paragraph (4)(c) of section 20 of the <i>A New Tax System (Goods and Services Transition) Act 1999</i> (the Transition Act) applies.
Payment of residual	GST-free if lease was GST-free.
Lease of car before 1 July 2000	Lease payments on or after 1 July 2000 GST-free if lease was exempt from sales tax.
Payment of residual	GST-free if lease was exempt from sales tax.

It is accepted that the supply of a car by means of a lease is the 'supply of a car' for the purposes of sections 38-505 and 38-510.

A lease is a single supply, notwithstanding the fact that Division 156 treats a lease as a progressive or periodic supply for the purposes of the attribution rules.

It is the intention of the provisions that the supply of a car be GST-free if it is intended that the car be used during all of the Subdivision 38-P period, counting from the first supply. Therefore, at the time of the payment of the residual there is no requirement that the car be intended to be used during all of the Subdivision 38-P period, starting from the payment of the residual.

For more information about cars for people with disabilities, refer to the web guidance, Tax concessions - cars available at [ato.gov.au](http://ato.gov.au)

**Question 7. Cars for the disabled – will they be GST-free on purchase or will a refund be granted?**

Non-interpretative – straight application of the law

The legislation provides that a supply of a vehicle to certain disabled persons will be GST-free. On this basis GST should not be charged and then refunded.

If the person with a disability does not have a declaration for exemption before purchasing the car or car parts, the supplier may charge GST. The purchaser may be able to obtain a refund of the GST from the supplier after the purchase but it is simpler if the declaration is provided before the purchase. Under the GST law, the ATO is unable to provide the purchaser with a direct refund of the GST paid on a car or car parts.

**Question 8. What happens where a charity (disability service) gives a family money to purchase care from a provider of their choice? How do they account for this and what can the family spend their money on?**

Non-interpretative – straight application of the law

The charity is not providing the care directly and is therefore not making a supply to the recipient of the care. When providing the money directly to the family they are in effect providing a grant of assistance to the family. The family would generally not be registered for GST and therefore the supply would not be subject to GST. When the family uses the funds to acquire care services those services will be GST-free if they fall within sections:

- 38-7 (medical services)
- 38-10 (other health services)
- 38-15 other government funded health services)
- 38-20 (hospital treatment)
- 38-25 (residential care etc)
- 38-30 (home care), or
- 38-35 (flexible care).

If the care does not fall within these sections the recipient will be charged GST on the provision of the service. The charity can choose to pay the family the full amount (inclusive of GST) but they will not be entitled to an input tax credit for any GST amounts because the supply of the assistance to the family is not a taxable supply.

**Question 9. Will computers used by disabled people be GST-free?**

Non-interpretative – straight application of the law

A supply of a medical aid or appliance is GST-free if it is specified in Schedule 3 of the GST Act or is specified in the regulations. Further, to be GST-free, the specified item must also be specifically designed for people with an illness or a disability, and is not widely used by people without an illness or disability.

Therefore, ordinary computers will not be GST-free as they are widely used by people without an illness or disability.

However, certain hardware and software that is specifically designed for people with disabilities is GST free, including:

- printers and scanners specifically designed for the disabled
- alternative keyboards
- computer modifications required for the disabled,
- enlarged text computer monitors for the visually impaired.

## **Issue 2: How will the provision of disability supports to participants under the National Disability Insurance Scheme be affected by GST?**

Non-interpretative – straight application of the law

### ***Principle***

Section 38-38 of the GST Act provides that certain supplies of disability supports to participants of the National Disability Insurance Scheme (NDIS) are GST-free.

A supply to a participant of the NDIS is GST-free under section 38-38 of the GST Act if the supply:

- (a) is a supply to a participant for whom a participant's plan is in effect under section 37 of the *National Disability Insurance Scheme Act 2013*; and
- (b) is a supply of one or more of the reasonable and necessary supports specified in the statement of supports in the participant's plan; and
- (c) is made under a written agreement, between the supplier and the participant (or another person) that:
  - (i) identifies the participant; and
  - (ii) states that the supply is of one or more of the reasonable and necessary supports specified in the statement of supports in the NDIS plan; and
- (d) is of a kind determined in a legislative instrument by the Minister responsible for Disability Services.

For more information about the application of section 38-38 of the GST Act, refer to [GST and the National Disability Insurance Scheme](#).



## Part 13 - Education, education materials, training and childcare

### Issue 1: What affect will the introduction of GST have upon supplies of education, training and childcare?

Non-interpretative – straight application of the law

#### *Principle*

Division 38 in the GST Act sets out the supplies that are GST-free. If a supply is GST-free then:

- no GST is payable on the supply, and
- an entitlement to an input tax credit for anything acquired or imported to make the supply is not affected.

The supply of an education course is a GST-free supply. The ATO has issued Goods and Services Tax Ruling [GSTR 2000/30](#) on pre-school, primary and secondary education courses and Goods and Services Tax Ruling [GSTR 2001/1](#) on tertiary education courses. Also, a final ruling, [GSTR 2000/27](#), on the meaning of 'likely to add to employment skills' as it applies to adult and community education courses has been issued by the ATO.

## Specific questions and answers

### **Question 1. Will the provision of first-aid kits and books issued as part of a first-aid course be considered GST-free?**

Non-interpretative – straight application of the law

First aid or life saving courses are included in the definition of an 'education course' and are therefore GST-free. Course materials (photocopied education materials, art supplies or ingredients in a cooking class) that are consumed or transformed in an 'education course' would be GST-free.

First-aid kits and books that are issued as part of the course will be subject to GST. Supplies of kits and books are taxable supplies for GST purposes and consequently GST should be remitted on the portion of the course fee that relates to the supply of those items.

### **Question 2. To what extent will the provision of life saving courses other than resuscitation courses be considered GST-free? For example, the instruction of people in the use and manoeuvring of inflatable rubber boats?**

Non-interpretative – straight application of the law

If the instruction of people to use inflatable rubber boats was part of an overall life-saving course as stated in the legislation then this aspect of the course would be part of a course that is GST-free. If this type of instruction was separate to the life-saving course then it would not be an education course and would be taxable.

### **Question 3. How will 'life education' courses that are conducted in primary and secondary schools be treated with respect to GST. Life education exists as a complementary health and drug education resource for schools.**

**Clarification is sought as to:**

- **whether the course would be considered GST-free?**
- **how a market value can be established for these types of services?**

Non-interpretative – straight application of the law

A supply of an education course is GST-free. The ATO has issued [GSTR 2000/30](#) – Goods and services tax: supplies that are GST-free for pre-school, primary and secondary education courses and [GSTR 2001/1](#) – Goods and services tax: supplies that are GST-free for tertiary education courses. Both mention what constitutes an education course for the purposes of GST.

All recognised preschool, primary school, secondary school and tertiary courses are GST-free. All courses covered by the determination of education courses under the *Student Assistance Act 1973* are GST-free. The determination also covers secondary and tertiary courses provided they are accredited with the relevant State or Territory accreditation authority and are not considered to be 'hobby' course.

The Education Minister may determine that any primary, secondary or tertiary course not covered by the determination is a GST-free course.

Where a course is not an education course that is GST-free under Subdivision 38-C, the supply of the course may still be GST-free under Subdivision 38-G. This will be the case where an endorsed charity, a gift deductible entity or a government school makes a supply, other than a supply of accommodation, for consideration for less than 50% of the GST inclusive market value or less than 75% of the cost of making the supply.

**Question 4. How will GST apply to a neighbourhood centre when it offers low cost courses/programs aiming to create opportunities for socialisation, development of life skills, or aim to increase active participation in community life or increase health etc?**

Non-interpretative – straight application of the law

Some of these courses are facilitated by volunteers, others by professionals visiting from another organisation. In all cases the neighbourhood centre will bear the cost of administering bookings, promotion, venue maintenance, insurance, utilities etc., and usually the cost of purchasing and maintaining equipment.

Goods and services, other than a supply of accommodation, supplied by a charity (if registered for GST) are GST-free if the consideration for the supply is less than 50% of the GST inclusive market value or less than 75% of the cost of supply. Where the supplies are GST-free or taxable the charity is entitled to full input tax credits for all their acquisitions that relate to these supplies, including all the administration costs mentioned above.

**Question 5. A Child Care Rebate (CCR) is paid by Services Australia to a childcare service or directly to a parents bank account. Parents pay their portion of the childcare direct to carers. Will the parent levy attract GST?**

Non-interpretative – straight application of the law

A supply of child care will be GST-free under Division 38-D if these services are provided at an approved child care service or if the child care provider is a registered carer for the purposes of the Child Care Rebate. Provided the childcare qualifies, the supply is GST-free irrespective of whether the payment is from Child Care Assistance or the parents.

## Part 14 - Conservation

**Issue 1: The GST legislation contains a number of special rules for endorsed charities and gift deductible entities. How will conservation groups determine whether they are included in either of these categories?**

Non-interpretative – straight application of the law

For more information refer to Income tax and fringe benefits tax: charities.

### ***Principle***

The policy intent is for the commercial activities of charities to be subject to GST and non-commercial activities of charities to be GST-free. For more information, please refer to Income tax guide for non-profit organisations and *GiftPack*.

A charity's sole or dominant purpose is to provide benefits to the public or to relieve poverty. An entity will not be a charity if any benefit to the community is merely incidental to, or a consequence of, a non-charitable purpose.

For an organisation that is not a fund to be a charity, its sole or dominant purpose must be charitable. If it has purposes which when viewed in isolation would not be charitable, they must be incidental or ancillary to the charitable purpose.

The characteristics of each entity will determine whether it is a charity. An entity's governing or constituent documents (constitution, memorandum and articles of association, trust deed, rules, charter etc) must show that it is a charity. For entities that are not merely trust funds, their activities must also show they are charities.

There is no general doctrine in Australia which excludes a charity from having political purposes. In certain circumstances, an entity can be charitable if it has a purpose (including a sole purpose) of generating public debate with a view to influencing legislation, government activities or government policy that comes within the definition of a charitable purpose.

Political parties are not charitable and an organisation is not charitable if its sole purpose is engaging in activities associated with political parties.

However, if an organisation's purpose is otherwise charitable, the presence of political, lobbying or promotional activity that is incidental to the charitable aims will not prevent it being a charity.

### **Can conservation groups be charities?**

Purposes are considered to be charitable if they benefit the community, or some section of it, through:

- the relief of poverty or sickness or the needs of the aged
- the advancement of education
- the advancement of religion, or
- other purposes beneficial to the community.

The category of most relevance to conservation groups is the last one - other purposes beneficial to the community.

## **Other purposes beneficial to the community**

Charitable activities for other purposes that may be beneficial to the community include:

- preserving defence and public order
- relieving stress due to natural disasters
- providing community facilities such as a museum, library, hall, garden or fire service
- promoting art and culture such as through music and drama
- promoting health, for example through educating the public about disease
- protecting animals, and
- scouts.

Organisations that are not charitable include:

- organisations carried on for the profits of their members
- organisations carried on for their members' common interests, such as professional or trade groups, and
- community service organisations that have significant membership purposes, such as traditional service clubs, sporting, recreational and social clubs.

## **Environment**

Non-profit organisations that operate for the public benefit to protect, preserve, care for, and educate the community about the environment are charities. Political bodies are not charities.

### **Examples of charities**

- conservation bodies which help protect the environment provided they are not for political purposes
- environmental associations whose purpose is to educate the public about environmental issues
- flora and fauna conservation societies which are not political in nature
- land care groups and other greening organisations involved in tree-planting and revegetation
- marine conservation societies which are involved in the conservation of Australia's coastal areas or coral reefs
- natural resource organisations which educate the public about the wise use of Australian resources such as soil, water and forests
- support groups for national parks
- friends of botanic gardens.

### **Examples of non-charities**

- bushwalking clubs
- government instrumentalities carrying out the ordinary functions of government.

- outdoor recreation clubs
- political bodies
- resident action groups set up to oppose planning policies detrimental to their lifestyles, for example a residents action group formed to lobby against a proposed rubbish dump
- water sports clubs.

## Specific questions and answers

### **Question 1. Will conservation groups receive charity status, particularly recreation-type groups that have a strong conservation role?**

Non-interpretative – other reference (see [TR 2011/4](#) Income tax and fringe benefits tax: charities)

As stated above, for an organisation that is not a fund to be a charity, its sole or dominant purpose must be charitable. If it has purposes which when viewed in isolation would not be charitable, they must be incidental or ancillary to the charitable purpose.

In addition, the predominant activities of the organisation must be charitable. This is generally determined by examining the manner in which the majority of the organisation's funds are employed.

### **Question 2. Are Conservation Councils and similar organisations entitled to ITEC (Income Tax Exempt Charity) status?**

Non-interpretative – other reference (see [TR 2011/4](#) Income tax and fringe benefits tax: charities)

From 3 December 2012, there is a new national regulator for charities, the Australian Charities and Not-for-profits Commission (ACNC). The ACNC registers organisations as charities. An organisation must be registered with the ACNC to access any tax concessions available to charities from the Australian Tax Office. For more information, refer to Income tax guide for non-profit organisations.

### **Question 3. Do environmental/conservation organisations fall under the 'Home Care' category of GST-free supplies?**

(Note: Effective from 1 August 2013, subsections 38-30(1) and 38-30(3) of the GST Act were amended by *Aged Care (Living Longer Living Better) Act 2013* to substitute the term 'home care' for the term 'community care'.)

Non-interpretative – straight application of the law

The term 'home care' is defined in section 45-3 of the *Aged Care Act 1997*. It does not relate to environmental/conservation issues.

### **Question 4. What is the GST treatment of payments made to a conservation body in return for advertising/sponsorship?**

Non-interpretative – straight application of the law

Assuming the body providing the advertising is registered for GST, this will constitute a taxable supply (of advertising). The recipient of the monies would therefore be required to pay 1/11th of the amount received to the Commissioner of Taxation. If the payer of the monies is registered for GST, they will be entitled to an input tax credit of the same amount.

### **Question 5. Are free services provided by conservation groups subject to GST?**

Non-interpretative – straight application of the law

A key element of a taxable supply is that it is made for consideration. The term consideration has a very broad meaning, and extends beyond the mere payment of

monies. If a supply is made, and there is truly no consideration received in return, it will not be taxable.

**Question 6. Will grants made to conservation organisations be GST-free supplies?**

Non-interpretative – other reference (see [GSTR 2012/2](#) Goods and services tax: financial assistance payments)

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.

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.

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.

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

**Question 7. Is each grant provided to a conservation organisation considered a separate enterprise within the entity?**

Non-interpretative – other reference (see [GSTR 2012/2](#) Goods and services tax: financial assistance payments)

An enterprise is an activity or series of activities carried on by an entity. The activities may be of a particular type, such as activities carried on in the form of a business, or it may be all the activities of a particular type of entity, such as a charitable fund.

Each grant may be consideration for a separate supply. However, each individual grant will not be a separate enterprise.

**Question 8. What are the obligations of a peak conservation group if it processes and administers GST on all grants within its affiliate branches in the capacity of an agent?**

Non-interpretative – other reference (see [GSTR 2000/37](#) Goods and services tax: agency relationships and the application of the law)

Assuming the peak group is acting as an agent on behalf of its affiliates, the following rules contained within Division 153 of the Goods and Services Tax Act would apply.

- To claim input tax credits, either the agent or the principal must hold a tax invoice.
- To record an adjustment on a business activity statement, either the agent or the principal must hold an adjustment note.
- Either the agent or principal (but not both) may issue tax invoices.
- A tax invoice must be issued within 28 days of either the principal or agent receiving the request.
- Either the agent or principal (but not both) may issue adjustment notes.



- An adjustment note must be issued within 28 days of either the principal or agent receiving the request.

**Question 9. How are transitional contracts involving grants for conservation organisations being treated where they span 1 July 2000?**

Non-interpretative – other reference (see [GSTR 2012/2](#) Goods and services tax: financial assistance payments)

GST is only payable on a taxable supply or taxable importation to the extent that it is made on or after 1 July 2000. There are transitional rules that will help grantees work this out.

GST is not payable on grants. It is payable on the supply or supplies to the grantor, if any, for which the grant is consideration. Consequently, how the transitional rules will apply depends on the nature of the supply made in exchange for the grant.

A supply made to the grantor in exchange for the grant will only be subject to GST to the extent it is made on or after 1 July 2000.

A supply of specific goods to the grantor in exchange for the grant is made when the goods are removed or made available to the grantor.

A supply of real property in exchange for the grant is made when the property is made available to the grantor.

A supply of specific services is made when the services are performed.

Where a grant is made in exchange for the supply of goods or services to the grantor over a predetermined period that begins before 1 July 2000 and ends on or after 1 July 2000, the supply is treated as having been made continuously or uniformly over the period. This includes a supply that is an obligation to do something with the funds over a predetermined period. GST will be payable in respect of the portion of the supply that relates to the period from 1 July 2000.

The following examples illustrate these principles.

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**Example 1**

*A conservation group receives a grant on 15 April 2000 in return for the performance of the obligation to plant 500 trees. As at 30 June 2000, the group has planted 300 trees. The remaining 200 trees are planted in July 2000. GST would be payable in respect of the grant to the extent of 200/500ths.*

**Example 2**

*A conservation group receives a grant on 15 April 2000 in return for the performance of the obligation to remove salvation jane (paterson's curse) from a 5km strip of coastland. As of 30 June 2000, the group has removed the weed from 2 kilometres. The remaining 3 kilometres are weeded in the following year. GST would be payable in respect of the grant to the extent of 3/5ths.*

**Example 3**

*A conservation group receives a grant on 15 April 2000 to finance the group's weed eradication programme over the period 15 April 2000 to 14 April 2001. As the grant is in exchange for a supply for a period of time, 288/365ths would be subject to GST.*

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If the grantor has already made the grant and it is to any extent taxable, the grantor may choose to increase the grant to account for the tax payable on the grant in anticipation of any input tax credit that will arise on the taxed grant. However any decision on the amount and timing of a grant payment will be a matter for grantor and grantee to determine.

**Question 10. When are supplies made by Landcare groups in return for government grants recognised under the GST accounting rules?**

Non-interpretative – other reference (see [GSTR 2012/2](#) Goods and services tax: financial assistance payments)

The answer to this question will depend on whether the recipient of the grant (that is, the Landcare group making supplies to government) accounts for GST on a cash or 'other than cash' (accruals) basis.

If the Landcare group accounts on a cash basis, they will account for supplies they make as and when they receive cash. For example, if they receive \$100,000 in September 2001 as part of a \$1 million grant, they will recognise supplies of \$100,000 in their business activity statement for the period ended 30 September 2001.

If the Landcare group accounts on the 'other than cash' basis, the general rule is that a taxable supply will be accounted for in entirety at the earlier of issuing an invoice or receiving any part of the grant.

However, a special rule (contained in Division 156) applies where a supplier makes supplies on a progressive basis, and payment is received progressively or periodically. Where this is the case, the supplier will account for its supplies on the following basis;

- If the Landcare group invoices supplies periodically (for example, as various milestones are met), GST will be accounted for at the earlier of issuing an invoice for the milestone or receiving any payment in respect of the milestone.
- If the Landcare group is making supplies over a set period of time (and distinct milestones are not specified) GST will be accounted for as and when payment is received.

The following examples illustrate this treatment.

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**Example 1**

*On 1 January 2001, a Landcare group enters into an agreement to provide services to the government over the period 1 January 2001 to 31 December 2001. The total amount of the grant is \$100,000 of which \$20,000 is paid on 1 January 2001. Further payments of \$20,000 are made on 1 March 2001, 1 June 2001, 1 August 2001 and 1 November 2001. The Landcare group would account for each payment in the quarter (or month) in which it is received.*

**Example 2**

*On 1 January 2001, a Landcare group enters into an agreement to revegetate 10 kilometres of sand dunes. The total amount of the grant is \$100,000 and the agreement states that the Landcare group can invoice for \$10,000 as and when they complete each kilometre. By 31 March 2001, the Landcare group has revegetated one kilometre and issues an invoice to the government. Payment is received on 4 April 2001. The Landcare group would account for the GST on the \$10,000 in the quarter ended March 2001.*

**Question 11. Will the provision of memberships by a charitable conservation body be subject to the non-commercial rules?**

Non-interpretative – straight application of the law

The supply of membership rights will be subject to the non-commercial rules. Accordingly, if the membership fee charged is less than 50% of the market value of the goods/services and entitlements provided to a member, the supply will be GST-free. Alternatively, if the membership fee charged is less than 75% of the actual costs incurred by the charity in making the supply, the membership will be GST-free.

In calculating the market value of the goods/services and entitlements provided to the member, one should only consider those things enjoyed by the member that are not available free of charge to the general public. For example, if the member is granted access rights to a library, and members of the general public can access the library free of charge, this right should not be taken into account in determining the market value of the membership.

**Question 12. Where an entity under the register of environmental organisations operates under a Trust Deed and all donations are directed through one bank account, is a separate ABN required for the trust?**

Non-interpretative – straight application of the law

If in fact the entity is the trust, the trustee would apply for an ABN on behalf of the trust.

**Question 13. When are payments to office-holders of conservation groups subject to PAYG withholding?**

Non-interpretative – other references see:

- [Volunteers and tax.](#)

**Question 14. What is the taxation treatment of payments made by conservation groups to leaflet distributors?**

Non-interpretative – other references see:

- [Volunteers and tax.](#)

**Question 15. Where a body pays a small amount (say a few hundred dollars) to its president or other office bearer, what are the GST and Pay as You Go (PAYG) consequences?**

Non-interpretative – other references see:

- [Volunteers and tax.](#)

**Question 16. Currently there is little tax reform information specifically directed at the conservation industry. How is this being addressed?**

Non-interpretative – other references see:

- [Volunteers and tax.](#)

The Conservation Partnership Committee is another means of communicating information to this sector.

**Question 17. A land care group has applied for a grant and has been successful. The grant may be to fence off a gully and plant trees and understorey. Money is transferred to the account of the Landcare group. How does GST apply to each of the following scenarios?**

a) *A farmer (on whose property the project will be conducted) purchases the fencing material and then is reimbursed by the group for the purchase.*

Non-interpretative – straight application of the law

If in fact the farmer is buying the fencing material and then subsequently selling it to the Landcare group, this will have the following GST consequences:

- The fencing retailer (if registered for GST) will charge the farmer GST.
- The farmer (if registered for GST) will claim an input tax credit in respect of the GST paid.
- The farmer (if registered for GST) will charge the Landcare group GST.
- The Landcare group (if registered for GST) will claim an input tax credit in respect of the GST paid.

b) *What if the Landcare group 'gives' the fencing to the farmer at the end of the project? What are the GST implications?*

Non-interpretative – straight application of the law

Assuming both parties are registered for GST, the Landcare group is 'supplying' the fencing and the consideration is the value of the farmer's involvement. The farmer is contributing to the project, and the consideration for the supply is the value of the fencing. Given the supply and acquisition will normally be of the same value, there are no GST consequences. However, tax invoices reflecting the deemed 'price' paid for the fencing/involvement must be exchanged between the Landcare group and the farmer.

Where the farmer is a hobbyist and is therefore not registered for GST, the Landcare group is making a taxable supply to the farmer in return for the farmer's involvement. The farmer is not making a taxable supply to the Landcare group as the farmer is not GST-registered. The farmer is also not entitled to claim an input tax credit on the acquisition of the fencing as he/she is not registered. This means the Landcare group should provide the farmer with a tax invoice. The consideration on the tax invoice is the value of the farmer's contribution. GST will be payable by the Landcare group on the supply of the fencing.

If an unregistered Landcare group provides fencing to a GST-registered farmer, the position is reversed. The farmer is supplying his/her labour in return for the fencing. The farmer is therefore making a taxable supply and must remit 1/11th of the value of the fencing to the ATO. As the Landcare group is not GST-registered, it does not have to account for GST. It cannot charge GST on the supply of the fencing and is unable to claim an input tax credit for the labour acquired from the farmer.

c) *In some groups the farmer is given a voucher which is used as payment, either in part or in full for the purchase of materials. The invoice is made out to the farmer.*

Non-interpretative – straight application of the law

The provision of vouchers has no GST consequences. It is treated in a similar manner to the giving of money. Where the farmer buys fencing material as an agent for the charity Division 111 will apply, and the charity can claim the input tax credit. Where the farmer buys fencing material on behalf of the charity in the capacity of a volunteer, the charity will be able to claim an input tax credit under section 111-18 of the GST Act.

d) *A condition of the grants is often that the value of the grant is matched on a one for one basis. This may be done by the Landcare group or by the landholder. The matching may take the form of the following:*

- Use of a computer for design purposes on the project.
- Machinery of the land-holder or a group member may be used in the project.
- Voluntary labour of the land-holder or the group members.
- Provision of accommodation to volunteers.

Non-interpretative – straight application of the law

When a grant is paid to an organisation for a specific purpose or with any conditions, GST is payable on the grant if the recipient of the grant is registered for GST. If there is no obligation tied to the grant and no other supply to be provided by the recipient of the grant, GST will not be payable. Where GST is payable, the amount payable to the ATO is 1/11th of the grant. The entity making the grant (the grantor) is entitled to an input tax credit equal to 1/11th of the grant amount. The recipient of the grant will need to give the grantor a tax invoice.

The 'matching' conditions form part of the supply for which the grant is consideration.

***Question 18. The structure of some Landcare groups is hierarchal. The regional body makes bids on behalf of a number of groups. If the bid is successful then the grant is devolved to the individual groups. There could be a number of steps in the chain. Is there any GST implications on the devolution of funds?***

Non-interpretative – other reference [GSTR 2012/2](#) Goods and services tax: financial assistance payments.

The treatment of this issue depends on the manner in which the government grants are provided, for example:

- The government provides a grant to the regional body, and the regional body determines which other bodies should receive the grant monies.

Where the government provides a grant to a regional body and the regional body makes grants to individual groups, and both the regional body and the individual groups are registered for GST, there will be two taxable supplies. There will be a supply by the regional body to the government in return for the grant monies. There is a subsequent supply by the individual group to the regional body in return for a share of the grant monies.

In this situation, the regional body will remit 1/11th of the grant monies received to the ATO. The government will claim an input tax credit for the same amount. The individual group (if registered for GST) will remit 1/11th of the monies received from the regional body to the ATO. The regional body will claim an input tax credit for the same amount.

Where there are other links in the chain, each organisation receiving monies (if they are registered for GST) is making taxable supplies to the payer. They will remit 1/11th of the monies received to the ATO, and the payer (if registered for GST) will claim an input tax credit for the same amount.

- The government provides grants to the individual groups, and the regional body is merely a conduit via which the funds are transferred.

Where this is the case, the individual groups (if registered for GST) are making supplies directly to the government in return for the funds. They would therefore remit 1/11th of the

funds received to the ATO. The government would claim an input tax credit for the same amount.

If the regional body charges the individual groups a commission for organising the grant or other services, this would be a taxable supply by the regional body. The regional body would remit 1/11th of the commission monies to the ATO, and the individual groups (if registered for GST) would claim an input tax credit for the same amount.

**Question 19. Payments to carry out land care activities are sometimes made to landholders that are carrying on a hobby farm. These people will not have an ABN. To avoid withholding tax from these payments, will a letter have to be provided by the hobby farmer on every occasion they receive money to show that they are not carrying on an enterprise?**

Non-interpretative – straight application of the law

To remove PAYG responsibilities, the payee must make a written, signed statement that a supply is private or domestic in nature, or relates to a hobby. A statement is required in respect of each supply provided by the hobby farmer.

**Question 20. Similarly with payments to people for urban-based land care activities. Will a withholding event arise and will a letter be required from the recipient of the payment if they do not have an ABN?**

Non-interpretative – straight application of the law

The above rule applies.

**Question 21. Large companies may sponsor certain land care activities in a particular area. What are the GST consequences for the companies that provide these funds? Does it matter whether the recipient land care group is registered for GST or not?**

Non-interpretative – straight application of the law

This will generally constitute a taxable supply (of advertising/sponsorship) by the land care organisation to the large company. The Landcare organisation (if registered for GST) is required to remit 1/11th of the amount received to the ATO. The large company will be able to claim an input tax credit of the same amount.

**Question 22. If land is provided by the government to a conservation group, are there any GST implications? Does it matter whether the land is improved or unimproved?**

Non-interpretative – straight application of the law

The first supply of **crown land** (ie from the Commonwealth, State or Territory) is GST-free if it is unimproved. This GST-free status only applies once, that is, any subsequent supply of the same land will be subject to GST under the general rules

The supply of **farm land** is GST-free if:

- a farming business has been carried out on there for at least five years before the sale, and
- the recipient of the land intends to carry on a farming business on the land.

Where GST applies, it generally applies to the price of the land (that is, the supply) regardless of whether the land had been improved or not. Where land is sold on or after

1 July 2000, the seller will have a choice under the margin scheme to charge GST only on the increase in value from 30 June 2000, rather than on the total sale price. It is not relevant for GST purposes whether the value added was due to improvements or simply an increase in market value.

## Definitions

**Residential care** is defined in section 195-1 of *A New Tax System (Good and Services Tax) Act 1999* (GST Act) as having 'the meaning given by section 41-3 of the *Aged Care Act 1997*. Residential care can include respite care'.

**Residential care** is defined in section 41-3 of the *Aged Care Act 1997* as:

Residential care is personal care or nursing care, or both personal care and nursing care, that is provided to a person in a residential facility in which the person is also provided with accommodation that includes:

- appropriate staffing to meet the nursing and personal care needs of the person
  - meals and cleaning services, and
  - furnishings, furniture and equipment for the provision of that care and accommodation, and
  - meets any other requirements specified in the Residential Care Subsidy Principles.

**Home care** is defined in section 195-1 as having 'the meaning given by section 45-3 of the *Aged Care Act 1997*'.

**Home care** is defined in section 45-3 of the *Aged Care Act 1997* as:

Home care is care consisting of a package of personal care services and other personal assistance provided to a person who is not being provided with residential care.

### **Item 2.1 of Part 2 of Schedule 1 to the Quality of Care Principles:**

Personal assistance, including individual attention, supervision and physical assistance, with:

- bathing, showering, personal hygiene and grooming
- maintaining continence or managing incontinence and using aids and appliances designed to assist continence management
- eating and eating aids and using eating utensils and eating aids (including actual feeding if necessary)
- dressing and undressing and using dressing aids
- moving, walking, wheelchair use and using devices and appliances designed to aid mobility, including fitting of artificial limbs and other personal mobility aids, and
- communication, including to address difficulties arising from impaired hearing, sight or speech or lack of common language (including fitting sensory communication aids) and checking hearing aid batteries and cleaning spectacles.

This excludes hairdressing.

### **Item 3.8 of Part 3 of Schedule 1 to the Quality of Care Principles:**

Nursing services carried out by a registered nurse, or other professional appropriate to the service (for example, medical practitioner, stoma therapist, speech pathologist, physiotherapist or qualified practitioner from a palliative care team).

Services may include, but are not limited to, the following:



- establishment and supervision of a complex pain management or palliative care program, including monitoring and managing any side effects
- insertion, care and maintenance of tubes, including intravenous and naso-gastric tubes
- establishing and reviewing a catheter care program, including the insertion, removal and replacement of catheters
- establishing and reviewing a stoma care program
- complex wound management
- insertion of suppositories
- risk management procedures relating to acute or chronic infectious conditions
- special feeding for care recipients with dysphagia (difficulty with swallowing)
- suctioning of airways
- tracheostomy care,
- enema administration.

## **Schedule 1 to GST-free Supply (Care) Determination 2000:**

<b>Item</b>	<b>Service</b>
1	Home service
2	Personal care
3	Home maintenance
4	Home modifications
5	Provision of food
6	Provision and delivery of meals at home or at a day care or similar centre
7	Respite care
8	Transport to and from day care or similar centres and for shopping trips, social outings and for health-related purposes
9	Community paramedical services
10	Community nursing
11	Assessment of the person's care needs
12	Referral to other community care services
13	Training in the use of aids and appliances and in how to get the most out of the other services mentioned in this Schedule
14	Individual care planning or case management

Item	Service
15	Provision of basic equipment for social support, excluding the provision of aids and appliances under paragraph 7 (3) (b) of the Schedule to the <i>Home and Community Care Act 1985</i>
16	Day care
17	Linen services
18	Counselling
19	Community advocacy for a purpose mentioned in section 8-1 of the <i>Aged Care Act 1997</i>
20	Medication management
21	Provision and monitoring of personal alert systems
22	Provision of therapeutic supplies and services under the program known as the Psychogeriatric Unit Program administered by the Commonwealth
23	Continence management

## Schedule 1 of the Quality of Care Principles

### Part 1

#### *Hotel services – To be provided for all residents who need them*

Item	Service	Content
1.1	Administration	General operation of the residential care service, including resident documentation.
1.2	Maintenance of buildings and grounds	Adequately maintained buildings and grounds.
1.3	Accommodation	Utilities such as electricity and water.
1.4	Furnishings	Bed-side lockers, chairs with arms, containers for personal laundry, dining, lounge and recreational furnishings, draw-screens (for shared rooms), resident wardrobe space, and towel rails.  Excludes furnishings a resident chooses to provide.
1.5	Bedding	Beds and mattresses, bed linen, blankets, and absorbent or waterproof sheeting.
1.6	Cleaning services, goods and facilities	Cleanliness and tidiness of the entire residential care service.  Excludes a resident's personal area if the resident chooses and is able to maintain it himself or herself.
1.7	Waste disposal	Safe disposal of organic and inorganic waste material.
1.8	General laundry	Heavy laundry facilities and services, and personal laundry services, including laundering of clothing that can be machine washed.

Item	Service	Content
		Excludes cleaning of clothing requiring dry cleaning or another special cleaning process, and personal laundry if a resident chooses and is able to do this himself or herself.
1.9	Toiletry goods	Bath towels, face washers, soap, and toilet paper.
1.10	Meals and refreshments	(a) Meals of adequate variety, quality and quantity for each resident, served each day at times generally acceptable to both residents and management, and generally consisting of 3 meals per day plus morning tea, afternoon tea and supper.  (b) Special dietary requirements, having regard to either medical need or religious or cultural observance.  (c) Food, including fruit of adequate variety, quality and quantity, and non-alcoholic beverages, including fruit juice.
1.11	Resident social activities	Programs to encourage residents to take part in social activities that promote and protect their dignity, and to take part in community life outside the residential care service.
1.12	Emergency assistance	At least 1 responsible person is continuously on call and in reasonable proximity to render emergency assistance.

## Part 2

### ***Care and services – To be provided for all residents who need them***

Item	Care or service	Content
2.1	Daily living activities assistance	Personal assistance, including individual attention, individual supervision, and physical assistance, with: (a) bathing, showering, personal hygiene and grooming (b) maintaining continence or managing incontinence, and using aids and appliances designed to assist continence management (c) eating and eating aids, and using eating utensils and eating aids (including actual feeding if necessary) (d) dressing, undressing, and using dressing aids (e) moving, walking, wheelchair use, and using devices and appliances designed to aid mobility, including the fitting of artificial limbs and other personal mobility aids (f) communication, including to address difficulties arising from impaired hearing, sight or speech, or lack of common language (including fitting sensory communication aids), and checking hearing aid batteries and cleaning spectacles. Excludes hairdressing.
2.2	Meals and refreshments	Special diet not normally provided.
2.3	Emotional support	Emotional support to, and supervision of, residents.
2.4	Treatments and procedures	Treatments and procedures that are carried out according to the instructions of a health professional or a person responsible for assessing a resident's personal care needs, including supervision and physical assistance with taking medications, and ordering and reordering medications, subject to requirements of State or Territory law.
2.5	Recreational therapy	Recreational activities suited to residents, participation in the activities, and communal recreational equipment.

<b>Item</b>	<b>Care or service</b>	<b>Content</b>
2.6	Rehabilitation support	Individual therapy programs designed by health professionals that are aimed at maintaining or restoring a resident's ability to perform daily tasks for himself or herself, or assisting residents to obtain access to such programs.
2.7	Assistance in obtaining health practitioner services	Arrangements for aural, community health, dental, medical, psychiatric and other health practitioners to visit residents, whether the arrangements are made by residents, relatives or other persons representing the interests of residents, or are made direct with a health practitioner.
2.8	Assistance in obtaining access to specialised therapy services	Making arrangements for speech therapy, podiatry, occupational or physiotherapy practitioners to visit residents, whether the arrangements are made by residents, relatives or other persons representing the interests of residents.
2.9	Support for residents with cognitive impairment	Individual attention and support to residents with cognitive impairment (eg dementia, and other behavioural disorders), including individual therapy activities and specific programs designed and carried out to prevent or manage a particular condition or behaviour and to enhance the quality of life and care for such residents and ongoing support (including specific encouragement) to motivate or enable such residents to take part in general activities of the residential care service.

### **Part 3**

#### ***Care and services – To be provided for residents receiving a high level of residential care***

<b>Item</b>	<b>Care or service</b>	<b>Content</b>
3.1	Furnishings	Over-bed tables.
3.2	Bedding materials	Bed rails, incontinence sheets, restrainers, ripple mattresses, sheepskins, tri-pillows, and water and air mattresses appropriate to each resident's condition.
3.3	Toiletry goods	Sanitary pads, tissues, toothpaste, denture cleaning preparations, shampoo and conditioner, and talcum powder.
3.4	Goods to assist residents to move themselves	Crutches, quadruped walkers, walking frames, walking sticks, and wheelchairs.  Excludes motorised wheelchairs and custom made aids.
3.5	Goods to assist staff to move residents	Mechanical devices for lifting residents, stretchers, and trolleys.
3.6	Goods to assist with toileting and incontinence management	Absorbent aids, commode chairs, disposable bed pans and urinal covers, disposable pads, over-toilet chairs, shower chairs and urodomes, catheter and urinary drainage appliances, and disposable enemas.
3.7	Basic medical and pharmaceutical supplies and equipment	Analgesia, anti-nausea agents, bandages, creams, dressings, laxatives and aperients, mouthwashes, ointments, saline, skin emollients, swabs, and urinary alkalising agents.  Excludes goods prescribed by a health practitioner for a particular resident and used only by the resident.
3.8	Nursing services	Nursing services carried out by a registered nurse, or other professional appropriate to the service (eg medical practitioner, stoma therapist, speech pathologist,

Item	Care or service	Content
		<p>physiotherapist or qualified practitioner from a palliative care team).</p> <p>Services may include, but are not limited to, the following:</p> <ul style="list-style-type: none"> <li>(a) establishment and supervision of a complex pain management or palliative care program, including monitoring and managing any side effects</li> <li>(b) insertion, care and maintenance of tubes, including intravenous and naso-gastric tubes</li> <li>(c) establishing and reviewing a catheter care program, including the insertion, removal and replacement of catheters</li> <li>(d) establishing and reviewing a stoma care program</li> <li>(e) complex wound management</li> <li>(f) insertion of suppositories</li> <li>(g) risk management procedures relating to acute or chronic infectious conditions</li> <li>(h) special feeding for care recipients with dysphagia (difficulty with swallowing)</li> <li>(i) suctioning of airways</li> <li>(j) tracheostomy care</li> <li>(k) enema administration.</li> </ul>
3.10	Medications	Medications subject to requirements of State or Territory law.
3.11	Therapy services, such as, recreational, speech therapy, podiatry, occupational, and physiotherapy services	<ul style="list-style-type: none"> <li>(a) Maintenance therapy delivered by health professionals, or care staff as directed by health professionals, designed to maintain residents' levels of independence in activities of daily living</li> <li>(b) More intensive therapy delivered by health professionals, or care staff as directed by health professionals, on a temporary basis that is designed to allow residents to reach a level of independence at which maintenance therapy will meet their needs</li> </ul> <p>Excludes intensive, long-term rehabilitation services required following, for example, serious illness or injury, surgery or trauma.</p>
3.12	Oxygen and oxygen equipment	Oxygen and oxygen equipment needed on a short-term, episodic or emergency basis.

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