



TECHNICAL DECISION SUMMARY > ADJUDICATION

WHAKARĀPOPOTO WHAKATAU HANGARAU > WHAKAWĀ

# GST – payment for participation in religious practice

Decision date | Rā o te Whakatau: 8 April 2024

Issue date | Rā Tuku: 30 July 2024

TDS 24/15

## DISCLAIMER | Kupu Whakatūpato

This document is a summary of the original technical decision so it may not contain all the facts or assumptions relevant to that decision.

This document is made available for **information only** and is not advice, guidance or a “Commissioner’s official opinion” (as defined in s 3(1) of the Tax Administration Act 1994).

**You cannot rely on this document as setting out the Commissioner’s position more generally or in relation to your own circumstances or tax affairs.** It is not binding and provides you with no protection (including from underpaid tax, penalty or interest).

For more information refer to the [Technical decision summaries guidelines](#).

## Subject | Kaupapa

GST: participation in religious practices; whether for consideration and a taxable supply

## Taxation laws | Ture tāke

All legislative references are to Goods and Services Tax Act 1985 (GST Act) unless otherwise specified.

## Facts | Meka

1. The Taxpayer is registered for GST and carries on a taxable activity and makes taxable supplies.
2. The Taxpayer is a registered charity under the Charities Act 2005. It also falls within the definition of “non-profit body” in s 2.
3. The Taxpayer’s members participate in certain religious practices. For participation in some of the practices, payments were required to be made by the members to the Taxpayer. The dispute was about the religious practices for which payment was generally required.
4. The Taxpayer had filed returns in which it returned GST on the amounts received for the participation in the religious practices
5. The Taxpayer subsequently proposed adjustments to reverse the inclusion of GST on the amounts. Customer and Compliance Services, Inland Revenue (CCS) rejected the proposed adjustments as it considered the GST positions as filed were correct.
6. The parties didn’t come to agreement and the dispute was referred to the Tax Counsel Office, Inland Revenue (TCO) for adjudication.

## Issue | Take

7. The main issue considered in this dispute was:
  - Whether the Taxpayer was liable for GST in relation to the payments received for participation in religious practices, being consideration for the supply of goods and services by a registered person in the course or furtherance of a taxable activity.

## Decisions | Whakatau

8. The Tax Counsel Office (TCO) concluded:
  - The Taxpayer was liable for GST in relation to the payments.

## Reasons for decisions | Pūnga o ngā whakatau

### Issue | Take: Whether the payments were subject to GST

9. In deciding whether the payments were subject to GST, TCO considered the charging of GST under s 8 and whether the payments were consideration for the supply of services.
10. Whether the payments were consideration depended on:
  - Whether there was reciprocity (a sufficient connection) between the payments and supplies of services.
  - Whether the payments were “unconditional gifts”, which involved considering:
    - whether the payments were voluntary; and
    - whether “identifiable direct valuable benefits” arose, or may have arisen, for the members in respect of the payments.
11. TCO also considered arguments about consistency of treatment between taxpayers.

### The charging of GST under s 8

12. Under s 8, GST is charged on the supply (but not an exempt supply) in New Zealand of goods and services by a registered person in the course or furtherance of a taxable activity carried on by that person. The GST is charged by reference to the value of the supply.

### Supply of services

13. The definition of “services” in s 2 is very wide. It includes “anything” that is not “goods or money or cryptocurrency.” The religious practices involved the Taxpayer’s staff or volunteers guiding members through the course content. This fell within the meaning of “services”. The definition of “services” does not contain any exception for services of a religious nature.

### **In the course or furtherance of a taxable activity**

14. The supply of the religious practices was carried out in the course or furtherance of a taxable activity, as required by s 8.
15. The word "activity" is of considerable breadth. It means a course of conduct or series of acts that a person has chosen to undertake or become engaged in. The supply of the services fell within this definition of "activity". This was an activity of the Taxpayer because it involved the use of the Taxpayer's resources, staff and volunteers and was conducted in accordance with the Taxpayer's policy. This was in addition to the activity of supplying books and premises, which the Taxpayer accepted it carried on.
16. A business or commercial overlay is not a requirement for an activity to be a taxable activity.
17. For an activity to be a taxable activity, the activity must be carried on continuously or regularly. There was no dispute that the activity involving the participation in the religious practices was carried on regularly by the Taxpayer.
18. For an activity to be a taxable activity, the activity must involve, or be intended to involve, in whole or in part, the supply of goods and services to any other person for a consideration. It is sufficient if the activity in fact involves the supply of goods and services regardless of whether there is a subjective intention to make supplies. Further, for the reasons discussed below, TCO concluded that the supply of the religious practices was made for consideration.
19. Finally, the definition of taxable activity does not contain any exemption for religious activities.
20. GST is not charged on "exempt supplies". "Exempt supplies" is defined in s 14. The supply of participation in the religious practices did not come within this definition. Unlike in the law of other countries, the GST Act does not contain any exemption for supplies that have a religious nature.

### **Value of the supply**

21. GST is charged on a supply by reference to the value of the supply. Section 10 applies for the purpose of determining the value of any supply of goods or services.
22. In the absence of an associated party supply, s 10 calculates the value of a supply based on the consideration paid for it. There is no requirement or ability to value the supply in any other way. In the absence of an associated party supply, the GST Act

does not question whether the objective value of the supply matches the consideration provided.

23. Under s 10(18) where a taxable supply is not the only matter to which a consideration relates, the supply is deemed to be for such part of the consideration as is properly attributable to it. This subsection applies only if it can be shown that part of the payment relates to another matter. This must be demonstrated by reference to the true legal character of the transaction, not merely the substance of the transaction. It also cannot be inferred from the market value of the goods or services provided. This is because s 10(2) does not enquire into the adequacy of consideration.
24. In the present dispute, the Taxpayer had not demonstrated that any part of the payments in question were unconditional gifts. The evidence suggested that the payments were, in full, for the services supplied.

## Consideration

25. Relevant to the dispute, "consideration" includes any payment made, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of any services, but does not include an unconditional gift to any non-profit body.

## Reciprocity between the payment and the supply

26. For a payment to be consideration for a supply there must be reciprocity between the payment and the supply. In the dispute, it was considered that reciprocity existed because the supply of participation in the specific religious practices in dispute was generally conditional on payment being made.
27. The Taxpayer did not provide any details or evidence of any instances where participation in the specific religious practices, for which a set payment amount had been established, were provided for free. Even if there were some occasions where payments had been waived, this did not alter the general character of the transaction.
28. The Taxpayer's arguments to the contrary were not accepted. In particular:
  - The fact that the payments become the property of the Taxpayer and how the Taxpayer used the funds were irrelevant in determining the character of the payments.
  - The relevant question was not whether the acquisition of the services in dispute was mandatory, but rather whether payment was required if a member wished to acquire the services.

- The inability (generally) to obtain a refund was not determinative of whether the payments were consideration for supplies.
- The fact that the payments received were not allocated to meet the costs of participation in the religious practices was irrelevant.
- The fact that the costs of supplying participation in the religious practices, when compared to the payments made by the members to the Taxpayer, may have been equal to only a small proportion of the payments, did not mean that part of the payments were made for something other than the religious practices. The fact that the payments funded the Taxpayer's other activities and that the members may have been aware of this, was also not determinative.
- That the members may have been motivated to fund the Taxpayer's other activities does not change the legal nature of the transaction. The members were helping to fund the Taxpayer's activities by acquiring services from the Taxpayer.

### **Unconditional gift**

29. A payment is not consideration if the payment is an "unconditional gift" to a non-profit body. To be an unconditional gift a payment must be made voluntarily.

#### ***Made voluntarily***

30. The payments were not made voluntarily. The meaning of "voluntary" must be interpreted in the context of the definitions of unconditional gift and consideration. In this context, a payment is not made voluntarily if the payment is made for a supply of a service and the supply is conditional on the payment being made. In this case, the supply of participation in the religious practices was generally conditional on the payments being made.
31. This was, on its own, sufficient reason to conclude that the payments in dispute were not unconditional gifts.

#### ***No identifiable direct valuable benefit***

32. To be an unconditional gift, in respect of the payment, there must be no "identifiable direct valuable benefit" that arises or that may arise in the form of a supply of goods and services.
33. TCO concluded that, in respect of the payments, an "identifiable direct valuable benefit" arose, or may have arisen, in the form of the supply of participation in the

religious practices. This was a further reason to conclude that the payments were not unconditional gifts.

34. Even if it had been necessary to look beyond the receipt of the service for the benefit, it was considered that the benefit requirement would be satisfied by the spiritual or moral development and advancement that arose, or that may have arisen, from the religious practices in which the members participated.
35. The spiritual or moral benefit received by members from the services was a personal benefit and an end in itself for the members. The receipt of the benefit was not incidental or to facilitate the advancement of religion generally. Therefore, this was not a benefit that would be disregarded by a court.
36. The benefit received was identifiable. The benefit was the supply of participation in the religious practices or the spiritual and moral development that arose, or that may have arisen, from the services.
37. The benefit was direct. The benefit received by the members from the services was received by each of the members alone, rather than by a class of people. Also, the benefits in the form of the supply of participation in the religious practices (that is, the particular practices in dispute), would not have been obtained irrespective of whether the payments were made.
38. The benefit was also valuable. A benefit is valuable in this context if it is not nominal. The benefit, in the form of the supply of participation in the religious practices, was not nominal, as it involved considerable time and resources to provide.
39. The benefit was also capable of valuation. The Taxpayer had, in fact, placed a value on these services. The payments requested varied depending on the specific religious practices in which members participated. The members also appeared to place a financial value on the religious practices by agreeing to make the payments. Although, the members may also have been motivated by a desire to fund the practices of the Taxpayer, the Taxpayer had not shown that the members did not also value the services they received in return for the payments. Further, if necessary, a valuation could be calculated based on the cost of providing the services plus a mark-up.

## Consistency

40. The Taxpayer argued that charging GST on the payments in dispute was inconsistent with the tax treatment of payments made to other religious organisations.
41. The Commissioner has a duty to ensure the correctness of an assessment. In doing so, it is irrelevant if the correct tax treatment determined is inconsistent with assessments

or views the Commissioner may have previously made or expressed, either generally or in relation to a particular taxpayer.

42. In this dispute, the Commissioner was solely concerned with the correctness of the Taxpayer's assessments. Whether the assessments were consistent with the assessments of other taxpayers (some of which may be self-assessed) was irrelevant.

## **Conclusion**

43. The Taxpayer was liable for GST in relation to the payments received, being consideration for the supply of services.