

STATEMENT

GST treatment of payments received by a GST registered body corporate from the Ministry of Business, Innovation and Employment under the Leaky Homes Financial Assistance Package (FAP)

Issued: 21 September 2020

CS 20/05

This Statement sets out the Commissioner's approach to the correct GST treatment of payments received by a GST registered body corporate from MBIE on behalf of the Crown under the Leaky Homes Financial Assistance Package (FAP).

All legislative references are to the Goods and Services Tax Act 1985 unless otherwise stated.

Summary

1. This Statement sets out the Commissioner's position in relation to payments received by a GST registered body corporate from the Ministry of Business, Innovation and Employment (MBIE) on behalf of the Crown under the Leaky Homes Financial Assistance Package (FAP) scheme.¹
2. The Commissioner considers that a payment under the FAP scheme from MBIE to a body corporate is not a payment in respect of any actual supply of goods and services made by the body corporate in return for that payment.
3. However, the Commissioner considers that these payments are in the nature of a grant or subsidy from the Crown under section 5(6D) of the Act, and therefore are deemed to be in response to a supply from the body corporate.
4. As a result these payments are subject to GST.
5. A GST registered body corporate which receives such payments is therefore obliged to include the GST component in its GST return and to pay for any net GST output tax.
6. A body corporate which is not registered (and not liable to be registered) for GST will not be obliged to account for GST.

Background

7. Under the FAP scheme, MBIE makes payments to eligible claimants as a contribution towards the repair of their leaky property.
8. MBIE is not responsible for repairing leaky buildings. Any repairs required, as with all building maintenance, are the responsibility of the body corporate. As a result, when MBIE makes payment to a body corporate under the FAP scheme MBIE is not paying the body corporate for any services completed on MBIE's behalf or for any supplies made to MBIE.
9. Instead, the FAP payments are made by MBIE to ensure properties are repaired and to provide resolution for eligible claimants faster than what was being achieved through mediation or litigation under previously available processes. Eligible claimants have not supplied anything to MBIE in return for the payments, instead the payments are

¹ Payments under the FAP scheme from territorial authorities may also be facilitated by MBIE, but these are not made on behalf of the Crown. Such payments are outside the scope of this Commissioner's Statement.

connected to the property having suffered damage as a result of water ingress (for which MBIE is not liable).

10. For GST purposes, these payments will be subject to GST because they are consideration for a “supply” as defined under section 5.
11. A body corporate does not supply anything to MBIE in exchange for the payments under the FAP scheme. Nevertheless, as this Statement sets out, a payment from MBIE to a body corporate is still subject to GST if that payment is deemed to be consideration for a supply under section 5(6D) of the Act.

Explanation

12. Section 5(6D) of the Act provides:

For the purposes of this Act, where any payment in the nature of a grant or subsidy is made on behalf of the Crown or by any public authority to—

- (a) any person (not being a public authority) in relation to or in respect of that person’s taxable activity; or
- (b) any person for the benefit and on behalf of another person in relation to or in respect of that other person’s taxable activity,—

that payment shall be deemed to be consideration for a supply of goods and services by the person to whom or for whose benefit the payment is made in the course or furtherance of that person’s taxable activity.

13. The key requirements of section 5(6D) are that the payment is:
 - in the nature of a grant or subsidy;
 - made on behalf of the Crown or by any public authority; and
 - made to a person in relation to or in respect of that person’s taxable activity.
14. The Commissioner considers that FAP payments from MBIE to a GST registered body corporate meets each of these requirements.
15. First, the payments are in the nature of a grant or subsidy – MBIE makes payments under the FAP scheme as it is in the public interest to ensure that affected properties are repaired to a satisfactory standard to remain habitable by current and future homeowners.
16. The payments are not made under any obligation by MBIE to compensate homeowners, as MBIE is not under any legal obligation to do so.

17. As a result of being made in the public interest and not in response to any obligation, the Commissioner considers that the payments are in the nature of a grant or subsidy.
18. Second, the FAP payments are made by the Crown– MBIE makes these FAP payments on behalf of the Crown.
19. Finally, the FAP payments are made in relation to or in respect of the GST registered claimant's taxable activity. A key part of a GST registered body corporate's taxable activity is the maintenance of the unit title development. In the context of leaky buildings this will include repair and remediation of the affected building. Therefore, a FAP payment from MBIE to a body corporate is made in relation to that body corporate's taxable activity.

Application

20. This Statement sets out the Commissioner's position on all payments from MBIE under the FAP scheme to a GST registered body corporate, including payments made before the release of this Statement.
21. The Commissioner will continue to apply this position to all cases.
22. If you have any concerns about your compliance with the tax obligations outlined in this Statement, you should discuss this matter with a tax professional or contact Inland Revenue to make a voluntary disclosure.

Tony Munt
National Advisor, Technical Standards

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About this document

The purpose of a Commissioner's Statement is to inform taxpayers of the Commissioner's position and the operational approach being adopted on a particular tax matter.