

EXPOSURE DRAFT - FOR COMMENT AND DISCUSSION ONLY

Deadline for comment: **7 February 2023**

Please quote reference: **PUB00340 – GST**

Send feedback to Public.Consultation@ird.govt.nz

QUESTIONS WE'VE BEEN ASKED

Goods and Services Tax – Payments made by parents to childcare centres

Issued:

QB 22/XX

This Question We've Been Asked (QWBA) explains the GST treatment of payments parents make to their child's childcare centre. It includes some [examples](#).

Key provisions

Goods and Services Tax Act 1985 – ss 2, 10

Question

When is a parent's payment to their child's childcare centre subject to GST?

Answer

Usually, a parent's payment to their child's childcare centre is subject to GST at the standard rate of 15% where :

- **the childcare centre is GST registered (or should be GST registered); and**
- **the payment is made for the supply of early childhood education, childcare services or related goods.**

However, where a parent makes an unconditional gift to their child's childcare centre and that centre is a non-profit body, then that payment is not subject to GST. This includes some types of koha.

Key terms

Parent includes a child's guardian or caregiver who makes payments to a childcare centre.

Childcare centre includes kindergartens, daycare centres, preschools, early learning centres, crèches, kōhanga reo, Pacific Island language centres, Playcentres, playgroups and the like. It does not include home-based carers or early learning services provided by in-home educators.

Explanation

1. The Commissioner has been asked to clarify the GST treatment of payments parents make to childcare centres. QB 22/XX, Income Tax – payments parents make to childcare centres and donation tax credits¹ clarifies when payments parents make to childcare centres will be gifts for donation tax credit purposes.
2. In the past, some parents have made payments incorrectly called "donations" to childcare centres in substitution for paying no or low childcare fees. The Commissioner's view on this practice is addressed in [Revenue Alert RA 14/01](#).² Payments

¹ Inland Revenue, 2022.

² Inland Revenue, 2014.

parents make to childcare centres incorrectly described as donations are not unconditional gifts for GST purposes.

3. This QWBA assumes childcare centres are registered for GST. Some childcare centres may not need to be registered for GST and so choose not to be GST registered; this QWBA is not relevant to them.

How childcare centres are funded

4. Before considering the GST treatment of a payment a parent makes to a childcare centre, it is helpful to understand the government's role in funding childcare centres, as this helps with understanding the types of payments childcare centres may ask parents to make.
5. The Early Childhood Education (ECE) Funding Subsidy is the primary form of government funding paid to childcare centres that are licensed as ECE service providers under the Education and Training Act 2020. According to Ministry of Education guidelines in [ECE Funding Handbook](#),³ the ECE Funding Subsidy is a contribution to a centre's operating costs, paying for part of each hour each child spends in early childhood education to a maximum of 6 hours per child-place per day (that is, 30 hours per child-place per week). The subsidy is available for any enrolled children aged up to 6 years.
6. Licensed childcare centres that provide ECE services to children aged 3 to 5 years can obtain a higher rate of funding, up to a maximum of 6 hours per child per day and 20 hours per week. This is referred to as "20 Hours ECE". A centre can choose whether to offer parents 20 Hours ECE. Those centres that offer 20 Hours ECE may also claim the ECE Funding Subsidy for any additional hours a child attends over the hours covered by 20 Hours ECE, up to the maximum of 6 hours per day/30 hours per week.
7. According to the *ECE Funding Handbook*, childcare centres cannot charge parents fees for hours claimed as 20 Hours ECE. Parents may be charged fees for attendance hours outside of the hours claimed as 20 Hours ECE per week.
8. Where preschool children need additional hours of care in excess of 20 Hours ECE or are too young to access the 20 Hours ECE (that is, the child is younger than 3 years) some families may qualify for assistance like the Work and Income Childcare Subsidy or Early Learning Payment.

³ Ministry of Education, no date, issued under s 548(5) of the Education and Training Act 2020.

9. Both the ECE Funding Subsidy and the Work and Income payments are paid directly to the childcare centre and not to the parents. Those payments include GST.

Types of payments parents make to childcare centres

10. Despite receiving some government funding, many childcare centres also charge parents fees for attendance and other things. The amount of fees charged, or whether fees are charged, usually depends on the type of childcare centre (for example, whether it is a private "for-profit" childcare centre or a community-based, parent-led not-for-profit organisation).

Fees

11. Subject to the rules relating to 20 Hours ECE (see [6]), a childcare centre can charge fees for a child's attendance at the centre. This includes those childcare centres known as "free kindergartens" (see s 26 of the Education and Training Act 2020).
12. Where a childcare centre charges fees for a child's attendance at the centre, a contractual relationship exists between the centre and the parents for the provision of ECE services in return for the payment of fees.

Optional charges

13. Childcare centres can charge parents for optional activities or goods. These are things a parent purchases from a centre in addition to or to supplement the ECE services the childcare centre provides. The parent can choose whether to purchase the goods or services.
14. The *ECE Funding Handbook* includes information on the optional charges that licensed childcare centres can request, a list of unacceptable charges, and the level of service that must be provided to a parent who chooses not to pay optional charges. Acceptable optional charges include charges for transport, sunscreen, music teachers and sunhats. Unacceptable optional charges include contributions towards the cost of high-quality education, premiums for being a well-regarded service and administration of the 20 Hours ECE. Childcare centres that do not offer 20 Hours ECE are not subject to these rules.

Donations and voluntary contributions

15. Parents may choose or be asked to make donations or voluntary contributions to childcare centres. This is more likely to occur in respect of community-based centres

such as free kindergartens, kōhanga reo, Playcentres and playgroups. However, it is possible (although less likely) that private for-profit childcare centres may also occasionally receive donations or voluntary contributions from parents.

Scheme of the Goods and Services Tax Act 1985

16. A GST-registered childcare centre charges GST on the goods and services it supplies in the course or furtherance of its taxable activity at the standard rate of 15% (see s 8 of the Goods and Services Tax Act 1985). A childcare centre's taxable activity is the provision of early childhood education and childcare services to parents along with supplies of related goods and services.
17. The value of a childcare centre's supplies is determined by reference to the "consideration" paid for those supplies (see s 10(2)). "Consideration" is defined in s 2 and includes any payments made in respect of or for the supply of goods and services.
18. Payments for goods and services do not need to be made in only money, but can include forms of payment such as goods or parent help.
19. However, where a childcare centre is a "non-profit body" and a parent's payment is an "unconditional gift" (as defined in s 2), it is not "consideration" for a taxable supply and the payment is not subject to GST.

Unconditional gifts

20. A payment made to a non-profit body is an "unconditional gift" where:
 - the payment is voluntarily made for a non-profit body to carry on or carry out its purposes; and
 - no "identifiable direct valuable benefit" in the form of a supply of goods and services to the payer (or an associated person) arises or may arise in respect of the payment.
21. For more detailed guidance on GST and unconditional gifts, see [IS 20/09](#) GST: Unconditional gifts.⁴

⁴ Tax Information Bulletin Vol 33, No 1 (February 2021): 42.

Non-profit bodies

22. Childcare centres can be run in different ways and for different purposes. For example, a childcare centre might be a private for-profit business or it might be operated by a community-based not-for-profit organisation.
23. Only childcare centres that are non-profit bodies (as defined in s 2) can receive unconditional gifts for GST purposes.
24. A childcare centre operated by a non-profit organisation needs to be able to show the centre is:
 - carried on other than for the purposes of profit or gain to any proprietor, member or shareholder; and
 - prohibited from making distributions to any of those people.
25. If the childcare centre's governing documents do not provide this, then the centre is not a non-profit body for GST purposes. If a centre is a registered charity, it will be a non-profit body for GST purposes. However, registration under the Charities Act 2005 is not a requirement for being a non-profit body for GST purposes.
26. Childcare centres operated by private for-profit organisations are not non-profit bodies. Donations can still be made to for-profit organisations, but those payments are subject to GST unless it can be established they are not consideration for any supply of goods and services.
27. Practically, for most childcare centres that are non-profit bodies, simply confirming a payment is an unconditional gift will resolve whether the payment is subject to GST. Where it is not clear whether a payment is an unconditional gift, it may be relevant to consider the wider question of whether the payment is, in fact, consideration for a supply of goods or services.

Payment is voluntarily made

28. The first part of the definition of unconditional gift requires the payment to be "voluntarily made". These words are not defined in the Goods and Services Tax Act 1985, so they need to be given an ordinary meaning consistent with the purpose of the definition of unconditional gift (see s 10(1) of the Legislation Act 2019).
29. For the purposes of the definition of unconditional gift, the Commissioner considers a:
 - payment is voluntarily made if it is made freely by choice, is not required to be made or is optional;

- payment is not voluntarily made if it is made under a legal obligation;
- legal obligation includes a statutory obligation and in most instances it also includes an obligation under a contract; a payment made under a sense of moral obligation may still be voluntarily made; and
- non-profit body soliciting donations or recommending the amount of a donation does not, in itself, disqualify a payment from being voluntarily made.

Payments in money or kind

30. For GST purposes, a payment for a supply of goods or services does not need to be made in money (see s 10(2)(b)(i)). Therefore, a payment made by a parent by providing goods or services in return for the supply of childcare services is a payment to that childcare centre, and the centre needs to include that payment for GST purposes. The amount of the parent's payment is established by reference to the open market value of the goods or services the parent provided.

No identifiable direct valuable benefit

31. In the second part of the definition of an unconditional gift, a payment will not be an unconditional gift where an identifiable direct valuable benefit arises or may arise in respect of the payment, in the form of a supply of goods or services to the payer (or an associated person).
32. An "identifiable direct valuable benefit" is an advantage or gain in the form of a supply of goods or services to the payer (or an associated person) that is:
- clearly able to be defined or identified;
 - sufficiently closely connected to the payment;
 - useful, important and of real value;
 - capable of being valued; and
 - not of only nominal worth.
33. To disqualify a payment from being an unconditional gift, the identifiable direct valuable benefit (in the form of a supply of goods or services) must arise "in respect of" the payment made. That the payer (or an associated person) receives the benefit is not, by itself, enough to take the payment out of the definition of unconditional gift. To be disqualified from being an unconditional gift, a payment must have a sufficient link (or nexus) to the benefit arising in the form of a supply of goods or services. For example, where payment is a requirement of attendance at a childcare centre then that

payment is treated as a fee for GST purposes, and not as an unconditional gift (even if the childcare centre does not refer to the payment as a fee).

34. Where the benefit will arise regardless of whether the payment is made, the connection between the benefit and the payment will not be sufficient, so the payment will be an unconditional gift. The courts have found that for a payment to be an unconditional gift, any benefit arising must not be conditional or dependent on the payment being made.
35. *Case 8/2018 (2018) 28 NZTC 4,015 (TRA)* was about whether amounts paid by the parents of children attending a private school were consideration for a supply of education services or unconditional gifts. Judge Sinclair found on the facts that because children were not excluded from attending the school if their parents were unable to pay, their attendance at the school was not “conditional” on parents making the requested financial contributions.
36. However, Judge Sinclair found the school was “dependent” on parents’ contributions. This was because it was evident from the background facts before parents made the payments, including the related documentation and correspondence between the school and the parents, that if the parents had not made the contributions, the school would not have been able to operate. For this reason, Judge Sinclair found that in the circumstances a sufficient link could be established between the parents’ contributions and the supply of education services the school provided, so the parents’ contributions were consideration for the supply of education services, not unconditional gifts.
37. In determining whether a sufficient link exists between the payment and the benefit, the courts will take into account all the circumstances surrounding the payment.
38. A childcare centre may choose to supply goods or services to a parent or other donor as a thank you, acknowledging their generosity. In this case, there will not usually be a sufficient link between the donation and the supply of goods or services for the supply to be “in respect of” the donation (see Example 8: Donation to charity concert in return for free tickets in [IS 20/09](#)). In that situation, the payment is not subject to GST.

Examples

Example 1: Payments to daycare centre

Starling Daycare Centre is a GST-registered ECE service provider. It offers parents 20 Hours ECE.

Stella's 3-year-old daughter attends the centre for 30 hours each week. Each week, the centre provides Stella with an invoice for the 10 hours of daycare provided in addition to the 20 hours of the 20 Hours ECE claimed by Stella. The invoice also includes optional charges for goods and services supplied during the week such as outings and sunscreen. The centre charges GST of 15% on the goods and services it supplies. This is the correct treatment for GST purposes.

Example 2: Requests for contributions but no fees

Growing Giants Preschool is a non-profit organisation. It offers parents 20 Hours ECE.

Parents are not charged fees for their children to attend the preschool, even if their children attend in excess of 20 hours each week.

However, parents are asked for contributions where a child's attendance exceeds 20 hours per week. The requested contribution is calculated on an hourly rate based on the number of hours the child attends in excess of 20 hours per week, and the children of families who choose not to make the suggested contributions are not able to attend in excess of 20 hours per week.

In addition, all parents are asked for contributions towards the cost of providing children with additional items such as a music teacher and a personally monogrammed sunhat and apron. Families who choose not to make the contributions for these additional items do not get to participate in the music programme and do not get the sunhat or apron.

The contributions parents make are not unconditional gifts for GST purposes. Although a parent may have no legal or contractual obligation to make the contribution, an identifiable direct valuable benefit arises in the form of a supply of goods or service in return for the parent making the requested contributions. The benefits are the additional childcare services they receive for the time their children attend the preschool in excess of 20 hours per week and the sunhat and apron.

A sufficient link exists between the payments and the benefits to the families. The preschool should account for GST on the contributions the parents make.

Example 3: Payments to kōhanga reo

A local kōhanga reo offers its whānau 20 Hours ECE. The kōhanga reo is a non-profit organisation.

The kōhanga reo charges its whānau fees when tamariki attend for more than 20 hours per week. One whānau provides koha in the form of food and other goods instead of paying the fees for their tamariki. This koha is not an unconditional gift for GST purposes because it was not given voluntarily and an identifiable direct valuable benefit arises for the whānau in the form of a supply of ECE services in return for the payment to the kōhanga reo. The kōhanga reo should account for GST on this koha.

Another whānau at the kōhanga reo pays the fees for their tamaiti, but they have a surplus of vegetables from their garden. The whānau give these vegetables to the kōhanga reo, which uses them to provide lunches for the tamariki. This is an unconditional gift because it was given voluntarily and no identifiable direct valuable benefit arises in the form of a supply of goods or services to the whānau. This koha is exempt from GST.

Some whānau with tamariki at the kōhanga reo also choose to make cash donations to the kōhanga reo to be spent on improving its teaching facilities. This koha is exempt from GST as an unconditional gift, providing it is given voluntarily and no identifiable direct valuable benefit arises in the form of a supply of goods or services to the whānau making the payment.

Example 4: Payments to a community playgroup

St Christopher's Church runs a weekly playgroup in its church hall. The playgroup is open to the community, and any families attending on the day are asked for a gold coin donation. No one is turned away if they do not make a donation.

The church is GST registered. Attendance at the playgroup is not conditional on the families making the donation. Families can attend the playgroup whether or not they make a gold coin donation. This means the gold coin donation is not made "in respect

of" or "for" a family's attendance, so the payment is exempt from GST as an unconditional gift.

Periodically, the church newsletter includes a request for donations to help cover the playgroup's operating costs, along with a request for suitable used toys. Any donations (cash or toys) the church receives in response to the newsletter appeal are unconditional gifts for GST purposes. This is so even if a donation is made by a parent who regularly attends the playgroup with their child. While the parent may obtain a benefit from making the payment, a sufficient link does not exist between that benefit and the payment for it to be considered a "direct" benefit. The donations are exempt from GST as unconditional gifts.

Example 5: Advertising in exchange for a donation

A childcare centre asks families with businesses for donations. In return, it offers to place an advertisement for the business in its yearbook.

This payment is not an unconditional gift for GST purposes. The business gains an identifiable direct valuable benefit in the form of the supply of advertising in return for making the payment.

Example 6: Donation to playcentre with conditions

Jack is a businessperson with two children at his local Playcentre. Jack's company donates \$1,000 to the Playcentre for a new sunshade over the sandpit. The company's \$1,000 donation is an unconditional gift. The company makes the donation for the Playcentre (a non-profit body) to carry on or carry out its purposes, even though the funds are for a specified purpose.

Jack's company (or Jack and his children) does not receive an identifiable direct valuable benefit as a result of the company's payment. Any benefit Jack's children gain from using the sunshade is not an identifiable direct valuable benefit in the form of a supply of goods or services to an associate of the company. The sunshade is for the benefit of the Playcentre as a whole.

The payment is not subject to GST.

Draft items produced by the Tax Counsel Office represent the preliminary, though considered, views of the Commissioner of Inland Revenue.

In draft form these items may not be relied on by taxation officers, taxpayers, and practitioners. Only finalised items represent authoritative statements by Inland Revenue of its stance on the particular issues covered.

References

Legislative references

Charities Act 2005

Education and Training Act 2020, ss 26, 548(5)

Goods and Services Tax Act 1985, ss 2 (“consideration”, “non-profit body”, “unconditional gift”), 8, 10(2)

Legislation Act 2019, s 10(1)

Case reference

Case 8/2018 (2018) 28 NZTC 4,015 (TRA)

Other references

ECE Funding Handbook (Ministry of Education, no date). [education.govt.nz/early-childhood/funding-and-data/funding-handbooks/ece-funding-handbook](https://www.education.govt.nz/early-childhood/funding-and-data/funding-handbooks/ece-funding-handbook)

IS 20/09 GST: Unconditional gifts, *Tax Information Bulletin* Vol 33, No 1 (February 2021): 42). [taxtechnical.ird.govt.nz/interpretation-statements/is-20-09](https://www.taxtechnical.ird.govt.nz/interpretation-statements/is-20-09)

QB 22/XX Income Tax – Payments made by parents to childcare centres and donation tax credits (Question We’ve Been Asked, Inland Revenue, 2022). [URL](#)

Revenue Alert RA 14/01 (Inland Revenue, 2014). [taxtechnical.ird.govt.nz/revenue-alerts/ra-1401-revenue-alert](https://www.taxtechnical.ird.govt.nz/revenue-alerts/ra-1401-revenue-alert)

About this document

Questions We've Been Asked (QWBAs) are issued by the Tax Counsel Office. QWBAs answer specific tax questions we have been asked that may be of general interest to taxpayers. While they set out the Commissioner's considered views, QWBAs are not binding on the Commissioner. However, taxpayers can generally rely on them in determining their tax affairs. See further [Status of Commissioner's advice \(December 2012\)](#). It is important to note that a general similarity between a taxpayer's circumstances and an example in a QWBA will not necessarily lead to the same tax result. Each case must be considered on its own facts.