

EXPOSURE DRAFT - FOR COMMENT AND DISCUSSION ONLY

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QUESTIONS WE'VE BEEN ASKED

Goods and Services Tax – Payments made by parents to private schools

Issued:

QB 22/XX

This Question We've Been Asked explains the GST treatment of payments parents make to private schools.

Another QWBA on donation tax credits and a parent's payment to their child's private school (QB 22/XX) and a public ruling on payments by parents to state schools and state integrated schools ([BR Pub 18/06](#)) can be found on our Tax Technical website.

Key provisions

Goods and Services Tax Act 1985 – ss 2, 10

Question

When will a parent's payment to their child's private school be subject to GST?

Answer

In most cases, a parent's payment to their child's private school will be subject to GST.

Private schools make taxable supplies of education and education-related goods and services to parents. Usually, schools will charge GST on these supplies at the standard rate of 15%.

However, there can be exceptions, in particular:

- **an "unconditional gift" a parent makes to their child's private school is not subject to GST; and**
- **some of the boarding fees a parent pays to their child's private school can be subject to GST at what is, in effect, a reduced rate of 9%.**

Key term

Parent also includes a child's guardian or caregiver who makes payments to a private school.

Private school means a school registered under s 214 of the Education and Training Act 2020. This Question We've Been Asked (QWBA) assumes all private schools are GST registered. It also assumes most private schools are non-profit bodies for GST purposes.

Explanation

1. The Commissioner has been asked to clarify the GST treatment of payments parents make to private schools. (QB 22/XX: *Income Tax – Payments made by parents to private schools and donation tax credits*¹ clarifies when payments parents make to private schools will be gifts for donation tax credit purposes.)
2. This QWBA complements earlier GST advice published for parents with children attending state schools and state integrated schools ([BR Pub 18/06](#)).

¹ Inland Revenue, 2022.

3. In addition, in the past, there have been situations where parents have made "donations" to private schools in substitution for paying no or low school fees. The Commissioner's view on this practice was addressed in [Revenue Alert 14/01](#). Payments made by parents to private schools incorrectly described as "donations" are not unconditional gifts for GST purposes.
4. Private schools have also asked for some guidance on the GST treatment of boarding fees charged for students staying in a school boarding house, and when the reduced GST rate for the supply of "domestic goods and services" will apply.
5. This QWBA assumes that private schools are registered for GST.

Scheme of the Goods and Services Tax Act 1985

6. Generally, a private school 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). A private school's taxable activity is the provision of education and education-related goods and services to students and their families.
7. Usually, the value of a private school's supplies is determined by reference to the "consideration" paid for those supplies (see s 10(2)). "Consideration", as defined in s 2, includes payments made in respect of the supply of goods and services.
8. However, for private schools there can be two exceptions to this general rule. This is where:
 - a parent's payment is an "unconditional gift" (as defined in s 2) and so is not "consideration", and therefore is not subject to GST; or
 - a private school makes a supply of "domestic goods or services" (as defined in s 2) to a parent as part of the school supplying boarding accommodation for a student. Generally, for stays in a school boarding house that will be longer than four weeks, the value of the supply of "domestic goods and services" is reduced to 60% of the consideration paid for GST purposes. This effectively reduces the rate of GST the school charges for that portion of the boarding fees from 15% to 9%.
9. Both these exceptions are addressed in more detail below.

Unconditional gifts

10. If a private school that is a non-profit body receives a payment from a parent that is an "unconditional gift", that payment is not subject to GST.

11. For detailed guidance on GST and unconditional gifts, see "[IS 20/09](#) GST – unconditional gifts".²

Non-profit body

12. This QWBA assumes that most private schools are non-profit bodies for GST purposes, although it recognises some private schools are not. Essentially, a private school will be a non-profit body for GST purposes (see s 2) if the school 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.
13. If the school's governing documents do not provide this, then the school cannot be a non-profit body for GST purposes. If a school 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.

Unconditional gift

14. A payment made to a non-profit body is an "unconditional gift" where:
- the payment is voluntarily made for the 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.

Payment is voluntarily made

15. The first part of the definition of "unconditional gift" requires the payment to be "voluntarily made". These words are not defined in the Act and so they need to be given an ordinary meaning that is consistent with the purpose of the definition of "unconditional gift" (see s 10(1) of the Legislation Act 2019).
16. 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;

² *Tax Information Bulletin* Vol 33, No 1 (February 2021): 42.

- a payment is not voluntarily made if it is made under a legal obligation;
- a 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
- a non-profit body soliciting donations or recommending the amount of a donation does not in itself disqualify a payment from being voluntarily made.

No identifiable direct valuable benefit

17. In the second part of the definition, 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 of the payer).
18. 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.
19. 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.
20. Where the benefit will arise regardless of whether the payment is made, the connection between the benefit and the payment will not be sufficient, and 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.
21. *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 private school if their parents

were unable to pay, their attendance at the school was not “conditional” on parents making the requested financial contributions.

22. However, she 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 private school provided, so that the parents’ contributions were consideration for the supply of education services, not unconditional gifts.
23. 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.
24. In some circumstances, a non-profit body chooses to supply goods or services to a donor as a “thank you” acknowledging the donor’s generosity. In this case, there will not usually be a sufficient link between the donor’s payment and the supply of goods or services for the supply to be “in respect of” the donor’s payment (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.

Supplies of domestic goods and services in boarding houses

25. Where a private school provides boarding accommodation for a student in a school boarding house, the GST charged in respect of that supply of accommodation is subject to special rules.
26. Under the special rules set out in s 10(6), a lower rate of GST is chargeable than for ordinary taxable supplies on aspects of the supply of boarding accommodation – but only where the school boarding house qualifies as a “commercial dwelling” and the student’s stay in the boarding house will be for longer than four weeks in total. The goods and services eligible for the lower GST rate are referred to as “domestic goods and services”.
27. A “commercial dwelling” is defined in s 2 and includes hostels and boarding houses. For the purposes of this QWBA it is assumed that school boarding houses operated by private schools for student accommodation are “commercial dwellings”.
28. The term “domestic goods and services”, also defined in s 2, means the right to occupy premises like a boarding house together with any ancillary supplies like power, cleaning and other chattels related to the premises that are included along with the right to occupy. It does not include supplies of non-domestic goods or services such

as meals, personal care and personal laundry services that might also be supplied and included within the overall fee charged by the school for boarding accommodation.

29. For GST purposes, the value of the supply of “domestic goods and services” is treated as being 60% of the actual consideration for the supply. In effect, this means GST is charged on the supply of “domestic goods and services” at the reduced rate of 9%.
30. Only domestic goods and services are subject to the lower GST rate, so the school must make an apportionment when invoicing boarding fees between supplies of domestic and non-domestic goods and services to parents. An ongoing apportionment percentage can be established using a factual basis. The school must keep sufficient records to support the apportionment basis.
31. However, any expenses incurred in providing domestic goods and services in a school boarding house do not need to be apportioned as they are all incurred in the course of making taxable supplies.
32. Where a boarding house is a “residential establishment” (as defined in s 2), the reduced GST rate applies from the start of any contract or arrangement for boarding accommodation where it is agreed the stay will be longer than four weeks in total. A boarding house will be a residential establishment if at least 70% of the students living in the boarding house will reside there for longer than four weeks. The period of residence does not need to be unbroken – the stay simply needs to be longer than four weeks in total. This means weekly boarders (ie, students who board five days a week during the term) are included. A period of residence is established by considering the legal arrangements between the parties.
33. Supplies of domestic goods and services to short-term boarders who stay for less than four weeks in total are subject to GST at the standard rate.

Examples

St Christopher’s School, an independent church school, is a private school. It is registered for GST and it is also a registered charity under the Charities Act 2005 so it is a non-profit body for GST purposes.

Example 1: Tuition fees for attending private school

Michael has been accepted to attend St Christopher’s School as a day student, starting in Year 9. The school advises that Michael’s year 9 tuition fees are \$5,500 per term,

inclusive of GST. At the beginning of each term St Christopher's School issues a tax invoice to Michael's parents for the tuition fees payable for the upcoming term. The invoice includes GST of 15%.

Each family at the school also has a disbursement account for additional expenses like stationery, replacement uniform items, exam fees, and outings that are payable in addition to the tuition fees. The balance of the disbursement account is required to be paid monthly by direct debit. All the additional expenses are also subject to GST at 15%.

Example 2: Annual donation to scholarship fund

In its first newsletter for the school year, St Christopher's School includes a link to its website and a reminder from the school's Board that an annual donation from families or friends to help the school to fund its scholarship and building programme would be appreciated.

These payments are unconditional gifts as long as the families and friends make them voluntarily and get no identifiable direct valuable benefit in return. In these circumstances, the payments are not subject to GST.

Example 3: Donations to school instead of fees

St Christopher's School is offering students the opportunity to attend some "one-off" music lessons from a visiting "world-class" performer. Interested parents are asked to make voluntary contributions to cover the cost to the school of hosting the performer. The music department's newsletter makes it clear that the performer's visit will only go ahead if the school receives sufficient contributions and only children whose parents have made contributions will be able to attend the lessons.

These payments are not unconditional gifts. They are consideration for the supply of music lessons by the school. The supply of the music lessons is conditional and dependent on the parents making the payments to the school. The supply of these music lessons by the school, and the payments parents make for them are subject to GST.

Example 4: Donation to school with conditions

Jack is a businessperson with two children at St Christopher's School. Jack's company donates \$6,000 to the school, for the school to use to install sunshades over the school playground. The company's \$6,000 donation is an unconditional gift. The company makes the donation for the school (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 sunshades is not an identifiable direct valuable benefit in the form of a supply of goods or services to an associate of the company. The sunshades are for the benefit of the school community as a whole.

The payment is not subject to GST.

Example 5: Plaque to recognise philanthropic donation

ABC Trust, a private philanthropic trust that a school alumnus has set up, makes a substantial distribution to St Christopher's School for its project to build a new hall. The school builds a new hall with the funds and in gratitude displays a plaque that states the hall was funded by the generous donation from the ABC Trust.

ABC Trust has not received an identifiable direct valuable benefit in the form of a supply of goods or services in respect of the distribution. The distribution is an unconditional gift for GST purposes. While the plaque acknowledges ABC Trust, it is not a "valuable" benefit and so does not prevent the payment from being an "unconditional gift".

The payment is not subject to GST.

Example 6: Supply of accommodation in a boarding house

St Christopher's School operates a boarding house for its students during term time. It enters into a contract with a family to supply their child with boarding accommodation for one 10-week term. The school has previously established, based on an analysis of past transactions, that it supplies 30% domestic goods and services and 70% non-

domestic goods and services to its boarders. The school has kept records supporting that apportionment.

The GST-exclusive fee for a 10-week term boarding in the school's boarding house is \$4,000:

- $\$4,000 \times 30\% = \$1,200$ (portion of boarding fee attributable to domestic goods and services, including cleaning, bed linen, heating, Wi-Fi, etc):

$$\$1,200 \times 60\% \times 15\% = \$108 \text{ (GST on domestic goods and services)}$$

- $\$4,000 \times 70\% = \$2,800$ (portion attributable to non-domestic goods and services including duty staff, pastoral care, meals, personal laundry services, activities etc):

$$\$2,800 \times 15\% = \$420 \text{ (GST on non-domestic goods and services)}$$

Total GST on the boarding fee is $\$108 + \$420 = \$528$

Therefore, the total boarding fee inclusive of GST for a 10-week term is \$4,528.

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, or 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

Goods and Services Tax Act 1985, ss 2 ("commercial dwelling", "consideration", "domestic goods and services", "non-profit body", "residential establishment", "unconditional gift"), 8, 10(2), 10(6)

Legislation Act 2019, s 10(1)

Case reference

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

Other references

"GST – Supplies made to residents of commercial dwellings", *Tax Information Bulletin* Vol 6, No 2 (August 1994): 6. taxtechnical.ird.govt.nz/tib/volume-06---1994-1995/tib-vol6-no2

"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

QB 22/XX Income Tax – Payments made by parents to private schools and donation tax credits.

About this document

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