

**EXPOSURE DRAFT – FOR COMMENT AND DISCUSSION ONLY | HUKIHUKI HURANGA  
– MŌ TE TĀKUPU ME TE MATAPAKI ANAKE**

Deadline for comment | Aukatinga mō te tākupu: **14 June 2023**

Please quote reference | Whakahuatia te tohutoro: **PUB00423**

Send feedback to | Tukuna mai ngā whakahokinga kōrero ki  
[Public.Consultation@ird.govt.nz](mailto:Public.Consultation@ird.govt.nz)

Notes | Pitopito kōrero: Let us know if this fact sheet could be more useful. Does it highlight the most important points?

## FACT SHEET | PUKA MEKA

# GST – Court awards and out-of-court settlements

Issued | Tukuna: # # 2023

IS ##/## FS #

This fact sheet accompanies *IS XX/XX: GST – Court awards and out-of-court settlements*, which discusses whether court awards and out-of-court settlements give rise to a GST liability. This liability may occur if the award or settlement is consideration for a supply made by the person receiving the payment.

## Key terms | Kīanga tau tāpua

<b>consideration</b>	A defined term with several important features as discussed in IS XX/XX, but essentially it is the payment made in return for a supply.
<b>reciprocity</b>	A state where the thing provided by each party is provided because of, or in exchange for, the thing provided by the other party.

## Key points

1. This fact sheet sets out the main points from *IS XX/XX: GST – Court awards and out-of-court settlements*, which discusses whether court awards and out-of-court settlements give rise to a GST liability. This liability may occur if the award or settlement is consideration for a supply made by the person receiving the payment.

### **For an amount to be consideration, a supply must first occur**

2. It is first necessary to identify a supply of goods or services. If no supply exists, the payment is not consideration, so is not subject to GST.
3. No supply exists if a person uses property without right. However, a mandatory acquisition of property under legislation can be a supply, as the transaction is accompanied by a legal transfer of ownership.
4. An agreement not to do something in the future can be a supply (that is, a chose in action, which is a service). A forbearance to sue can be a supply but see [13].
5. When identifying a supply, the supply does not need to be made to the person providing the consideration.

### **Sufficient connection and reciprocity must exist**

6. For a court award or out-of-court settlement to be consideration for a supply it must have a sufficient connection with a supply of goods or services or be an adjustment to the consideration for an earlier supply. Reciprocity must exist between the payment and the supply.

7. When determining whether a sufficient connection exists between a payment and a supply, it is necessary to consider the legal arrangements actually entered into, not the economic or other consequences of the arrangements.
8. The label attached to a payment is not determinative of its legal nature. In determining the legal nature of a payment, it may be necessary to consider the circumstances of the dispute. In the case of out-of-court settlements, it is necessary to consider the remedy that would most likely have resulted had the dispute proceeded to court.

## **Different types of court award or out-of-court settlement**

9. Compensation for a loss is not consideration for a supply because a person does not make a supply by suffering a loss.
10. Where a monetary equivalent is paid in restitution to a person from whom a thing has been taken without right, the payment is not consideration for a supply of the thing.
11. Where one party terminates an ongoing supply contract without a right to terminate and without the agreement of the other party, a settlement sum in respect of this action will typically relate to a loss that the other party suffers as a result of the early termination. Therefore, the award is not consideration for a supply.
12. In contrast, if the other party agrees to alter or terminate the contract in exchange for a payment, there is a supply by that other party of rights under the contract, and the payment is consideration for the supply.
13. A forbearance to sue is capable of being a supply (given the wide definition of supply), but a settlement payment will generally be for something other than the forbearance. Generally (but not always), the forbearance to sue will be merely a mechanism to ensure finality of the dispute and the payment will relate to an underlying matter.
14. A court order under s 43(3)(c) of the Fair Trading Act 1986 varying a contract by reducing the price of the goods may create an inaccuracy that needs to be adjusted under s 25 of the GST Act 1985. Such an order might be made, if the quality of goods purchased is misrepresented.

## Insurance payments

15. A special case is where an insurer makes a payment arising from a court award or out-of-court settlement. Where a registered person receives an amount from an insurer, the amount is **deemed** to be consideration for a supply made by the registered person. This applies to payments that would not otherwise be regarded as consideration for a supply, for example an award of compensation for a loss.

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## About this document | Mō tēnei tuhinga

Some of the Tax Counsel Office's longer or more complex items are accompanied by fact sheets, which summarise and explain the item's main points. While they summarise the Commissioner's considered views, to fully understand the guidance a fact sheet should be read alongside the full item. Fact sheets are not binding on the Commissioner. See further [Status of Commissioner's advice \(December 2012\)](#).