

# GST – Section 5(6D): Payments in the nature of a grant or subsidy

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This interpretation statement considers the application of section 5(6D) of the Goods and Services Tax Act 1985. Section 5(6D) broadly provides that when a payment in the nature of a grant or subsidy is paid on behalf of the Crown or by a public authority to a person in respect of their taxable activity, then that payment is deemed to be consideration for a supply of goods and services in the course or furtherance of the taxable activity.

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

## REPLACES | WHAKAKAPIA

- "GST and Compensation to Maori Organisations", *Tax Information Bulletin* Vol 4, No 7 (March 1993): 4
  - "GST on Grants", *Tax Information Bulletin* Vol 4, No 7 (March 1993): 13
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## Summary | Whakarāpopoto

- Section 5(6D) is a deeming provision in the Act that applies in certain circumstances where a payment in the nature of a grant or subsidy is made. The term “payment in the nature of a grant or subsidy” is interpreted according to the usual rules of statutory interpretation but section 5(6E) contains specific inclusions in and exclusions from the term.
- Section 5(6D) only applies to payments made on behalf of the Crown or by any public authority.
- Section 5(6D) covers a payment where it is made to:
  - any person in relation to or in respect of that person’s taxable activity; or

- any person for the benefit of and on behalf of another person in relation to or in respect of that other person's taxable activity.
4. Where a payment meets the requirements in [3], section 5(6D) operates to deem the payment 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. If they are a GST-registered person, they will have to account for output tax.
  5. A payment in the nature of a grant or subsidy will have one or more of the following characteristics:
    - The Crown or another public body pays it gratuitously (without obligation) out of public funds.
    - The purpose of the payment is to further objectives in the public interest, and this may be done by lowering the price of a commodity or service.
    - The payment is often made to public, charitable or private bodies so that third parties can benefit.
    - The objective of the payment is to promote or encourage an industry or enterprise.
  6. The legislation refers to a payment "in the nature of" a grant or subsidy. The words "in the nature of" extend the coverage of section 5(6D) to include payments that are not technically grants or subsidies.
  7. The focus is on the character or quality of what the payer pays, and of the consideration they give, rather than on what the payee receives.
  8. Where section 5(6D) applies, and the amount they receive means an unregistered person crosses the GST registration threshold of \$60,000 per annum, they will need to register for GST and pay output tax on the payment. The proviso to section 51(1)(a) may apply, which excludes the need to register on the "backward-looking" test in section 51(1)(a).
  9. Alternatively, if it is a requirement that the person spends the grant or subsidy on replacing any plant or other capital asset they use in their taxable activity, then the deemed supply under section 5(6D) may not trigger registration because of the proviso in section 51(1)(d).

## Introduction | Whakataki

10. This interpretation statement replaces and updates the Commissioner's previous statements on section 5(6D). These statements are:

- [“Application of GST to Government Grants and Subsidies”](#), *Tax Information Bulletin* Vol 3, No 1 (July 1991): 30;
  - [“GST and Compensation to Maori Organisations”](#), *Tax Information Bulletin* Vol 4, No 7 (March 1993): 4; and
  - [“GST on Grants”](#), *Tax Information Bulletin* Vol 4, No 7 (March 1993): 13.
11. This statement **does not** replace two other public items that discuss section 5(6D). These items are:
- [“Treaty of Waitangi Settlements – GST Treatment”](#), *Tax Information Bulletin* Vol 14, No 9 (September 2002): 50; and
  - [“GST Treatment of Funding Provided to Treaty of Waitangi Claimants by the Crown through the Office of Treaty Settlements”](#), *Tax Information Bulletin* Vol 18, No 11 (December 2006): 37.
12. The two items listed in [11] cover generally the GST treatment of Treaty of Waitangi settlements and the funding provided to Treaty of Waitangi claimants and are not limited to section 5(6D). The conclusions in these items on section 5(6D) are consistent with the approach of this interpretation statement.

## Analysis | Tātari

### Background to, and overview of, section 5(6D)

13. Section 5(6D) was introduced into the Act in 1991 as a result of a Tax Review Authority decision (*Case M129* (1990) 12 NZTC 2,839). Here Barber DJ found that the Department of Labour’s payment of a jobseeker subsidy to an employer did not amount to consideration for a taxable supply of services by the employer to the Department of Labour.
14. As a result of the case, section 2(1) of the Goods and Services Tax Amendment Act (No 3) 1991 introduced section 5(6D). Although the section was enacted on 28 June 1991, it took effect from 1 October 1986 (the date the Act came into effect) to ensure that the legislation reflected the government’s original intention. (It included a savings provision for positions taken before 19 December 1990.)
15. Section 5(6D) provides:
- (6D) 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 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.

16. For section 5(6D) to apply, the payment must meet the following criteria:
  - there must be a payment in the nature of a grant or subsidy; and
  - the payment must be made on behalf of the Crown or by any public authority; and
  - the payment must be made to either:
    - a person in relation to or in respect of that person's taxable activity; or
    - a person for the benefit and on behalf of another person in relation to or in respect of that other person's taxable activity.
17. If the payment meets the criteria in [16], then the operative part of the section applies. That is, the payment is 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.
18. When a payment is deemed a supply, it leads to other issues such as time of supply and GST registration.

## A "payment in the nature of a grant or subsidy"

*Ordinary meaning of "grant" and "subsidy"*

19. Case law has found the dictionary definitions of "grant" and "subsidy" to be helpful in interpreting the law. It is useful to consider them before turning to that case law.
20. The *Concise Oxford English Dictionary* (12th ed, 2011, Oxford University Press, Oxford) defines "grant" and "subsidy" as follows:

grant. n. a sum of money given by a government or public body for a particular purpose

subsidy. n. 1. a sum of money granted from public funds to help an industry or business keep the price of a commodity or service low. ▪ a sum of money granted to support an undertaking held to be in the public interest ▪ a grant or contribution of money

21. The *Oxford English Dictionary* (online edition, 3<sup>rd</sup> ed, 2012, Oxford University Press<sup>1</sup>) gives an expanded definition of each term:

grant n1.

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<sup>1</sup> Accessed 9 March 2023.

3a. An authoritative bestowal or conferment of a privilege, right, or possession; a gift or assignment of money, etc. by the act of an administrative body or of a person in control of a fund or the like.

subsidy, n.

3. a. *gen.* A donation of money or other property, usually made to provide assistance.

...

c. Money or a sum of money granted by the state or a public body to help keep down the price of a commodity or service, or to support something held to be in the public interest. Also: the granting of money for these purposes

22. In these dictionary definitions, the two terms have some features in common. They identify a public authority or government as providing the funds and contain a sense that the purpose of providing the funds is to further objectives in the public interest. Often the way of achieving this purpose is to lower the price of a commodity or service. This understanding that a public authority or government is providing the funds is consistent with the specific requirements of section 5(6D) that the payment is on behalf of the Crown or by any public authority.
23. New Zealand case law deals with the meaning of “in the nature of a grant or subsidy”, but in considering another provision of the Act – the second proviso to section 78(2) (inserted with effect from 23 March 1989 by section 20 of the Finance Act 1989). Section 78 covers the effect of imposing or altering the rate of GST. Section 78(2) provides for the modification of an agreement or contract to allow the supplier to change the agreed price to take account of the tax change. The second proviso is that the rule in subsection (2) does not apply to require a public authority to alter any amount it is to pay for any supply of goods and services where the consideration for that supply is “in the nature of a grant or subsidy”.
24. The two relevant cases are *Director-General of Social Welfare v De Morgan and another* (1996) 17 NZTC 12,636 (CA) and *Kena Kena Properties Limited v Attorney-General* (2002) 20 NZTC 17,433 (PC). The cases involved substantially similar facts, involving Department of Social Welfare payments to rest home operators to help residents of those rest homes with the cost of living there.
25. After the change in GST rates in 1989 (from 10% to 12.5%), the Department refused to compensate for the increase in GST by increasing the amount of its payment to the rest home operators. The operators sought to apply the rule in section 78(2) to increase the payments. The Department relied on the second proviso to section 78(2) as support for its view that it did not need to increase the amount it paid as a result of the increase in the GST rate. The Court of Appeal in *De Morgan* and the Privy Council in *Kena Kena Properties* both found in favour of the Department of Social Welfare.

26. In *De Morgan*, Richardson P explained (at 12,641) that the words “in the nature of” extend the coverage of section 5(6D) so that, even if the payments are not technically a grant or subsidy, the subsection will apply if the payment is within the nature of a grant or subsidy.
27. His Honour also concluded that:
- the focus is on the character or quality of what the payer pays and of the consideration they give, rather than what the payee receives in their hands;
  - the authority for making the payments is relevant (in this case, a scheme with the purpose of granting special assistance under any welfare programme); and
  - the description of the payment as a “subsidy” and the ultimate purpose of supporting the rest home residents were relevant.
28. The Privy Council in *Kena Kena Properties* endorsed the Court of Appeal decision in *De Morgan*. It further observed that:
- most grants or subsidies will be made to public, charitable or private bodies so that third parties can benefit;
  - grants or subsidies are made because it is considered in the public interest to enable such bodies to provide accommodation, health services, cultural events and so on to members of the public at a concessionary rate; and
  - the body in question may not itself be the intended beneficiary of the grant or subsidy.
29. Overseas case law on what is a “grant” or “subsidy” appears in Canadian and Australian cases such as:
- *GTE Sylvana v R* [1974] 1 FCR 726;
  - *Placer Development Ltd v Commonwealth of Australia* (1969) 121 CLR 353 (HCA);
  - *Reckitt & Colman Pty Ltd v FCT* 74 ATC 4185 (Supreme Court of New South Wales); and
  - *First Provincial Building Society Limited v FCT* 95 ATC 4145 (Full Federal Court).
30. These cases, together with the New Zealand case law, establish that a grant or subsidy has one or more of the following characteristics:
- The Crown or another public body pays it gratuitously (without obligation) out of public funds.
  - The objective of the payment is to further objectives in the public interest and lowering the price of a commodity or service may achieve this objective.
  - The payment is often made to public, charitable or private bodies so that third parties can benefit.

- The objective of the payment is to promote or encourage an industry or enterprise.
31. Individual circumstances also need to be considered. For example, in *De Morgan* the authority for making the payments was relevant (a scheme with the purpose of granting special assistance under any welfare programme). Also relevant was the description of the payment as a “subsidy” and the ultimate purpose of supporting the rest home residents.
32. Whether a payment is a grant or subsidy is not determined by the description used by the parties to describe the payment. In this regard the principle from *Marac Life Assurance v CIR* (1986) 8 NZTC 5086, 5097-8 (CA) (per Richardson J) applies. His Honour said:

The true nature of a transaction can only be ascertained by careful consideration of the legal arrangements actually entered into and carried out: not on an assessment of the broad substance of the transaction measured by the results intended and achieved or of the overall economic consequences. **The nomenclature used by the parties is not decisive and what is crucial is the ascertainment of the legal rights and duties which are actually created by the transaction into which the parties entered.** The surrounding circumstances may be taken into account in characterising the transaction. Not to deny or contradict the written agreement but in order to understand the setting in which it was made and to construe it against that factual background having regard to the genesis and objectively the aim of the transaction. Of course the documentation may be a sham hiding the true agreement or its implementation. Or there may be a statutory provision mandating a broader or different approach. But at common law there is no halfway house between sham and characterisation of the transaction, according to the true nature of the legal arrangements actually entered into and carried out.

(Emphasis added.)



*Section 5(6E) definition of "payment in the nature of a grant or subsidy"*

33. As well as this analysis of the meaning of "grant" or "subsidy" in section 5(6D) there is also the need to consider the definition in section 5(6E). This provides a number of specific rules for what is included and not included in the term "payment in the nature of a grant or subsidy". The two specific inclusions are (section 5(6E)(a)):
- (i) any suspensory loan or advance, when that loan or advance becomes non-repayable by reason of its conditions for non-repayment being satisfied; and
  - (ii) any payment in the nature of a grant or subsidy of a kind that is declared by the Governor-General by Order in Council to be a taxable grant or subsidy for the purposes of subsection (6D), being a payment that, but for such declaration, would be excluded from this definition by virtue of paragraph (b)(ii):
34. At present, in terms of section 5(6E)(a)(ii), there is no Order in Council declaring an amount to be a taxable grant or subsidy.
35. There are three exclusions from the term "payment in the nature of a grant or subsidy" (section 5(6E)(b)):
- (i) any payment of a benefit paid under the Social Security Act 2018; or
  - (ii) subject to paragraph (a)(ii), any other payment made to a person where the payment is for the personal use and benefit of the person or, as the case may be, a relative (as defined in paragraph (a) of the definition of that term in section YA 1 of the Income Tax Act 2007) of the person; or
  - (iii) any payment of a kind that is declared by the Governor-General by Order in Council not to be a taxable grant or subsidy for the purposes of subsection (6D).
36. These exclusions cover social welfare benefits, payments made to a person for their personal use and benefit (in contrast to being in relation to a taxable activity), and payments declared by Order in Council not to be a taxable grant or subsidy for the purposes of section 5(6D). The Schedule to the Goods and Services Tax (Grants and Subsidies) Order 1992 has a list of payments declared not to be taxable grants or subsidies for the purposes of section 5(6D). These include earthquake subsidy payments in relation to the Christchurch and Kaikoura earthquakes and certain Covid-19 payments.

## **Payment made on behalf of the Crown or by any public authority**

37. It will normally be straightforward to establish whether a payment meets the section 5(6D) requirement that it is made on behalf of the Crown or any public authority. The Act has its own definition of "public authority" (in section 2(1)) as follows:

**public authority** means all instruments of the Crown in respect of the Government of New Zealand, whether departments, Crown entities, State enterprises, or other instruments; and includes offices of

Parliament, the Parliamentary Service, the Office of the Clerk of the House of Representatives, public purpose Crown-controlled companies, and the New Zealand Lottery Grants Board; but does not include the Governor-General, members of the Executive Council, Ministers of the Crown, or members of Parliament

38. It is worth observing the four exclusions from the term “public authority” at the end of that definition, namely:
- the Governor-General;
  - members of the Executive Council;
  - Ministers of the Crown; and
  - members of Parliament.

## **Payment made to a person in relation to or in respect of that person’s taxable activity – section 5(6D)(a)**

39. Section 5(6D)(a) concerns the situation where a payment in the nature of a grant or subsidy is made to “any person ... in relation to or in respect of that person’s taxable activity”. Section 5(6E)(b)(ii) provides that a “payment in the nature of a grant or subsidy” does not include a payment made to a person where the payment is for the personal use and benefit of the person or a relative of the person.
40. Accordingly, the statutory scheme makes it clear that section 5(6D) only covers payments relating to taxable activities. It does not extend to all payments to GST-registered persons (subject to the Order in Council process in section 5(6E)(a)(ii) – which has not been used to date).
41. Case law establishes that the words “in relation to or in respect of” are words of “the widest import” (*Shell New Zealand Limited v CIR* (1994) 16 NZTC 11,303 (CA)). (Although *Shell* was an income tax case, there is no reason for interpreting the words in a different way in a GST context.) In the *First Provincial* case mentioned at [29], Hill J was considering a subsidy received “in relation to” the carrying on of a taxpayer’s business. His Honour found that the words “in relation to” were intended to extend the section (the first part of which covered a subsidy a taxpayer received in “carrying on” a business) and indicated a wider relationship between a subsidy and the taxpayer’s business.
42. As a result, it can be expected that a court would interpret the required link between a grant or subsidy and the person’s taxable activity widely. However, in practice it is unlikely that this will give rise to significant uncertainty as it would be expected that someone who pays a grant or subsidy will usually carefully explain the reasons why they are making the payment, who they are paying it to, and what the payment is for. The accountability requirements on the Crown and public authorities in respect of

payments in the nature of a grant or subsidy should provide sufficient detail to determine whether section 5(6D)(a) is engaged.

43. Obviously the person receiving the grant or subsidy needs to have a taxable activity if section 5(6D) is to apply to them. If they do not have a taxable activity, the rule in section 5(6E)(b)(ii) is likely to apply (as the payment will be in their private capacity). Receiving a grant or subsidy does not create a taxable activity where there is not one. However, if the grant or subsidy is paid to help a person to start a taxable activity, that will be enough to engage section 5(6D)(a) because section 6(2) of the Act provides that "anything done in connection with the beginning ... of a taxable activity is treated as being carried out in the course or furtherance of the taxable activity".
44. Where a grant or subsidy is paid in relation to or in respect of a taxable activity **and** some other matter then an apportionment may be required. For example, if a payment relates to both a person's taxable activity and to an activity involving the making of exempt supplies (excluded from the definition of "taxable activity" by section 6(3)(d)) then section 10(18) would apply to apportion the consideration between the deemed supply in section 5(6D) and the other matter (the exempt activity). Only the portion relating to the taxable activity would be subject to GST under section 5(6D).
45. For more on section 10(18) see IS3387 (*GST treatment of court awards and out of court settlements*) and IS20/05 (*GST – supplies of residences and other real property*).

### **Payment made to any person for the benefit and on behalf of another person in relation to or in respect of that other person's taxable activity – section 5(6D)(b)**

46. Section 5(6D)(b) provides for a situation where the person who receives a payment is not the intended beneficiary of the funds paid. In this situation, the first recipient of the funds is not liable to account for GST. Instead, the person who ultimately receives the funds will have to account for GST (assuming they are GST registered and the funds are in relation to or in respect of their taxable activity).
47. *Chatham Islands Enterprise Trust v CIR* (1999) 19 NZTC 15,075 (CA) provides support for this view. In that case, the Crown had provided funding to the Chatham Islands Enterprise Trust and claimed that the trust had GST output tax obligations as a result. One basis for this claim was that section 5(6D) applied. The Court of Appeal found that the trust was not conducting a taxable activity and so section 5(6D)(a) did not apply. In discussing section 5(6D)(b), the Court of Appeal observed at [22] that:

Counsel for the Commissioner abandoned any reliance on s 5(6D)(b), recognising that if it applied and the Crown's payments could truly be said to be for the benefit of the trading companies [owned by the Trust], the tax would be recoverable from them, not from the Trust. In any event, we found persuasive Mr Jenkin's submission that para (b) is referring

to the receipt of payment in the capacity of an agent and that the payments in this case were not received on that basis, but were payments to the Trust itself to be dealt with in its discretion in terms of the deed.

48. For the rule in section 5(6D)(b) to cover a payment in the nature of a grant or subsidy, the payment must be both:
  - to a person for the benefit and on behalf of another person; and
  - in relation to or in respect of that other person's taxable activity.
49. A payment will satisfy the first of the two criteria in section 5(6D)(b) when it is made to a person for the advantage or profit of another person, and it is made to a person as agent or representative of that other person.
50. For discussion of the second of the two criteria (the payment must be in relation to or in respect of the other person's taxable activity), see from [40]. The same analysis applies here but with the focus on whether the person who eventually receives the payment, rather than the person who first receives the payment, has a taxable activity.
51. The challenge in applying section 5(6D)(b) is to determine when the facts establish that a person is receiving funds on behalf of and for the benefit of a third party. That will obviously depend on what the legal arrangements involve, and the legal rights and responsibilities of the parties. To reach a conclusion, it will be necessary to assess the individual situation.
52. Some examples of situations where this issue might arise are where the Crown:
  - makes payments to a body for it to distribute to individual grant recipients;
  - makes a grant to a national body, which the national body then distributes to individual member organisations; or
  - makes a grant to a parent company, which the parent company then passes on to a subsidiary company.
53. Section 56 of the Act allows a registered person carrying on a taxable activity in branches or divisions to apply for any such branch or division to be registered as a separate registered person. Section 56(2) indicates the requirements to allow such a separate registration, but once the separate registration is approved the taxable activity of the branch or division is deemed not to be carried on by the original registered person. The registration takes place under section 51 in the usual manner.

*Payment of a grant or subsidy via an intermediary*

54. Section 5(6D)(b) can apply in situations where an intermediary or "delivery agent" receives an amount of a grant or subsidy payment for distribution to recipients, including situations where the intermediary or delivery agent has discretion as to the

recipients of the grant or subsidy money. (However, the grant or subsidy payment must be made on behalf of the Crown or by any public authority.)

55. In such a situation the intermediary or delivery agent will not need to account for GST on the payments as that is the responsibility of the ultimate recipient of the grant or subsidy. This assumes that any grant or subsidy that is paid to the intermediary or delivery agent is distributed to ultimate recipients of the payment or returned to the payer if the funds are not so distributed.

### **A payment that meets the section 5(6D) criteria is 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**

56. If the person is GST registered, they will be required to account for GST output tax when they receive the payment.
57. The deemed supply under section 5(6D) is subject to the normal time of supply rules in section 9(1). (The payment or issue of an invoice, whichever is earlier, will trigger the time of supply.)
58. The deemed supply under section 5(6D) may also have consequences for GST registration under section 51. Given that section 5(6D) only applies where the person who receives a grant or subsidy has a taxable activity, the relevant section 51 consequence is for persons with a taxable activity who are below the GST registration threshold (\$60,000 per annum) and who are not voluntarily registered for GST. If such a person receives a grant or subsidy covered by section 5(6D), then it may appear that that could push them above the \$60,000 threshold so that they would have to register for GST. This issue is discussed from paragraphs 59 to 66.

### **Registration under section 51(1)(a)**

59. This is the backward-looking test from the end of a month where the total value of supplies in that month and the preceding 11 months exceeds \$60,000. This could be affected by the receipt of a grant or subsidy.

### **Proviso to section 51(1)(a)**

60. However, GST registration may not be required under section 51(1)(a) if the proviso to that paragraph applies. The proviso states:

provided that a person does not become liable to be registered by virtue of this paragraph where the Commissioner is satisfied that the value of those supplies in the period of 12 months beginning on the day after the last day of the period referred to in the said paragraph will not exceed that amount:

61. Therefore, if a grant or subsidy was a one-off payment that was not going to be repeated, and the Commissioner considers that the value of supplies in the next 12 months is not going to exceed \$60,000, then the person would not need to register for GST. As a result, they would not be liable for GST output tax when they received a grant or subsidy.

### **Proviso in section 51(1)(d)**

62. GST registration may also not be required under section 51(1) if the proviso to section 51(1)(d) applies. That proviso states that:

provided that any such person shall not become liable where the Commissioner is satisfied that that value will exceed that amount in that period solely as a consequence of—

...

- (d) the replacement of any plant or other capital asset used in any taxable activity carried on by that person;
63. So, if the person exceeds the registration threshold because they have replaced any plant or other capital asset used in the taxable activity, then they will not be required to register.
64. A grant or subsidy may be of a capital nature (see *First Provincial*). No matter what the nature of the grant or subsidy, the rule in section 5(6D) would still apply to deem the person receiving the grant or subsidy to have made a supply. However, that supply may not count towards the GST registration threshold in section 51(1) **if** it can be established that the grant or subsidy relates to the replacement of any plant or other capital assets that the person receiving the grant or subsidy uses in any taxable activity they carry on.
65. For this proviso to apply, the person would need to be able to prove that the grant or subsidy was only paid on condition that they used it to replace any plant or other capital asset. Without a definite link between the grant or subsidy and the replacement of plant or other capital asset, it would not be possible to state that the person exceeded the threshold “solely as a consequence” of such replacement.
66. An example is where a person had a taxable activity with annual supplies of \$50,000 and received a grant of \$40,000. If they chose (but were not required) to put that grant towards upgrading a machine they used in their taxable activity, then the proviso in section 51(1)(d) would not apply (but the proviso to section 51(1)(a) would still apply in these circumstances). But if the grant was given only on condition that the person replaced the machine, and they used the grant for this purpose, then the proviso in section 51(1)(d) could apply.

## Flowchart

67. The following flowchart illustrates the process of applying section 5(6D).

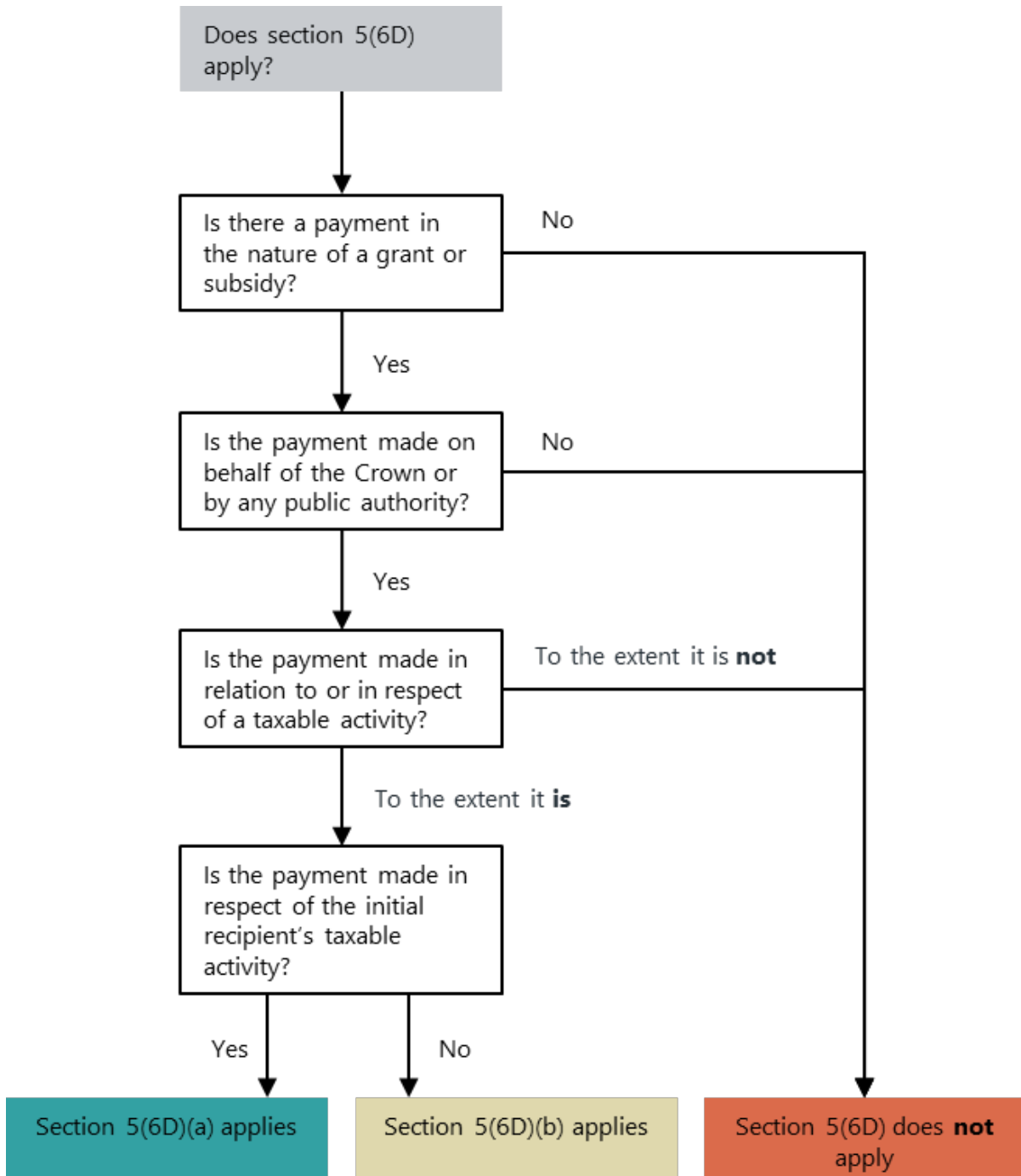


Figure | Hoahoa 1

**Outline of the flowchart process.**

1. Does section 5(6D) apply?
  - 1.1. Forward to 2.
2. Is there a payment in the nature of a grant or subsidy?
  - 2.1. **If No**, Forward to 8.
  - 2.2. **If Yes**, Forward to 3.
3. Is the payment made on behalf of the Crown or by any public authority?
  - 3.1. **If No**, Forward to 8.
  - 3.2. **If Yes**, Forward to 4.
4. Is the payment made in relation to or in respect of a taxable activity?
  - 4.1. **If To the extent it is not**, Forward to 8.
  - 4.2. **If To the extent it is**, Forward to 5.
5. Is the payment made in respect of the initial recipient's taxable activity?
  - 5.1. **If No**, Forward to 7.
  - 5.2. **If Yes**, Forward to 6.
6. Section 5(6D)(a) applies.
7. Section 5(6D)(b) applies.
8. Section 5(6D) does **not** apply.



## Examples | Taurira

### Example | Taurira 1 – Payment in the nature of a grant or subsidy

The Anti-Graffiti League (AGL) is a not-for-profit body set up to remove graffiti from public places in the interest of community enjoyment of those spaces. The Department of Community Beautification (DCB), a government department, supports the aims of the AGL and pays it a sum of \$100,000 to put towards its activity of removing graffiti. The DCB places constraints on the AGL's use of the money, as well as setting accounting and reporting requirements.

The DCB's payment to the AGL is a "payment in the nature of a grant or subsidy". It makes the payment gratuitously out of public funds, with the purpose of furthering objectives in the public interest and promoting or encouraging an enterprise.

### Example | Taurira 2 – Payment not in the nature of a grant or subsidy

The Department of Community Beautification (DCB) is so impressed by the achievements of the Anti-Graffiti League (AGL) in removing graffiti and beautifying public places that it enters into a contract with the AGL for the AGL to provide ongoing maintenance of high-profile public places throughout New Zealand, including public monuments, parks, and tourist sites. The DCB pays the AGL \$250,000 per year for this work and the parties agree to a level of services of a specified quality that the AGL will provide at each specified place.

The DCB's payment to the AGL is not a "payment in the nature of a grant or subsidy" and will not come within section 5(6D). It is instead a normal commercial contract in which both parties provide consideration. The arrangement between the parties will, however, satisfy the normal meaning of a supply within section 5(1) and, in light of the activity undertaken, will mean that the AGL will need to account for GST on the payment in the usual way.

### Example | Taurira 3 – Payment made on behalf of the Crown or by a public authority

The Department of Extinct Languages (DEL), a government department, makes a grant payment of \$200,000 to the Proto-Norse Language Society (PNLS) to encourage its research into ancient Norse and the translation of myths and legends from that language.

The grant is a payment by a “public authority” as the DEL is a government department. As such, the payment may come within section 5(6D) if it also meets the other requirements of the section (and if so there will be GST consequences for the PNLS).

#### **Example | Tauria 4 – Payment not made on behalf of the Crown or by a public authority**

Thorin Thorsson is an eccentric philanthropist and fan of Proto-Norse languages. He decides to match the grant of the Department of Extinct Languages (DEL) to the Proto-Norse Language Society (PNLS) and pays \$200,000 to the PNLS.

The grant is not a payment by a “public authority” as Thorin Thorsson does not satisfy the definition of being a “public authority”. Section 5(6D) will not cover his grant. (However, depending on the terms of the payment, and what the PNLS has to do in return for it (if anything), there may be GST consequences for the PNLS.)

#### **Example | Tauria 5 – Payment made in relation to or in respect of a person’s taxable activity**

Alpaca Rescue is an organisation that rehomes abandoned alpacas. It makes supplies of animals for a consideration to members of the public, and as such has a taxable activity. The Department of Unloved Animals (DUA), a government department, is concerned that Alpaca Rescue is struggling to find homes for all the alpacas it has rescued and may not be able to feed and care for them in the interim. The DUA pays a grant of \$500,000 to Alpaca Rescue to support the organisation’s mission of rehoming and caring for abandoned alpacas.

The grant is a payment to Alpaca Rescue “in relation to or in respect of” Alpaca Rescue’s taxable activity of supplying rescued alpacas to members of the public. The payment satisfies section 5(6D)(a) and Alpaca Rescue will need to account for GST on the grant.

#### **Example | Tauria 6 – Payment not made in relation to or in respect of a person’s taxable activity part 1**

Yak Rescue is an organisation that cares for abandoned yaks, with a vision that these yaks can see out their days at the Yak Sanctuary. Rescued yaks are not sold, and Yak Rescue does not conduct tours for consideration or make any other supplies for consideration. Carol Bee, a wealthy yak lover, supports the sanctuary financially. The

Department of Unloved Animals (DUA) pays a grant of \$250,000 to Yak Rescue to support the organisation's work in caring for abandoned yaks.

The grant is not a payment "in relation to or in respect of" a taxable activity because Yak Rescue does not make supplies for consideration, so it does not have a taxable activity. The payment does not satisfy section 5(6D)(a) and Yak Rescue is not liable to pay GST on the grant.

### **Example | Taura 7 – Payment not made in relation to or in respect of a person's taxable activity part 2**

A religious order runs a non-profit body called Making Lives Better (MLB) that exists to improve the lives of disadvantaged people. MLB is headquartered in Auckland and has a facility in Auckland where it undertakes a number of activities specifically designed to encourage disadvantaged women to participate in the workforce. These include providing subsidised childcare and employment skills training. Additionally, in Christchurch MLB runs a soup kitchen for homeless people, where simple meals are provided for no consideration.

The government makes a grant of \$250,000 to MLB in relation to the Christchurch soup kitchen, to assist with the daily running of the facility.

This grant is not covered by section 5(6D) as the payment is not "in relation to or in respect of" MLB's taxable activity and MLB is not liable to pay GST on the grant. While MLB does have a taxable activity (because it makes supplies for consideration in respect of its Auckland-based activities) the Christchurch soup kitchen does not involve the making of supplies for consideration so as to be a taxable activity in its own right and has an insufficient connection with the taxable activity of MLB carried on in Auckland. The Christchurch activity is geographically separate, as well as having a very different nature to the Auckland childcare and skills training activities. Although it arises as a result of the same overall objective as that which led to the Auckland activities, that is not sufficient to link the activities together within one taxable activity.

### **Example | Taura 8 – Payment made in relation to or in respect of a person's taxable activity and another matter**

Trafford Castle is a nationally important heritage site. It has a taxable activity which includes castle tours, a café, a shop, venues for concerts and conferences, and so on. It also has a separate accommodation block which was previously the stables for the castle. The accommodation is used as long-term rental accommodation, and the supplies in respect of it are exempt supplies under section 14(1)(c). Both the castle and

the accommodation operations are running significant financial deficits. The Ministry for Castles is a government department set up to support the preservation of the country's castles. It pays a grant of \$2,500,000 to Trafford Castle to support its operations. The terms of the grant from the Ministry provide that \$2 million is paid for support of the operations of the castle itself, and \$500,000 is paid in respect of running the accommodation activity carried on through the former stables. The terms require that the funds are used strictly according to the terms of the grant.

Section 10(18) can be applied to apportion the consideration paid by the Ministry for Castles. \$2 million of the grant is a payment "in relation to or in respect of" Trafford Castle's taxable activity. The payment satisfies section 5(6D)(a) and Trafford Castle will need to account for GST on this part of the grant.

\$500,000 of the grant is a payment "in relation to or in respect of" Trafford Castle's exempt activity of making exempt supplies of residential accommodation. The payment does not satisfy section 5(6D)(a) and Trafford Castle is not liable to pay GST on this part of the grant.

### **Example | Taura 9 – Payment to any person for the benefit and on behalf of another person – part one**

The Cassette Tape Association (CTA) is an organisation dedicated to the preservation of the iconic audio cassette tape. The CTA has a taxable activity, which includes running seminars and exhibitions, selling memorabilia, and selling cassette tape players and audio cassettes. It has a head office and 18 regional branches. Each branch is individually registered for GST, because each meets the requirements of section 56(2).

The Department of Vintage Technologies (DVT), a government department, wishes to support the aims of the CTA and makes a grant of \$400,000 to the head office of the CTA. The conditions of the grant are that each separate regional branch is to receive \$20,000 and the head office may keep \$40,000.

The CTA should account for the grant payment it received in the following way:

- The \$40,000 for the head office comes within section 5(6D)(a) as a payment to the head office in relation to or in respect of the head office's taxable activity. The head office should account for GST on this amount.
- The \$20,000 paid for the benefit and on behalf of each regional branch comes within section 5(6D)(b) as a payment to the head office "for the benefit and on behalf of" each regional branch in respect of each branch's taxable activity. Each branch should account for GST on this amount.

### **Example | Tauria 10 – Payment to any person for the benefit and on behalf of another person part two**

Fergie's Bay has recently been hit by a natural disaster which has severely affected many farms, orchards, and other businesses in the area.

The government pays an immediate grant of \$1 million to the Fergie's Bay Business Association (the FBBA) to assist with supporting affected businesses in the clean up after the natural disaster. All grant applicants are GST registered. The FBBA is engaged to receive and process grant applications and to distribute funds when decisions have been made. The FBBA accepts the grant funding in an agency capacity, and any undisbursed funds must be returned to the government.

The grant payment received should be accounted for in the following way:

- None of the funds received by FBBA come within section 5(6D)(a) as none of the funds relate to the FBBA's taxable activity.
- The funds paid by the FBBA to grant applicants come within section 5(6D)(b) as payments are "for the benefit and on behalf of" each applicant in respect of each applicant's taxable activity. Each applicant should account for GST on this amount.
- Any funds returned to the government do not give rise to any GST consequences under section 5(6D).

### **Example | Tauria 11 – Payment to any person not for the benefit and on behalf of another person**

The Laser Disc Revival Society (LDRS) is dedicated to the revival of the laser disc as an audio-visual technology. It is registered for GST and has a head office and six branches. Each branch is individually registered for GST, because each meets the requirements of section 56(2). The LDRS undertakes a series of activities, such as selling laser disc players and discs, repairing existing players, and running seminars and exhibitions.

The Department of Vintage Technologies (DVT) wishes to support the LDRS and makes a grant of \$200,000 to the head office of the LDRS. It sets the conditions that the grant must go towards the objectives of the organisation and the LDRS must meet accountability and reporting requirements, but it leaves how to use and disburse the funds to the discretion of the LDRS. The LDRS head office keeps \$80,000 for its own operations and distributes \$20,000 to each of the branches to support their operations.

The LDRS should account for the payment it receives in the following way:

- The \$200,000 paid to the head office is all within section 5(6D)(a) as a payment to the head office in relation to or in respect of the head office's taxable activity. Nothing in the terms of the grant suggests that the head office is receiving the funds for the benefit and on behalf of another person in relation to or in respect of that other person's taxable activity. It is simply the head office's choice to distribute the funds it has received to its branches; the terms of the grant do not oblige it to do so. The head office should account for GST on this amount.
- Section 5(6D)(b) does not apply to any of the grant funds so as to require the branches to return GST on the amount they receive from the head office.

### Example | Tauria 12 – GST registration part 1

The New Zealand Moa Revival Society (NZMRS) is an organisation promoting efforts to revive the extinct moa by developing new scientific techniques that might lead to the reintroduction of the moa (via ostrich surrogates). The NZMRS has a taxable activity but, because it is below the GST registration threshold, is not required to register for GST and has not voluntarily registered for GST. The Department of Extinct Birds (DEB), a government department, pays a grant of \$100,000 to the NZMRS to assist with the funding of the required research. The NZMRS is to spend the grant as it sees fit. The parties agree that the payment is in relation to or in respect of the taxable activity of the NZMRS.

Does the payment mean that the NZMRS needs to register for GST on the basis that its taxable supplies now exceed the \$60,000 threshold?

Under section 51(1)(a)<sup>2</sup> a person becomes liable to be registered at the end of any month where the total value of supplies made in New Zealand in that month and the 11 months preceding the month in the course of carrying on all taxable activities exceeds \$60,000. Because section 5(6D) deems the \$100,000 grant paid to the NZMRS to be consideration for a supply of goods and services by the NZMRS in the course or furtherance of its taxable activity, it would first appear that the NZMRS would be liable to register under section 51(1)(a).

However, the proviso to section 51(1)(a) states that a person **does not** become liable to be registered where the Commissioner is satisfied that the value of supplies in the period of 12 months beginning on the day after the last day of the period referred to in paragraph (a) will not exceed \$60,000. As such, **if** the grant is a one-off payment and not expected to be repeated annually, the proviso will apply, and registration will

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<sup>2</sup> The "backward-looking" test.

not be required under section 51(1)(a). (This assumes the current level of taxable supplies is expected to continue.)

### Example | Tauria 13 – GST registration part 2

The Huia Cloning Project (HCP) is an organisation seeking to revive the extinct huia by extracting DNA from existing stuffed birds, feathers and skins. It has set up a laboratory to work on this objective. Although it has a taxable activity, its annual supplies fall below the GST registration threshold, and it has not voluntarily registered for GST.

The existing laboratory equipment is not sufficient for the current work programme, so the HCP seeks a \$150,000 grant from the Department of Extinct Birds (DEB) to purchase new equipment. The DEB makes the payment. The terms of the grant provide that the DEB makes the payment on condition that the HCP uses the money only to replace the laboratory equipment, and that it must return any of the grant that it does not spend on such equipment.

The HCP purchases the new equipment, which costs \$175,000 – that is, the HCP fully uses the grant in purchasing new equipment. The parties agree that the payment is in relation to or in respect of the HCP's taxable activity.

Does the payment mean that the HCP needs to register for GST on the basis that its taxable supplies now exceed the \$60,000 threshold?

Many features are consistent with Example 12. It might first appear that section 51(1)(a) would apply to require the HCP to register for GST (the deeming rule in section 5(6D) pushing the organisation over the registration threshold). The proviso to section 51(1)(a) would then apply such that registration would not be required.

In addition to the proviso to section 51(1)(a) the proviso in section 51(1)(d) may also apply. This provides that a person will not become liable to register where the Commissioner is satisfied that the registration threshold will be exceeded **solely** as a consequence of the replacement of any plant or other capital asset used in any taxable activity that the person carries on.

In this case, the HCP has exceeded the GST registration threshold only because it received the \$150,000 grant from the DEB, and the DEB only paid the grant on the condition that the HCP use the money to replace any "plant or other capital asset" (in this case, the laboratory equipment). Therefore, the proviso to section 51(1)(d) also applies and provides another reason why the HCP will not be required to register for GST and return GST output tax on receiving the payment from the DEB.

## References | Tohutoro

### Legislative references | Tohutoro whakatureture

#### Goods and Services Tax Act 1985

2(1) (definition of “public authority”), 5(1), 5(6D), 5(6E), 9(1), 51(1), 56, 78(2)

#### Goods and Services Tax (Grants and Subsidies) Order 1992

Schedule

### Case references | Tohutoro kēhi

*Case M129* (1990) 12 NZTC 2,839

*Chatham Islands Enterprise Trust v CIR* (1999) 19 NZTC 15,075 (CA)

*Director-General of Social Welfare v De Morgan and another* (1996) 17 NZTC 12,636 (CA)

*First Provincial Building Society Limited v FCT* 95 ATC 4145 (Full Federal Court)

*GTE Sylvana v R* [1974] 1 FCR 726

*Kena Kena Properties Limited v Attorney-General* (2002) 20 NZTC 17,433 (PC)

*Placer Development Ltd v Commonwealth of Australia* (1969) 121 CLR 353 (HCA)

*Reckitt & Colman Pty Ltd v FCT* 74 ATC 4185 (Supreme Court of New South Wales)

*Shell New Zealand Limited v CIR* (1994) 16 NZTC 11,303 (CA)

### Other references | Tohutoro anō

“Application of GST to Government Grants and Subsidies”, *Tax Information Bulletin* Vol 3, No 1 (July 1991): 30. [taxtechnical.ird.govt.nz/tib/volume-03---1991-1992/tib-vol3-no1](https://taxtechnical.ird.govt.nz/tib/volume-03---1991-1992/tib-vol3-no1)

*Concise Oxford English Dictionary*, 12th ed, Oxford University Press, Oxford, 2011

“GST and Compensation to Maori Organisations”, *Tax Information Bulletin* Vol 4, No 7 (March 1993): 4. [taxtechnical.ird.govt.nz/tib/volume-04---1992-1993/tib-vol4-no7](https://taxtechnical.ird.govt.nz/tib/volume-04---1992-1993/tib-vol4-no7)

“GST on Grants”, *Tax Information Bulletin* Vol 4, No 7 (March 1993): 13. [taxtechnical.ird.govt.nz/tib/volume-04---1992-1993/tib-vol4-no7](https://taxtechnical.ird.govt.nz/tib/volume-04---1992-1993/tib-vol4-no7)

“GST Supplies of residences and other real property”, *Tax Information Bulletin*, Vol 32, No 7 (August 2020): 85. [taxtechnical.ird.govt.nz/tib/volume-32---2020/tib-vol32-no7](https://taxtechnical.ird.govt.nz/tib/volume-32---2020/tib-vol32-no7)



"GST Treatment of Court Awards and out of court settlements", *Tax Information Bulletin*, Vol 14, No 10 (October 2002): 21. [taxtechnical.ird.govt.nz/tib/volume-14---2002/tib-vol14-no10](https://taxtechnical.ird.govt.nz/tib/volume-14---2002/tib-vol14-no10)

"GST Treatment of Funding Provided to Treaty of Waitangi Claimants by the Crown through the Office of Treaty Settlements", *Tax Information Bulletin* Vol 18, No 11 (December 2006): 37. [taxtechnical.ird.govt.nz/tib/volume-18---2006/tib-vol18-no11](https://taxtechnical.ird.govt.nz/tib/volume-18---2006/tib-vol18-no11)

IR249 *Grants and subsidies* (October 2020)

IR375 *GST Guide: Working with GST* (April 2023)

*Oxford English Dictionary* (online edition, 3<sup>rd</sup> ed, 2012, Oxford University Press)

"Treaty of Waitangi Settlements – GST Treatment", *Tax Information Bulletin* Vol 14, No 9 (September 2002): 50. [taxtechnical.ird.govt.nz/tib/volume-14---2002/tib-vol14-no9](https://taxtechnical.ird.govt.nz/tib/volume-14---2002/tib-vol14-no9)

## About this document | Mō tēnei tuhinga

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