

## QUESTION WE'VE BEEN ASKED QB 14/13

### GOODS AND SERVICES TAX – LOTTERIES, RAFFLES, SWEEPSTAKES AND PRIZE COMPETITIONS

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

This Question We've Been Asked (QWBA) is about ss 2(1) "prize competition", 3A, 5(10), 5(11), 9(2)(e), 10(14), 10(15), 20(3), 20(3C) and 20(3K).

#### Question

1. What are the GST implications of conducting a lottery, raffle, sweepstake or prize competition?

#### Answer

2. A person who is GST registered (or is liable to be GST registered) needs to account for GST on any lottery, raffle, sweepstake or prize competition they conduct. GST must be calculated on the amount paid by the participants in the lottery, raffle, sweepstake or prize competition, less the amount of all prizes paid or payable in money.
3. An unincorporated body of persons or an association of people formed for non-commercial purposes can be the conductor of a lottery, raffle, sweepstake or prize competition. This could include an unincorporated body or association conducting a lottery, raffle, sweepstake or prize competition on behalf of a school, kindergarten or other community group. For lotteries, raffles and sweepstakes, GST needs to be accounted for in the GST period that the first drawing or determination of the result of the lottery, raffle or sweepstake commences. (Although unlikely to apply in many cases, there is an exception to this special rule where the lottery, raffle or sweepstake is an instant game played by means of a gaming machine. In this limited situation GST is accounted for under the normal GST time of supply rules.) For prize competitions, GST needs to be accounted for in the GST period that the first drawing or determination of the prize competition commences.
4. Claiming input tax reduces the total amount of GST payable. Input tax can be claimed for any GST component of the cost of goods or services that are purchased and used for the making of a taxable supply of gambling or prize competition services. Conducting a lottery, raffle, sweepstake or prize competition is a taxable supply of gambling or prize competition services. If the goods or services are only partly used for making taxable supplies, then an apportionment may be necessary. A special input tax rule applies to non-profit bodies and ensures that a non-profit body can claim input tax on all acquired goods and services that relate to non-exempt supplies. 'Non-profit body' is defined in s 2 and a charity will often be a non-profit body for GST purposes.
5. This item covers similar content to **BR Pub 07/11 "GST—Lottery operators and promoters" *Tax Information Bulletin* Vol 20, No 1 (February 2008): 6**, which expired on 21 December 2012. This item replaces "Cash prizes in sporting competitions - GST implications for organising club" *Tax Information Bulletin* Vol 13, No 5 (May 2001): 52.

## Explanation

### Background

6. The subject matter covered in this QWBA was previously covered in BR Pub 07/11 "GST - Lottery operators and promoters", which expired on 21 December 2012, and the QWBA "Cash prizes in sporting competitions – GST implications for organising club", issued May 2001. Legislative changes relating to prize competitions have resulted in the 2001 QWBA no longer being correct. These legislative changes apply from 17 July 2013. Under the new legislative provisions, cash prize amounts are now allowed to be deducted when calculating the consideration for the supply of prize competition services. Consequently, the amount of GST payable is reduced.
7. This item does not apply to racing betting or sports betting that are covered under specific GST rules in ss 5(8) and 10(12).

### What is the nature of the supply?

8. If a person conducts a lottery, raffle, sweepstake or prize competition, they are making a supply of services, which may have GST implications.
9. Under s 5(10), a supply of gambling or prize competition services occurs where a person pays money to participate. Section 5(10) states that:

#### 5 Meaning of term supply

...

(10) For the purposes of this Act, an amount of money paid by a person to participate in gambling (including a New Zealand lottery) or in a prize competition is treated as a payment for a supply of services by the following:

- (a) for gambling, by the person, society, licensed promoter, or organiser who under the Gambling Act 2003 conducts the gambling;
- (b) for a prize competition, by the person who conducts the prize competition.

10. Note that s 14(1)(b) exempts a supply of donated goods and services by a non-profit body from GST. It states:

#### 14 Exempt supplies

(1) The following supplies of goods and services shall be exempt from tax:

...

- (b) the supply by any non-profit body of any donated goods and services:

11. However, as mentioned above, conducting a lottery, raffle or sweepstake is a supply of gambling services and conducting a prize competition is a supply of prize competition services. It is the gambling or prize competition services that the participants are paying for, not the ultimate prizes. Therefore, even where donated goods or services are given as prizes in a lottery, raffle, sweepstake or prize competition conducted by a non-profit body, the nature of the relevant supply is still the supply of gambling or prize competition services under s 5(10).

12. Section 5(11) provides the following definitions for the purposes of s 5(10):

(11) For the purposes of subsection (10)—

- (a) the terms **gambling**, **New Zealand lottery**, **licensed promoter**, and **society** have the meanings set out in section 4(1) of the Gambling Act 2003;
- (b) the term **organiser** means the New Zealand Lotteries Commission continued by section 236 of the Gambling Act 2003.

13. Section 2(1) provides the following definition of "prize competition" for the GSTA:

**prize competition** means a scheme or competition—

- (a) for which direct or indirect consideration is paid to a person for conducting the scheme or competition; and
- (b) that distributes prizes of money or in which participants seek to win money; and
- (c) for which the result is determined—
  - (i) by the performance of the participant of an activity of a kind that may be performed more readily by a participant possessing or exercising some knowledge or skill; or
  - (ii) partly by chance and partly by the performance of an activity as described in subparagraph (i), whether or not it may also be performed successfully by chance:

14. As a result, a supply of gambling or prize competition services occurs if a person pays an amount in money:

- to participate in “gambling”, as defined in s 4(1) of the Gambling Act 2003 (including a “New Zealand lottery” run by the New Zealand Lotteries Commission), or
- to participate in a “prize competition”, as defined in s 2(1).

### **What is “gambling” under the Gambling Act 2003?**

15. “Gambling” is defined in s 4(1) of the Gambling Act 2003 as follows:

#### **4 Interpretation**

(1) In this Act, unless the context otherwise requires,—

...

#### **gambling—**

- (a) means paying or staking consideration, directly or indirectly, on the outcome of something seeking to win money when the outcome depends wholly or partly on chance; and
- (b) includes a sales promotion scheme; and
- (c) includes bookmaking; and
- (d) includes betting, paying, or staking consideration on the outcome of a sporting event; but
- (e) does not include an act, behaviour, or transaction that is declared not to be gambling by regulations made under section 368.

No regulations under s 368 of the Gambling Act 2003 are relevant to this QWBA.

16. The above definition shows that in order for something to be “gambling” in terms of s 4(1) of the Gambling Act 2003, there is a requirement of seeking to win money. For the Gambling Act, “money” is defined as including “money’s worth, whether or not convertible into money”. Therefore money’s worth, in this context, is anything that is of some value, even if it cannot be converted into money. This means that things like vouchers for goods or services and other non-cash prizes (including any donated prizes) are **treated as “money” under the Gambling Act**. It also means that lotteries and raffles that offer non-cash prizes are **within the definition of “gambling”**.

### ***Is participating in a “lottery”, “raffle” or “sweepstake” within the definition of “gambling”?***

17. The definition of “gambling” in s 4(1) of the Gambling Act 2003 does not expressly include a lottery, raffle or sweepstake. However, the Commissioner considers that lotteries, raffles and sweepstakes fall within **the definition of “gambling”** and are therefore subject to s 5(10)(a) of the GSTA.

18. Section 4(1) of the Gambling Act 2003 defines the term “lottery” as specifically including raffles and sweepstakes, stating that:

#### 4 Interpretation

(1) In this Act, unless the context otherwise requires,—

...

##### **lottery—**

- (a) means a scheme or device involving multiple participants for which—
  - (i) a person pays consideration to participate, directly or indirectly; and
  - (ii) prizes of money are distributed according to a draw that takes place after all participants have entered; and
- (b) includes lotto, raffles, and sweepstakes

19. The terms “raffle” and “sweepstake” are not defined in the Gambling Act 2003. The ordinary meanings of “raffle” and “sweepstake” in the *Concise Oxford English Dictionary* (12<sup>th</sup> edition, Oxford University Press, New York, 2011) are (relevantly):

**raffle**<sup>1</sup> >n. a lottery with goods as prizes.

...

**sweepstake** (also **sweepstakes**) > n. a form of gambling, especially on sporting events, in which all the stakes are divided among the winners.

20. Lotteries, raffles and sweepstakes all involve paying or staking consideration on the outcome of something **seeking to win money (including money’s worth)** when the outcome depends wholly or partly on chance. This means that lotteries, raffles and sweepstakes fall within **the definition of “gambling” in s 4(1)(a)** of the Gambling Act 2003. Given that sweepstakes are also particularly associated with staking consideration on the outcome of sporting events, sweepstakes may also fall within **para (d) of the definition of “gambling” in s 4(1)** of the Gambling Act 2003.

21. As a result, a supply will be deemed to occur under s 5(10)(a) of the GSTA if a person pays money to participate in a lottery, raffle or sweepstake. If the supplier of such gambling services is a GST registered person (which includes a person who is liable to be GST registered), they will need to account for GST for the supply of those services.

#### **What is a prize competition?**

22. With application from 17 July 2013, s 10 of the GSTA was amended so that a person conducting a prize competition is able to deduct cash prizes from the total proceeds received for a prize competition when determining the consideration made for that supply. Before this amendment, cash prizes could only be deducted in relation to gambling and not prize competitions.

23. Consequently, ss 5 and 9 of the GSTA were amended to include references to prize competitions and a definition of **“prize competition”** for the GSTA was also included in s 2(1) (see [13] above).

24. For GST purposes, **“prize competition”** includes competitions where the participant pays to enter and is competing for a cash prize and where the result is determined either solely by the performance of participants of a particular kind of activity or partly by chance and partly by the performance of participants of a particular kind of activity. This means that participants may possess or exercise some knowledge or skill that relates to the activity, for example amateur sporting competitions. The Gambling Act 2003 also contains a narrower definition of **“prize competition” in s 4(1)** of the Gambling Act 2003. However, this definition is not relevant for determining the GST consequences of running a prize competition.

25. A supply is deemed to occur under s 5(10)(b) of the GSTA if a person pays money to participate in a prize competition. If the supplier of such services is a GST registered

person (which includes a person who is liable to be GST registered), they will need to account for GST on that supply.

### Who is the supplier?

26. It is necessary to determine who is making the supply of gambling or prize competition services. Whether there are GST obligations will depend on whether the supplier is GST registered (or required to be). For information about who is required to register for GST see currently: <http://www.ird.govt.nz/gst/gst-registering/register-who/>. Generally, you must register for GST if your turnover (sales from taxable activities) was over \$60,000 for the last 12 months or is expected to go over \$60,000 for the next 12 months.
27. Section 5(10)(a) states that the supplier of gambling services is "the person, society, licensed promoter, or organiser who under the Gambling Act 2003 conducts the gambling". Section 5(10)(b) states that the supplier of prize competition services is "the person who conducts the prize competition".
28. **"Person" is defined in s 2(1) of the GSTA as including "a company, an unincorporated body of persons, a public authority, and a local authority"**. Section 5(11) states that **"society" has the meaning set out in s 4(1) of the Gambling Act 2003, which is "an association of persons established and conducted entirely for purposes other than commercial purposes"**.
29. Therefore, community organisations, schools, kindergartens, etc, which may operate as unincorporated bodies or non-profit associations, can be suppliers of gambling or prize competition services for GST purposes. In the case of state schools, often it will be the Board of Trustees or, if one exists, the Parent Teacher Association (being a separate entity from the Board of Trustees) that is running the raffle, lottery, sweepstake or prize competition, so they are the supplier of the gambling or prize competition services for GST purposes. If such an organisation is a GST registered person (which includes a person who is liable to be registered), they need to account for GST on any lotteries, raffles, sweepstakes or prize competitions they conduct.
30. There may be other people involved in the running of a lottery, raffle or sweepstake **who are "conducting gambling" under the broad definition of that term in the Gambling Act 2003** (eg, anyone selling tickets, distributing prizes or otherwise involved in organising, supervising or running the lottery, raffle or sweepstake). However, for GST purposes the supplier is the person or organisation conducting the gambling that people are paying to participate in. This is the person or organisation ultimately running the lottery, raffle or sweepstake (ie, the person or organisation on whose behalf the tickets are being sold).

### What is the time of supply?

31. The time of supply of the gambling or prize competition services must be established because this determines when GST needs to be accounted for.
32. Section 9(2)(e) deems the time of supply for gambling services (lotteries, raffles or sweepstakes) generally to be the date on which the first drawing or determination of the result commences and the time of supply for prize competition services to be the date on which the first drawing or determination of the prize competition commences. Section 9(2)(e) states that:

#### 9 Time of supply

...

- (2) Notwithstanding anything in subsection (1) of this section, a supply of goods and services shall be deemed to take place—

...

- (e) if the supply is made under section 5(10),—

- (i) for an amount of money paid by a person to participate in gambling (including a New Zealand lottery), on the date on which the first drawing or determination of a result commences, but this subparagraph does not apply to an instant game that is a **New Zealand lottery** or **gambling** played by means of a gaming machine as defined in section 4(1) of the Gambling Act 2003:
- (ii) for an amount of money paid by a person to participate in a prize competition on the date on which the first drawing or determination of the prize competition commences:

33. Although unlikely to occur very often in the context of lotteries, raffles or sweepstakes, there is an exception to the special time of supply rule above. The exception is where the lottery, raffle or sweepstake is an instant game played by means of a gaming machine. In this limited situation GST is accounted for under the normal GST time of supply rules. The terms **"gaming machine"** and **"instant game"** are defined in s 4(1) of the Gambling Act 2003. Generally a gaming machine is any machine or device that is adapted or designed, and constructed for use in gambling. An example of a gaming machine is a pokie machine. An instant game means gambling when a winning ticket or the money or other reward that the winning ticket bears is determined before, or simultaneously with, the sale of tickets, randomly or wholly by chance. Examples of an instant game are a scratch and win game or mystery envelopes.

### What is the consideration for the supply?

34. GST needs to be returned on the amount of consideration for a supply. The GSTA specifies what the amount of consideration for a supply of gambling or prize competition services will be.

35. Under ss 10(14)(a) and (b), the consideration for the supply of gambling or prize competition services is the total of all amounts received from the participants in the gambling or prize competition, less any prizes paid and payable in money. Section 10(14) states as follows:

#### **10 Value of supply of goods and services**

(1) For the purposes of this Act the following provisions of this section shall apply for determining the value of any supply of goods and services.

...

(14) If a supply of services is treated as having been made under section 5(10), the consideration for the supply is calculated using the formula—

$$\text{amounts received} - \text{prizes}$$

where—

- (a) **amounts received** is the total of all amounts in money received in relation to the supply—
  - (i) for gambling, by the person, society, licensed promoter, or organiser who under the Gambling Act 2003 conducts the gambling;
  - (ii) for a prize competition, by the person who conducts the prize competition:
- (b) **prizes** is the total amount of all prizes paid and payable in money in relation to the supply.

36. If the prizes in a lottery, raffle, sweepstake or prize competition are non-cash prizes, then the consideration for the supply is simply the amounts received from the participants to participate in the lottery, raffle, sweepstake or prize competition. In other words, the consideration for the supply is only reduced for cash prizes.

### What input tax can a supplier claim?

37. Input tax deductions reduce the total amount of GST payable. Input tax can be claimed for any GST component of the cost of goods or services that are acquired and used for the making of a taxable supply: ss 3A and 20(3). As seen, conducting a

lottery, raffle, sweepstake or prize competition is a taxable supply of gambling or prize competition services.

38. If non-cash prizes in a lottery, raffle, sweepstake or prize competition are purchased by the supplier, then an input tax deduction may be available for any GST component of the cost of those prizes. However, if non-cash prizes in a lottery, raffle, sweepstake or prize competition are donated goods or services, then no input tax deduction is available to the supplier as no GST component was paid for the prize.
39. If the goods or services acquired are only partly used for making taxable supplies, then an apportionment may be necessary: s 20(3C).
40. A special input tax rule applies to non-profit bodies allowing a non-profit body to claim input tax on goods or services acquired that are used for other than making taxable supplies (see s 20(3K)). This rule does not apply to the extent that the goods or services are used for making exempt supplies.

### **What are the practical implications for a person running a raffle, lottery, sweepstake or prize competition?**

41. Running a raffle, lottery, sweepstake or prize competition has a number of GST implications. There may be a requirement to register for GST if the value of supplies (including the gambling or prize competition supplies) made by the person running the raffle, lottery, sweepstake or prize competition exceeds the GST registration threshold (currently \$60,000): see s 51.
42. Where the organisation running the raffle, lottery, sweepstake or prize competition is GST registered GST will need to be paid on the value of the total amount of tickets sold or fees paid, less any cash prizes paid or payable. This may mean that an **organisation's accounting system requires a separate account for** lottery and raffle proceeds, to ensure that these funds are treated as being subject to GST, as opposed to other fundraising funds which may be treated as GST-exempt. As discussed above, input tax credits may be claimed on costs associated with running a raffle, lottery, sweepstake or prize competition.
43. There may potentially be tax invoicing requirements (see s 24). However, if the consideration for the supply does not exceed \$50, a tax invoice is not required to be provided (s 24(5)).
44. This QWBA does not address the requirements under the Gambling Act 2003 that need to be satisfied. For information on the relevant rules for running a gambling activity, and whether a licence is needed, refer to: <http://www.dia.govt.nz/gambling>.

### **Examples**

45. The following examples explain the application of the GST provisions.

#### **Example 1 – Fundraising raffle**

46. The Sunnyside pre-school is a community-based, not-for-profit organisation and is GST registered.
47. As part of its annual fundraising the pre-school runs a raffle, selling tickets for \$2 each. The raffle prizes include a family ferry voucher (donated by a ferry company), \$100 cash, a massage voucher (donated by the local day-spa) and a basket of grocery items (purchased by the pre-school). The raffle is drawn at the end of term 4.
48. The raffle is a "lottery" and, therefore, "gambling" for the purposes of the GSTA. The pre-school, in conducting the raffle, is a supplier of gambling services for GST

purposes. As the pre-school is GST registered, it must account for GST on this fundraiser.

49. The time of supply is the date at the end of term 4 on which the raffle is drawn. GST on the raffle must be accounted for in the GST return for the GST period in which that date falls.
50. The consideration for the raffle is the total amount received from ticket sales, minus the \$100 paid as a cash prize. Input tax can be claimed for the basket of grocery items purchased by the pre-school. No input tax can be claimed for the donated prizes (ie, the ferry voucher and the massage voucher).

### **Example 2 - Sweepstake**

51. The Canterbury **Working Men's Club** is GST registered. Every year it runs a sweepstake for the Melbourne Cup. Participants pay to enter the sweepstake and are randomly allocated a horse. The total amount paid by participants is divided among the participants who were allocated the horses that placed 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup>.
52. **The sweepstake is a "lottery" and, therefore, "gambling" for the purposes of the GSTA.** The Canterbury **Working Men's Club**, in conducting the sweepstake, is a supplier of gambling services for GST purposes. As the club is GST registered, it must account for GST on the sweepstake.
53. The time of supply is the date of the Melbourne Cup, as the determination of the result commences on that day. GST on the sweepstake must be accounted for in the GST period in which that date falls.
54. The consideration for the supply is the total amount received from participants, less the total amount paid out in prizes in money. As all of the money paid by participants is paid out in prizes, there is no consideration for the supply of gambling services by the Canterbury **Working Men's Club** for the sweepstake. This means that the club is not required to account for any GST on the sweepstake.

### **Example 3 – Skill only prize competition**

55. The Somes Bowling Club is a GST registered amateur sports club. People pay a membership fee to be members of the club and use the facilities. The club organises a Christmas Gala bowls competition on 14 December 2013. Members pay \$10 and non-members \$20 to compete. The winners in the different categories are awarded cash prizes totalling \$150 on the day of the competition.
56. The Christmas Gala bowls competition is a prize competition. People pay consideration to participate. The Somes Bowling Club, in conducting the competition, is a supplier of prize competition services for GST purposes. As the club is GST registered, it must account for GST on the competition.
57. The time of supply is 14 December 2013, the date on which the prize competition is determined. GST on the prize competition must be accounted for in the GST period in which that date falls.
58. The prize competition was conducted after 17 July 2013 – being the date when the new legislative provisions relating to prize competitions took effect. As such, the club is allowed to deduct the \$150 of cash prizes from the total fees received for the competition when calculating the consideration for the prize competition.



## References

### Related rulings/statements

BR Pub 07/11 "GST—lottery operators and promoters", *Tax Information Bulletin* Vol 20, No 1 (February 2008): 6

"Cash prizes in sporting competitions – GST implications for organising club", *Tax Information Bulletin* Vol 13, No 5 (May 2001): 52

### Subject references

GST, lottery, raffle, sweepstake, prize competitions

### Legislative references

Goods and Services Tax Act 1985 – ss 2(1), 3A, 5(10), 5(11), 9(2)(e), 10(14), 10(15), 20(3), 20(3C) and 20(3K)

Gambling Act 2003 – s 4(1)

### Other references

Concise Oxford English Dictionary (12<sup>th</sup> edition, Oxford University Press, New York, 2011)