

# GST: Non-profit body claiming input tax deductions

Decision date | Te Rā o te Whakataui: 12 July 2021

Issue date | Te Rā Tuku: 18 October 2021

TDS 21/01

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## Subjects | Ngā kaupapa

GST: Cancellation of GST registration, input tax deductions, supplies of donated goods and services.

## Abbreviations | Whakapotonga kupu

The abbreviations used in this document include:

<b>Commissioner</b>	Commissioner of Inland Revenue
<b>GST</b>	Goods and services tax
<b>TAA</b>	Tax Administration Act 1994

## Taxation laws | Ngā ture take

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

## Facts | Ngā meka

1. The non-profit body is registered under the Charities Act 2005 as a charitable entity. It received income from donations and from making supplies of donated goods and services.
2. The non-profit body was registered for GST. Its GST returns included sales of donated goods and services and input tax deductions claimed for expenses for its leased premises, e.g. rent, water, rates, power and insurance.

## Issues | Ngā take

3. The issues considered in this dispute were:
  - whether the non-profit body was entitled to the input tax deductions it claimed; and
  - whether the non-profit body's GST registration should be cancelled.
4. A preliminary issue on the onus and standard of proof was also considered.

## Decisions | Ngā whakatau

5. The Tax Counsel Office decided that:
  - the non-profit body was not entitled to the input tax deductions it claimed; and
  - the non-profit body's GST registration should be cancelled from the date it was GST registered.

## Reasons for decisions | Ngā take mō ngā whakatau

### Preliminary Issue | Take tōmua: Onus and standard of proof

6. The onus of proof in civil proceedings<sup>1</sup> is on the taxpayer, except for shortfall penalties for evasion or similar act, or obstruction.<sup>2</sup> The taxpayer must prove that an assessment is wrong, why it is wrong, and by how much it is wrong.<sup>3</sup>
7. The standard of proof in civil proceedings is the balance of probabilities.<sup>4</sup> This standard is met if it is proved that a matter is more probable than not. Whether the non-profit body has discharged the onus of proof is considered in the other issues.

### Issue 1 | Take tuatahi: Input tax deductions

8. Input tax is charged under s 8(1) on the supply of goods or services acquired by a person (s 3A). In calculating the amount of GST payable, a GST registered person may deduct input tax to the extent to which the goods or services are used for, or are available for use in, making taxable supplies (s 20(3C)(a)).
9. A "taxable supply" is a supply of goods and services in New Zealand that is charged with GST under s 8.<sup>5</sup> However, s 8 does not impose GST on exempt supplies.

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<sup>1</sup> Challenge proceedings (ie, the proceedings that would follow if this dispute proceeds to the Taxation Review Authority or a court) are civil proceedings.

<sup>2</sup> Section 149A(2) of the Tax Administration Act 1994 (TAA).

<sup>3</sup> *Buckley & Young Ltd v CIR* (1978) 3 NZTC 61,271 (CA); *Beckham v CIR* (2008) 23 NZTC 22,066 (CA).

<sup>4</sup> Section 149A(1) of the TAA; *Yew v CIR* (1984) 6 NZTC 61,710 (CA); *Birkdale Service Station Ltd v CIR* (1999) 19 NZTC 15,493 (HC); *Case X16* (2005) 22 NZTC 12,216; *Case Y3* (2007) 23 NZTC 13,028.

<sup>5</sup> See definition of "taxable supply" in s 2.

10. Goods and services acquired by a non-profit body are treated as being used in the course or furtherance of their taxable activity to the extent the goods and services are not used for making exempt supplies (s 20(3K)).
11. The supply by a non-profit body of donated goods and services is an exempt supply (s 14(1)(b)). Donated goods and services are defined as goods and services gifted to a non-profit body that are intended for use in the carrying on or carrying out of the purposes of the non-profit body.<sup>6</sup> Even if made for consideration, a supply by a non-profit body of donated goods and services will be exempt.<sup>7</sup>
12. The non-profit body may have provided goods and services for consideration but these were exempt supplies. This is because the goods and services it supplied were donated. The non-profit body had not shown that it was making any taxable supplies. Therefore, it was not entitled to the input tax deductions it claimed.

## Issue 2 | Take tuarua: Cancellation of GST registration

13. The Commissioner may cancel a person's GST registration if the Commissioner is satisfied that the person is not carrying on a taxable activity (s 52(5)). The cancellation may be retrospective to the date the person was GST registered if the Commissioner is satisfied that the person did not carry on any taxable activity from that date (s 52(5A)).
14. A taxable activity is an activity carried on continuously or regularly by a person that involves, or is intended to involve, the supply of goods and services to another person for a consideration (s 6(1)(a)). However, a taxable activity does not include any activity to the extent to which the activity involves the making of exempt supplies (s 6(3)(d)).
15. The non-profit body only made exempt supplies and so the non-profit body's activity was not a taxable activity. Therefore, the non-profit body's GST registration should be cancelled from the date it was GST registered.

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<sup>6</sup> Definition of "non-profit body" in s 2.

<sup>7</sup> *Case M40* (1990)12 NZTC 2,247 at 2,252-2,254.