

GST AND UNCONDITIONAL GIFTS

Background

- 1.0 The Department has been asked to review its interpretation of the definition of “unconditional gift”. This item sets out the Department’s interpretation of unconditional gift and gives practical examples of its application.
- 1.1 As a result of the review the Department determines that payments of school fees (as defined in paragraph 6.3 below) to state schools are unconditional gifts and not subject to GST.

Unconditional Gift

- 2.0 The definition of unconditional gift is found in section 2 of the Goods and Services Tax Act 1985 (the Act). Payments falling within the definition of unconditional gift are excluded from the definition of consideration. It follows that there is no consideration, the value of the supply is nil, and no GST is payable.
- 2.1 An unconditional gift is defined to mean a payment:
- made voluntarily to any non-profit body;
 - for the carrying out of the purposes of that non-profit body;
 - in respect of which no identifiable direct valuable benefit arises or may arise in the form of a supply of goods or services to the donor, or associated persons of the donor; and
 - does not include any payment made by the Crown or a public authority.
- 2.2 Two main areas of concern with the definition of unconditional gift have been identified. The first concerns the meaning of the word “voluntarily”. The second is in regard to the third point noted above (the concept of benefit accruing to the donor).
- 2.3 As a practical point when considering whether a payment is or is not an unconditional gift, the voluntary nature of the payment must be considered separately from the concept of benefit accruing to the donor.

Meaning of “Voluntarily”

- 3.0 The word “voluntarily” should be given its ordinary meaning. To do something voluntarily means doing something of one’s own free will or to act without compulsion.
- 3.1 Whether a payment is or is not made “voluntarily” is a question of fact to be determined in all the circumstances. However, the Department considers that just because a payment is not legally enforceable does not automatically mean it is a voluntary payment.

Identifiable Direct Valuable Benefit

- 4.0 To fall within the definition of unconditional gift there must be “... a payment voluntarily made... in respect of which no identifiable direct valuable benefit arises or may arise in the form of a supply of goods and services...”.
- 4.1 The Department has previously taken the view (PIB No.150, July 1986) that a voluntary payment is only an unconditional gift where the payment is a “pure gift” and it is perceived that no benefit accrues to the donor (nor an associated person). Examples of pure gifts included church plate collections, street collections, and door to door appeals.
- 4.2 Where, however, the donor (or an associated person) received a benefit, the Department determined that the receipt of benefit was itself sufficient to remove the payment from the definition of unconditional gift. Examples where the Department has so ruled were payments to schools of school activity fees (PIB No.148, May 1986) and payments to kindergartens (PIB No.161, April 1987).

Ruling

- 5.0 The Department now accepts that receipt of benefit to the donor (or an associated person) is not, in itself, sufficient to take the payment out of the definition of unconditional gift. In addition to the receipt of benefit, there must be a connection between the payment and the benefit before the payment will fall outside the definition of unconditional gift. The words “in respect of”, in the definition of unconditional gift, indi-

cate or imply that there must be some connection between the payment and the benefit.

Degree of connection (nexus)

5.1 Whether there is or is not a sufficient connection between the voluntary payment and the benefit is a question of fact to be determined by considering all the circumstances. However, the definition indicates that the benefit flowing from the payment must be an "...identifiable direct valuable benefit...".

5.2 It is the Department's view that there is a sufficient connection where receipt of the benefit is conditional, or dependent on the payment. Where, however, receipt of the benefit is not conditional nor dependent on the payment, i.e. the benefit arises irrespective of the payment, then there is insufficient connection. The payment will be an unconditional gift.

5.3 Where a payment is made and a benefit is received by the donor (or an associated person) the Department considers that the inference must be that the benefit results, or is conditional on the payment. There will be no unconditional gift. However, where the taxpayer can show that the benefit received is not conditional nor dependent on the payment (i.e. the benefit arises irrespective of the payment), then there will be an unconditional gift.

5.4 Voluntary payments to non-profit bodies can be classified into 3 different categories:

- i. those payments where no benefit accrues to the donor (nor an associated person). These payments are pure gifts and are unconditional gifts;
- ii. those payments where the donor (or an associated person) receives a benefit but there is insufficient connection between the payment and the benefit so that the payment is still an unconditional gift. In other words the benefit received by the donor (or an associated person) is not conditional nor dependent on the payment (i.e. the benefit arises irrespective of the payment); and
- iii. those payments where the donor (or an associated person) receives some benefit and there is sufficient connection between the payment and benefit so that the payment is not an unconditional gift.

Examples

6.0 Unconditional gifts include:

- church plate donations;
- envelope donations;
- tithes;
- bequests;
- money collected in donations in museums; and
- money raised in street collections.

6.1 A golf club (a non-profit body) decides that it will no longer require non-members to pay green fees but will ask them to make an "unconditional gift" to the golf club for each round of golf the non-member plays. The non-member is required to report to the club's professional before playing the round and make the "unconditional gift". The round of golf is conditional or dependent on the payment being made and the payment is not an unconditional gift.

Fees Paid to Schools

6.2 In PIB No.148 it was determined that school activity fees (meaning at that time both school fees and school activity fees as defined below) were subject to GST. The Department now accepts that some school fees will no longer be subject to GST.

State Schools in Terms of the Education Act 1989

6.3 A distinction is drawn between school fees and school activity fees:

- i. School fees are fees paid to the school's general fund for the benefit of the school as a whole. The school will usually send a notice to the parent of a child attending the school asking that the parent make a payment to the school's general fund;
- ii. School activity fees are fees paid for a specific activity a particular student may undertake. For example, the student may go on a field trip, a canoeing trip, or take a music lesson. A fee, essentially the cost of the activity, will be charged by the school.

School Fees

6.4 The Department considers that payments of school fees are voluntary payments for the purposes of the definition of unconditional gift.

6.5 The Department accepts that where the payment is made by a parent (or a guardian) of a student attending the state school, and the pay-

ment is to the general fund and for the benefit of the school as a whole, then the payment will be an unconditional gift.

- 6.6 Pursuant to section 3 of the Education Act 1989 “...every person who is not a foreign student is entitled to free enrolment and free education at any state school during the period beginning on the person’s 5th birthday and ending on the 1st day of January after the person’s 19th birthday”.
- 6.7 A statutory right, therefore, exists to receive free education (and the provision of education services) at a state school between the ages of 5 and 19. It follows that the student (or parent) will receive the benefit of the education services irrespective of whether or not the school fee payment is made. The benefit received is not conditional nor dependent on the payment being made. There is insufficient connection between the payment and the benefit and the payment is an unconditional gift.

School Activity Fees

- 6.8 Where the payment is a school activity fee i.e. it is for a specific activity, then the school will not usually be supplying any goods nor services. The school will usually be acting as only a collecting agent and will not in itself make supplies. Whether or not the payment to the school includes a GST increment depends on whether or not the person supplying the services is a registered person and is making a taxable supply. If that person is registered and the supply is a taxable one then the payment will include a GST increment.

Donations

- 6.9 Donations made by PTA groups from fund raising activities to registered school committees are unconditional gifts. This reiterates the Department’s policy set out in PIB No.173, April 1988.

Integrated Schools in Terms of the Private Schools Conditional Integration Act 1975

- 6.10 The payment of attendance dues pursuant to section 36 of the 1975 Act are not unconditional gifts.

Private Schools Registered Pursuant to Section 35A of the 1989 Education Act

- 6.11 Where the payment is of tuition fees, i.e. the payment that is usually made per term (per year)/per child attending the particular school, then the payment is not an unconditional gift.

Kindergartens

- 6.12 In PIB No.161 it was determined that payments by parents to kindergartens were subject to GST. It is now determined that where the payment to the kindergarten is a voluntary payment, and is to the general kindergarten fund, then the payment will be an unconditional gift if the student (or parent) either receives no benefit or the benefit received is not conditional nor dependent on the payment (i.e. the benefit arises irrespective of the payment).

Membership Fees

- 6.13 The Department considers that the benefits derived from membership are conditional on payment of the membership fee. Membership fees are not, therefore, unconditional gifts.

Application Date

- 7.0 As this policy changes the Department’s previously stated policy it will apply from 16 November 1990.

Reference: H.O. GST D.5.2