GSTR 2012/2

Ruling

**Supply for consideration - establishing a sufficient nexus**

15. For a financial assistance payment to be consideration for a supply[[9]](https://www.ato.gov.au/law/view/document?docid=GST/GSTR20122/NAT/ATO/00001" \l "fp9) there must be a sufficient nexus between the financial assistance payment made by the payer and a supply made by the payee. A financial assistance payment is consideration for a supply if the payment is 'in connection with', 'in response to' or 'for the inducement of' a supply.[[10]](https://www.ato.gov.au/law/view/document?docid=GST/GSTR20122/NAT/ATO/00001" \l "fp10) The test is an objective one.

15A. Further, in identifying the character of the connection, the word 'for' ensures that not every connection between supply and consideration meets the requirements for a taxable supply. That is, merely having any form of connection of any character between a supply and payment of consideration is insufficient to constitute a taxable supply[[10A]](https://www.ato.gov.au/law/view/document?docid=GST/GSTR20122/NAT/ATO/00001" \l "fp10A).

16. Reference to all of the surrounding circumstances of the arrangement, in particular any written documentation, determines whether a financial assistance payment is 'in connection with', 'in response to' or 'for the inducement of' a supply. The surrounding circumstances may include the statutory purpose of the payer in providing the financial assistance, the activities which are to be undertaken by the payee and any other terms and conditions attached to the payment. However, none of these factors will be determinative on their own and the arrangement must the considered as a whole. The description the parties may give to the arrangement, whilst relevant, is not determinative.[[11]](https://www.ato.gov.au/law/view/document?docid=GST/GSTR20122/NAT/ATO/00001" \l "fp11)

17. Described below are specific issues which may arise in the context of financial assistance payments when determining whether a payment is consideration for a supply.

**Financial assistance payment made to obtain a right that is a material benefit.**

18. In some arrangements the payer obtains a material benefit in return for the financial assistance payment. This may occur where the payer is provided with the right to commercially exploit the results of the payee's work in return for the financial assistance payment. In this circumstance, the payment has a sufficient nexus with the supply of the right because the payment is made in connection with, in response to or for the inducement of the supply of the right.

*Example 1 - sufficient nexus - payment for the supply of rights*

19. *Yearning for Learning, a non-profit organisation established to advance teaching and learning, provides financial assistance payments to enable Australian tertiary institutions to undertake research*.

20. *Yearning for Learning invites bids from Australian tertiary education institutions to receive financial assistance payments to undertake or further the institution's innovative research*.

21. *To receive the financial assistance payment, a successful payee must enter into a written arrangement in which the payee agrees to provide Yearning for Learning with the right to use the results of the research in its own enterprise*.

22. *Under the arrangement the payee makes a supply of rights to exploit the research findings*.[[12]](https://www.ato.gov.au/law/view/document?docid=GST/GSTR20122/NAT/ATO/00001" \l "fp12) *The financial assistance payment has a sufficient nexus with this supply because the payment was made to secure the rights. Therefore the payment is consideration for that supply*.

23. *The tertiary institution is liable for GST on the supply of the rights. Yearning for Learning is entitled to an input tax credit on their acquisition of the rights*.

Payments for providing advice and information

24. Providing advice or information is a supply.[[13]](https://www.ato.gov.au/law/view/document?docid=GST/GSTR20122/NAT/ATO/00001" \l "fp13) A financial assistance payment has a sufficient nexus with such a supply where the payment is made for the purpose of obtaining the information.

*Example 2 - sufficient nexus - payment for the provision of information*

25. *A university undertakes various research projects into mental illness. In order to fund its future research projects, the University sells the rights to the results of its completed studies. Previously the University carried out a one month study into the psychological impacts of chronic illness. The government pays the university to acquire the rights to use these research findings in its own review of aspects of the health system.*

26. *The payment has a sufficient nexus with the right to the research findings because the payment is made in connection with, in response to or for the inducement of that supply*.

27. *The university is liable for GST on the supply of the right to the research findings. The government is entitled to an input tax credit on their acquisition of the right to the research findings*.

Payment for the entry into an obligation to do or refrain from doing something

28. Where a supply is constituted by the payee entering into an obligation with the payer to do or refrain from doing something and the payment is made to secure that obligation, there is a sufficient nexus between the payment and the obligation. This is because the financial assistance payment is made in connection with, in response to, or for the inducement of the entry into the obligation.

*Example 3 - sufficient nexus - payment for entry into an obligation*

29. *Snake Glass Jugglers is a commercial dance troupe that develops and presents performance art in South Australia. It enters into an arrangement with Gooseville Arts Foundation, a body that is established for the purpose of fostering the arts. Under that arrangement, in return for a financial assistance payment from the Foundation, the troupe enters into a binding agreement under which it is obligated to expand its activities - by presenting three performances outside South Australia during the following year*.

30. *By entering into this obligation to present three performances outside South Australia, the troupe has made a supply to the Foundation. The payment by the Foundation has been made in connection with, in response to, or for the inducement of this supply. Therefore, there is a sufficient nexus between the entry into the obligation and the financial assistance payment such that the financial assistance payment is consideration for that supply*.

31. *Snake Glass Jugglers is liable for GST on the supply of the entry into the obligation. The Gooseville Arts Foundation is entitled to an input tax credit on their acquisition of the right to require Snake Glass jugglers to present the performances*.

**Sponsorships**

32. Where, in return for a financial assistance payment, the payee promotes the payer's business through promotional material, programs or uniforms or advertises the business at events and in the media, the payment will have a sufficient nexus with the supply of the promotion and advertising. That nexus is established where the payment is in connection with, in response to or for the inducement of the promotion/advertising.

*Example 4 - sufficient nexus - sponsorships*

33. *Demeter Sports Goods, a sporting goods manufacturer, sponsors organisations that provide sport and recreational activities for the health and wellbeing of the community*.

34. *In return for a financial assistance payment, a payee must*:

*display the logo of Demeter Sports Goods on event signage*;

**·**

*place Demeter Sports Goods' signage at optimal locations for media and public exposure*; *and*

**·**

*display the logo of Demeter Sports Goods on uniforms, invitations*/*tickets, event programs, advertisements, newsletters and award certificates*.

35. *As Demeter Sports Goods is making the financial assistance payment in connection with, in response to or for the inducement of the above supplies, there is a sufficient nexus between the payment and those supplies*.

36. *The payee is liable for GST in respect of these supplies. Demeter Sports Goods is entitled to an input tax credit for acquiring these supplies*.

*Example 5 - insufficient nexus - mere acknowledgement of payment*

37. *A local art gallery receives a financial assistance payment from a major Australian company to enable them to acquire an artwork. The financial assistance payment is provided on the understanding that it be used to acquire artwork but the local art gallery is not under an enforceable obligation to use the payment in the way specified. The artwork is acquired and the director of the art gallery decides to install a plaque below the artwork to acknowledge the support of the company*.

38. *The mere acknowledgement of the financial assistance payment is not an act which has the character of advertising, or promoting the company. There is nothing else supplied by the art gallery. The payment by the company is not in connection with, in response to or for the inducement of any supply*.

39. *There will be no GST consequences for either party arising from this arrangement*.

Insufficient nexus between financial assistance payment and a supply

40. Things are often supplied by the payee to the payer that satisfy the statutory definition of a 'supply', given the broad meaning of 'supply'.[[14]](https://www.ato.gov.au/law/view/document?docid=GST/GSTR20122/NAT/ATO/00001" \l "fp14) In some circumstances, things may be supplied by the payee that are merely incidental or have an insufficient nexus to the financial assistance payment. Further, in such circumstances, although there may be supplies which are merely incidental or have an insufficient nexus to the financial assistance payment, the payment may be consideration for a good, service or some other thing supplied under the arrangement.

*Example 6 - insufficient nexus - provision of information to substantiate expenditure*

41. *A business qualifies for a government financial assistance payment that is to promote the advancement of technology. For the purposes of the government agency's own internal assurances, the business is required to provide a report to the agency outlining how the funds were expended*.

42. *The payment is made to enable the business to improve its technological capability, not to obtain the report on how the financial assistance payment was expended. The financial assistance payment does not have a sufficient nexus with the supply of the report because the payment was not in connection with, in response to or for the inducement of the report*.

43. *Therefore, there are no GST consequences for either party*.

Repayment clauses

44. An arrangement may include an obligation to repay a financial assistance payment in specified circumstances. The existence of a repayment clause alone is not determinative in establishing whether a financial assistance payment is consideration for a supply.

45. Rather, the repayment obligation is to be taken into account in the broader context of the arrangement as a whole and may be relevant in determining whether the financial assistance payment is consideration for a supply made by the payee.

*Example 7 - repayment clause - taxable supply*

46. *A government department instigates an exit assistance package to reduce the size of a particular industry. The package provides financial assistance payments to businesses exiting the industry*.

47. *Eligible businesses are those that satisfy specified criteria. To receive the financial assistance payment of $50,000 the business owners must agree to exit the industry for a period of 5 years*.

48. *If the business breaches conditions relating to exiting the industry the owners are required to repay the $50,000*.

49. *The existence of a repayment clause is not determinative when establishing whether the financial assistance payment has been made for a supply*.[[15]](https://www.ato.gov.au/law/view/document?docid=GST/GSTR20122/NAT/ATO/00001" \l "fp15) *Taking into account all of the facts and circumstances of this case as a whole under the arrangement, the eligible business owners make a supply of undertaking to exit their industry and remaining outside the industry for the period of five years. The financial assistance payment has a sufficient nexus with this supply as the payment is made in connection with this undertaking by the eligible business owners. Therefore, the financial assistance payment is consideration for this supply*.

50. *The eligible business is liable for GST on the supply. The government department is entitled to an input tax credit for acquiring the right to require the business to exit the industry*.

*Example 8 - repayment clause - no taxable supply*

51. *A local government body introduces a financial assistance initiative to assist community groups. A Scout Group requests funds from the local government body in relation to the purchase of gymnasium equipment*.

52. *Over several months the Scout Group enters into further negotiations with the local government body in relation to the purchase of the gymnasium equipment. The local government body agrees to provide the Scout Group with financial assistance. However, the payment must be returned if the gymnasium equipment is not purchased by the Scout Group by a particular date*.

53. *Taken as a whole, the agreement does not indicate that the Scout Group is obligated to purchase the gymnasium equipment. It merely requires the repayment of the funds if the equipment is not purchased. The financial assistance payment is made to the Scout Group to facilitate its purchase of the gymnasium equipment. There is no taxable supply made by the Scout Group to the local government or any third party when it purchases the equipment. The existence of the repayment clause does not alter this conclusion*.

54. *Therefore, there are no GST consequences for the payee or the local government body*.

**No supply**

55. There will be some arrangements that do not involve the making of any supply whatsoever. If no supply has been made a key element of the definition of taxable supply is not met.

56. In particular, there is no supply where the agreement between the parties is not binding and creates expectations alone. However, the payee may still make a supply in the absence of enforceable obligations. Where there is an agreement that does not bind the parties in some way there may still be a supply where there is something else, such as goods or some other benefit, passing between the parties.

*Example 9 - no supply - settlements of trust*

57. *The government settles a charitable trust which has terms that provide for relief to the poor. The charitable trust has not provided anything to the government for the settlement. Therefore there is no supply and no GST consequences of the payment of the settlement amount for either the payee or the payer under the arrangement*.

*Example 10 - no supply - mere expectation*

58. *A local tennis club is seeking funding to enable them to resurface their privately owned tennis courts. The local council provides financial assistance to the tennis club on the basis that the money is only used for the resurfacing of the tennis courts*.

59. *The local council has an expectation that the works will be carried out. However, as there is no binding obligation on the tennis club to actually carry out the resurfacing of the courts, and there are no other goods or services passing between the parties there is no supply to the local council*.

60. *There are no GST consequences arising from the arrangement for either party*.

*Example 11 - no supply - mere expectation (where the thing is done)*

61. *Continuing with the last example*.

62. *Even if the payment is ultimately used to resurface the tennis courts, this does not change the fact that the tennis club has not made any supply to the local council. Transactions that are neither based in an agreement that binds the parties in some way nor involve the supply of goods, services or, some other thing to the payer, do not establish a supply*.[[16]](https://www.ato.gov.au/law/view/document?docid=GST/GSTR20122/NAT/ATO/00001" \l "fp16) *In this example, the mere doing of the thing that was expected does not amount to a supply to the local council because it does not involve some good, service or other supply being provided to the local council by the tennis club for which the payment is consideration*.[[17]](https://www.ato.gov.au/law/view/document?docid=GST/GSTR20122/NAT/ATO/00001" \l "fp17) *Rather, the payment has facilitated the acquisition of services by the tennis club in having its courts resurfaced. This is not a supply made to the local council*.

*Example 12 - no supply - eligibility criteria*

63. *A government agency offers prepared food retailers a rebate of up to $3,000 when they purchase and install a new commercial dishwasher in their kitchen. The dishwasher can be purchased from any retailer*.

64. *To be eligible for the rebate the dishwasher must be installed in existing premises and the dishwasher must meet a specified energy efficiency rating. To obtain the rebate the prepared food retailer must submit an application form with copies of their purchase and installation invoices*.

65. *The food retailer does not enter into any obligations, other than providing further evidence to support their claim in accordance with the eligibility criteria*.

66. *Although the application submitted by the food retailer and the agreement to provide further evidence in support of their claim may meet the statutory definition of a* '*supply', these supplies are not the reason for which the payment was made. Rather the payments were made in order to encourage and facilitate the purchase of the commercial dishwasher by the food retailers. The provision of evidence in support of the claim does not have a sufficient nexus with the payment and is merely incidental to it*.

67. *The financial assistance payment is made once the food retailer has met the eligibility criteria. In meeting these criteria the food supplier is not supplying any good, service, or anything else to the government agency*.

68. *There are no GST consequences arising from the arrangement for either party*.

***An expectation is created between the parties and nothing more***

119. A further example of where there may be no supply is where an agreement between the parties is not binding and creates expectations alone. Where the financial assistance payment is made in circumstances where a party expects that something will be done, and it does not involve a binding obligation or the supply of goods, services or some other thing, there is no supply.[[61]](https://www.ato.gov.au/law/view/document?docid=GST/GSTR20122/NAT/ATO/00001" \l "fp61) The mere expectation that an act or event will happen is not sufficient to establish a supply.

120. However, the payee might still make a supply in the absence of enforceable obligations, if there is something else such as goods, services or some other thing passing from the payee to the payer or a third party.