INTRODUCTION

Following the introduction of the Goods and Service Tax (GST) legislation on 1 July 2000, State and Commonwealth Agencies including the Department of Health and Western Australian Health Services have generally treated payments for various contracts and any associated services between the two parties as being Appropriations. As such these payments have not been subject to GST. However, on 30 June 2004 the Australian Taxation Office (ATO) released a public ruling, GSTR 2004/5, which clarifies what funding can be classified as an appropriation. As a result some payments that have previously been regarded as an appropriation may no longer be treated in this manner. It is therefore essential that when Business Units enter into negotiations and contracts with other State or Commonwealth Government related agencies that they clearly establish the correct treatment of the payments for GST purposes, that is, whether the supply is subject to GST, GST-free, input tax, an appropriation, or in some cases, out of scope of the GST legislation.

In the past the majority of revenue from Commonwealth Government Agencies has been required to be paid to the Department of Health in the first instance. The Department has then incorporated these funds as part of the relevant Business Units’ annual budget and passed on the revenue as part of their normal operating ‘subsidy’. Given that not all funds will be regarded as appropriations in future it is extremely important that all Business Units ensure that such payments are correctly invoiced and receipted in line with the GST legislation. This will also impact on the Business Units’ budgetary and reporting processes with the Department of Health.

POLICIES AND PROCEDURES

While the following policies refer principally to payments from Commonwealth Government related agencies, the same principles apply to interactions with State Government related entities.

All staff involved with negotiating and developing contracts for services to and from Commonwealth Government agencies must clearly establish the taxation and associated billing treatment before the contract is executed. To this end, it is paramount that the parties establish whether the payments are covered under an appropriation for the purposes of paragraph 9-15(3)(c) of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act) which provides that:

A payment made by a government related entity to another government related entity is not the provision of a consideration if the payment is specifically covered by an appropriation under an Australian law.
According to GSTR 2004/5, the following conditions have to be met for a payment to be regarded as an ‘appropriation’ payment and therefore not consideration for a taxable supply under paragraph 9-15(3)(c) of the GST Act:

- there has to be an appropriation under an Australian law;
- the payment must be made by a government related entity to another government related entity; and
- the payment must be specifically covered by the appropriation.

To be specified in the relevant Australian law, the following must be specified in an Appropriation Act:

- the purpose of the payment;
- the amount of the payment; and
- the relevant government related entities.

The ATO have advised that:

“a payment will be specifically covered by an appropriation if the Appropriation Act, together with the relevant supporting documents shows the purpose of the payment, the amount of the payment and the government related entity to which the payment is to be made.”

“Relevant supporting documents are those which are considered by a Parliament in passing Appropriation Bills, such as budget papers and Portfolio Budget Statements”.

If the payment does not meet any or all of the above criteria; it cannot be treated as an appropriation. In such cases, it is important that the parties involved establish whether or not the payment relates to a taxable supply under subsection 9-5 of the GST Act, which states:

You make a taxable supply if:

(a) you make the supply for consideration; and
(b) the supply is made in the course or furtherance of an enterprise that you carry on; and
(c) the supply is connected with Australia; and
(d) you are registered or required to be registered.

However, the supply is not a taxable supply to the extent that it is GST-free or input taxed.

Paragraph 9-5(a) of the GST Act will be satisfied where there is a supply and consideration and there is sufficient nexus between the supply and consideration.

Paragraph 9-10 of the GST Act states the meaning of supply as:

(1) A supply is any form of supply whatsoever.

(2) Without limiting subsection (1), supply includes any of these:
   a. a supply of goods;
   b. a supply of services;
   c. provision of advice or information;
   d. a grant, assignment or surrender of real property;
   e. a creation, grant, transfer, assignment or surrender of any right;
   f. a financial supply;
   g. an entry into, or release from, an obligation:
      i. to do anything; or
      ii. to refrain from an act; or
      iii. to tolerate an act or situation;
   h. any combination of any 2 or more of the matters referred to in paragraphs (a) to (g).
(3) It does not matter whether it is lawful to do, to refrain from doing or to tolerate the act or something constituting the supply.

If the parties cannot clearly ascertain (or do not agree on) the taxation status of the goods or services to be provided under the contract, the matter should be referred to the Department’s Taxation Unit for advice and clarification. If the Taxation Unit cannot clarify the situation it will seek a private ruling on the contract from the ATO.

Where a contract, which the GST status of the supply cannot be determined or agreed, requires immediate implementation and/or payment, it is to be treated as a taxable supply until such time as a private ruling can be obtained from the ATO.

ACCOUNTING AND BUDGETING TREATMENT

**Taxable Supplies**

Where it has been agreed that the contract and payments relate to taxable supplies, then the contract should be under the Australian Business Number (ABN) and name of the Business Unit that will be providing the goods or services. The required tax invoices should also be issued under the ABN and name of the Business Unit providing the goods and services, unless the two entities enter into a Recipient Created Tax Invoice (RCTI) agreement for the relevant Commonwealth Government agency (ie the recipient of the supply) to issue an RCTI with the payment, within 28 days thereof. In these cases payment must also be made directly to the Business Unit (under their ABN) and not to the Department of Health. The Business Unit will need to receipt this funding as ‘Own Sourced Commonwealth Revenue’. Such payments must not be offset against any expenditure codes related to the cost of providing the goods or services. The Business Unit is also responsible for ensuring that the GST is correctly accounted in the relevant Business Activity Statement (BAS) and the acquittal of all funds to the Commonwealth Government agency as required under the terms of the contract.

For budgeting purposes, all Commonwealth funds that fall within the realm of taxable supplies will become part of the Business Unit’s ‘own sourced revenue’ rather than being included in the ‘Commonwealth Programs’ as part of the normal appropriation or subsidy, as may have occurred in the past.

Business Units are reminded that they are not permitted to make expenditure above their approved budget limits. Where the Business Unit is to match Commonwealth funds with those of State funds, the State relevant funds will have to be found within the Business Units’ existing State resources. Therefore, if new contracts are entered into during the year that had not previously been budgeted for, the Business Unit will need to seek approval for a budget adjustment from Health Finance before the contract is signed and/or executed, or increasing their expenditure.

**GST-Free or Input Taxed Supplies**

The same rules for Taxable Supplies apply in situations where the supply relates to goods or services of a GST-free or input taxed nature except that in these situations no GST can be charged when the Tax Invoice or RCTI is raised.


**Appropriations and out of scope payments**

Where the contract, and subsequent payments, are determined to fall within the definition of an appropriation as outlined above, or out of scope of the GST legislation, existing accounting and budgeting processes will continue to apply. That is, all such payments should be made to the Department of Health and not to the Business Unit. These funds will then be distributed to the relevant Business Unit as part of the normal budget cycle. The payment should be made under the Department of Health’s ABN, however, it may be under the relevant Business Unit’s ABN. If using the Business Unit’s ABN, care needs to be taken to ensure that payment directly to the Department of Health by the Commonwealth agency or via the Business Unit does not establish a tripartite arrangement between three entities. That is, it is important that no ‘supply’ of goods or services is involved between the Business Unit, Department of Health and/or Commonwealth Government Agency.

Appropriations and out of scope payments are not required to be included in either the Business Unit’s or Department of Health BAS.

For budgetary and reporting purposes, all appropriation and out of scope payments must be included as Commonwealth Programs.

As with Taxable, GST-Free and Input taxed supplies, where the Business Unit is to match Commonwealth funds with those of State funds, the State funds will have to be found within the Business Units’ existing State resources. Therefore, if new contracts are entered into during the year that had not previously been budgeted for, the Business Unit will need to seek a budget adjustment from Health Finance before the contract is signed or executed or increasing their expenditure.

**EXISTING CONTRACTS**

All Business Units are requested to undertake an immediate review of all existing ‘Commonwealth Programs’ and contracts with Commonwealth and State Government Agencies, to ensure that they are correctly aligned to the GST legislation as outlined above. This may require working with the relevant Government agency to establish the correct treatment for GST purposes and alteration of contracts for allowing any relevant GST to be charged.

Where it is established that the contract payments can no longer be classified as an appropriation, immediate steps should be taken to alter the contract to allow for all relevant GST to be charged and paid, and for payments to be made directly to the Unit as outlined above. Business Units should then notify the Commonwealth Budget Officer on 9222 2276 that the program no longer is to be treated as an appropriation and request that their budgets be altered to transfer these funds from Commonwealth Programs to Own Sourced Commonwealth revenue.

These arrangements should not alter the net amount of funds that the Business Unit is to receive under the contracts, unless the relevant Government Agency is not prepared to alter an existing contract to allow for charging GST. In this case, the matter should be referred to the Department’s Taxation Unit.

Where Business Units are already raising invoices either with or without GST (or receiving RCTIs) for goods and services provided under the ‘Commonwealth Programs’ they should immediately notify the Commonwealth Budgeting Officer on 9222 2276, in respect to the name of the program or contract and details of the date from which such invoices have been raised or RCTI’s have been received. The Commonwealth Budget Officer will then check the payments and work with the Business Unit to ensure all relevant GST has been correctly accounted for against these contracts and take steps to ensure the Business Units’ revenue budgets are adjusted in line with the above.
For further information on this matter please contact Kevin Forward on 9222 2265.

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HEALTH FINANCE