



# **ATPP 401**

## **ACT TAXATION POLICY PAPER**

### **ON**

## **LIABILITY FOR AND PAYMENT**

## **OF GST BETWEEN ACT**

## **GOVERNMENT RELATED**

## **ENTITIES**

Chief Minister, Treasury and Economic  
Development Directorate

Policy start date: 1 April 2021

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# 1. INTRODUCTION

## 1.1 Purpose

This Policy provides guidance to ACT Government agencies on applying subsection 9-17(3) of the *New Tax System (Goods and Services Tax) Act 1999* (GST Act) related to payments for supply between government-related entities (GRE), and the *Financial Management Act 1996* (FMA) in applying section 9-17(3) of the GST Act.

This policy is to be read in conjunction with the applicable legislation, Australian Accounting Standards and other relevant information that includes the following:

- > *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)*
- > *Financial Management Act 1996 (FMA)*

There is no intention that this Policy will replicate the relevant legislation or Australian Accounting Standards. Consequently, agencies should ensure that they have a thorough understanding of the content of the legislation and standards before reading and applying this policy.

## 1.2 Application Date

This Policy applies from 1 April 2021.

## 1.3 Agencies Covered by this Policy

This policy applies to ACT agencies, for the purposes of this document an 'agency' includes:

- > an administrative unit of the Territory Government such as a Directorate; and
- > a Territory Authority prescribed by the financial management guidelines (part 8 of the FMA).

(Refer Legislation Act 2001, Public Sector Management Act 1994 and FMA 1996 (Dictionary)).

Identification of agencies as either Territory Authorities or Directorates is contained under the relevant Disallowable Instruments for Financial Management (Directorates or Territory Authorities) Guidelines in the ACT Legislation Register.

For business units of Directorates or Territory Authorities, what applies to the parent agency applies to them unless their respective legislation says otherwise.

A full list of agencies is provided at [Attachment A](#) and the application status of this policy.

## 1.4 Contact

If you have any questions regarding this Policy, please do not hesitate to contact the Financial Reporting and Framework (FRF) Branch to provide further clarification. Contact details are listed on the website: <https://apps.treasury.act.gov.au/accounting/>.

## 2. BACKGROUND

In 2012 section 9-17(3) of the GST Act was introduced to reduce the volume of GST movements in and out of government entities Business Activity Statements, as large amounts of GST were paid and then claimed within government. The legislation provides that payments between GRE are GST-Free, subject to four requirements detailed in Section 3 below.

A key issue in meeting the four requirements of section 3 relates to the definition of appropriation under section 9-17 (specifically section 9-17(3)(b)(1)) which provides that to be GST free, eligible payments must be covered by an appropriation under Australian law or an intergovernmental health reform agreement.

Under the FMA, Directorates are funded on a net cost of outputs basis and own source revenues (where applicable) is combined with appropriation and used to fund operations. Directorates qualify for the (GST section 9-17) exemption as section 9 of the FMA treats Own Source Revenue as appropriated funds. **This applies only to Directorates**, and not automatically to Territory Authorities Own Source Revenue where circumstances need to be considered on a case by case basis (refer to Section 6 below).

## 3. GST ACT SECTION 9-17

Under section 9-17 of the GST Act a payment between GREs will not be subject to GST if **all four** of below requirements are met:

- > the payment is for supply;
- > the payment is made by a GRE to another GRE;
- > the payment is fully covered by an appropriation under an Australian law or is made under a specified intergovernmental health reform agreement; and
- > the payment satisfies the non-commercial test (is on a cost recovery basis).

These four requirements are further described below. Also refer to the checklist at section 5.3 Determining if your Payments are Subject to GST below.

### 3.1 Supply

#### 3.1.1 What is Supply?

Supply encompasses a wide range of events, including:

- > transactions for a variety of goods, meaning any form of tangible personal property (reference Dictionary section 195-1 GST Act);
- > transactions for a variety of services, including the provision of advice or information; and
- > entering into or refraining from entering into an obligation.

### 3.1.2 Payment for Supply

Payment for supply (section 9-17 (3) (a) (c) of the GST Act) for the purpose of this policy, includes:

- > payment from one GRE to another GRE for supply:
  - however, it is not necessary that the supply is made to the GRE making the payment. The supply may be made/delivered to either the GRE making the payment or to a third party; and
  - if there is no actual supply made for the payment, there will be no potential GST liability created according to Division 9 of the GST Act.

(reference: Australian Taxation Office ('ATO') website, under the topic 'GST and payments between government related entities-overview' last modified 27 October 2014).

### 3.1.3 Taxable Supply

A taxable supply has three key elements: consideration, supplier registration, and supply not taxable per Subdivision 9A of the GST Act:

#### **Consideration (section 9-15)**

Consideration in connection with a supply (or acquisition) includes not only a payment of money but can also be:

- > an act – doing something, including refraining from an act, tolerating some act or situation; and
- > forbearance – in response to or for inducement for a supply.

Except where the act occurs by law such as government compulsory land acquisitions.

Where there is no consideration there can be no taxable supply.

#### **Not “Consideration” (section 9-17)**

The following are not “consideration” for a taxable supply despite section 9-15 (section 9-17(5)):

- > if a right or option to acquire a supply is granted, and the consideration to be paid for the supply on the exercise of the right or option is limited to any additional consideration. If there is no additional consideration, then there is no consideration for the supply (section 9-17(1));
- > making a gift to a non-profit body is not “consideration”, however, to be a gift, there must be no material benefit received as a result of making the gift (section 9-17(2));
- > GRE payments for supply are not “consideration” if the requirements of (section 9-17(3)) as outlined in section 3.1.2 are not met; and
- > ‘A payment is not the provision of consideration if the payment is made by a government related entity to another government related entity and the payment is of a kind specified in regulations made for the purposes of this subsection’ section 9-17(4) of the GST Act.

#### **Supplier Registered**

The supplier is registered, or required to be, and the supply is made in connection with an enterprise (including business, charity and Government) connected with Australia’s indirect tax zone.

#### **Supply Not Taxable**

Supply that is non-taxable such as GST-free or input taxed. (see below Non-Taxable Supply).

## Non-Taxable Supply

Non-taxable supplies are termed GST Free and Input Taxed.

### GST Free

- > the definition of consideration specifically excludes certain payments between GREs from appropriation (for non-commercial supply); and
- > the term GST free is a supply that the seller cannot charge GST on but can claim any GST incurred in relation to that supply.

Examples of GST free supplies include exports, some education supplies, fresh food, health care services and the provision of water.

### Input Taxed

Input taxed is a supply that the seller cannot charge GST on and cannot claim any GST incurred in relation to that supply.

This includes input taxed sales and input taxed purchases. Input taxed sales include examples such as interest income, dividend income, or residential income. Input taxed purchases are expenses related to any input taxed sales.

Examples of input-taxed supplies include financial supplies (which includes bank charges, lending money and the provision of credit for a fee, and interest charges), supplies of residential rental properties, sale of residential premises excluding new homes and charity donations.

## 3.2 Government Related Entity (GRE)

A GRE is a department of state of the Commonwealth, a department of the parliament, an executive agency, or statutory agency, a department of state of a state or territory, an organisation, whether or not it is an entity, that:

- > is either established by the Commonwealth, a state or a territory (whether under a law or not) to carry on an enterprise or established for a public purpose by an Australian law; and
- > can be separately identified by reference to the nature of the activities carried out through the organisation or the location of the organisation; whether or not the organisation is part of a department or branch described in the GST Act section 9-17(3). This can include a local governing body established by or under a state or territory law, and public universities also being included as GREs.

(reference: Australian Taxation Office ('ATO') website, 'GST and payments between government related entities – overview' last modified 27 October 2014).

The above definition covers ACT entities, including Directorates and Territory Authorities and transactions between Commonwealth, State and Territory entities.

## 3.3 Appropriation and Australian law

A payment between GREs is exempt from GST per section 9-17 of the GST Act, where it is fully covered by an appropriation under an Australian law or, is made under a specified intergovernmental health reform agreement.

The following describes an appropriation under Australian law:

- > Appropriation is an authorisation for the expenditure of money under a law.
  - The law regarding appropriations changed on 1 July 2012. From this date, there is no longer a need for the appropriation to specify the entity or class of entity that the appropriation relates to.
- > The appropriation is not itself a payment, it is the legislative segregation of funds from consolidated revenue (the Territory Banking Account) only (see below 3.4.1).
- > An appropriation under an Australian law means a segregation of funds from the consolidated revenue fund, by a:
  - statute of the Commonwealth;
  - state or a territory; and
  - delegated legislation.

(reference: Australian Taxation Office ('ATO') website, 'GST and payments between government related entities' last modified 27 October 2014, accessed 7 April 2020).

There are three key application issues arising from the above description of an appropriation under Australian Law. These are discussed below in the following subsections:

- > payment and recipient identification as an appropriation;
- > on-passing appropriation to another GRE; and
- > Own Source Revenue – how is it treated?

### 3.3.1 Payment and Recipient Identification – Appropriation

An appropriation is an authority to spend, not necessarily a payment sourced from an appropriation.

Therefore, a specific payment does not need to be:

- > specifically named to be covered by an appropriation; and
- > the recipient of the payment does not need to be specifically identified in the appropriation.

For a transaction to be exempt from GST under section 9-17 of the GST Act the payment must be covered by an appropriation. This means a payment must be fully covered by an appropriation, whereas a payment that is only partly covered by an appropriation will disqualify the payment from the exemption under section 9-17 of the GST Act (see 3.3.3 Own Source Revenue – Mixed Funding Sources).

### 3.3.2 On-Passing Appropriation to another GRE

Where one GRE receives a payment or a subsidy from another GRE provided through an appropriation, the payment/subsidy money continues to be considered appropriated by the receiving GRE.

For example, if the receiving GRE passes on some or all of the payment/subsidy received from appropriated funds, to another third-party GRE, the subsequent payment to the third-party GRE may continue to be considered appropriated and exempt from GST if it meets the other rules in section 9-17 of the GST Act.



### 3.3.3 Own Source Revenue

Own Source Revenue that is not covered by consolidated revenue, is not considered to be an appropriation for the purposes of section 9-17 of the GST Act, (see Section 3.3 An appropriation under an Australian law means a segregation of funds from the consolidated revenue fund).

The application of Own Source Revenue to ACT agencies is as follows:

- > Directorates Own Source Revenue is considered appropriated.
- > Territory Authorities Own Source Revenue is **not** considered appropriated.

Section 4.2 Own Source Revenue has the details of how the FMA operates to establish what is appropriation and how Directorates and Territory Authorities differ in the recognition of Own Source Revenue as being appropriated.

### Mixed Funding Sources – Own Source Revenue and Appropriation

Some agencies receive a mixture of appropriated funds and commercially sourced Own Source Revenue. While specific programs are usually appropriated, other items or general operating expenses may be partly or wholly funded by Own Source Revenue. These activities can be in the form of fare revenue, hiring fees, charges, fines and taxes and may or may not be charged at cost/non-commercial cost or at commercial/profit cost.

The appropriation provision does not allow for the application of proportionately applying the test between Own Source Revenue and Appropriation to arrive at a percentage of the payment being non-taxable between GREs for GST. Therefore, unless the funds can be identified as only being sourced from appropriated funds, the payment will not be 'covered by an appropriation under an Australian law' for the purposes of subsection 9-17(3) of the GST Act.

(reference: GST State Territory Industry Partnership (STIP) Meeting 27 April 2016).

Application to agencies is as follows:

- > Directorates:
  - Directorates Own Source Revenue is considered appropriated (Net Controlled Recurrent Payments), Directorates payments are appropriated no matter the original source of funding for the payment.
- > Territory Authorities (for further information see Section 6):
  - partial (mix, percentage or proportional) Own Source Revenue and appropriation cannot be used in applying the GST exemption; and
  - are required to 'drill down' into each transaction to identify and determine if the payment is fully covered by an appropriation (including third-party appropriation, see section 3.3.2 above). Only where the transaction can be fully covered by an appropriation would a GST exemption apply.

## 3.4 Non-Commercial Test

To be exempt from GST under section 9-17 of the GST Act, a payment must satisfy the non-commercial test. The basis of non-commercial is cost recovery, the amount of the payment does not exceed the anticipated or actual cost of making the supply. Cost recovery includes:

- > any payment/s relating to the supply;
- > anything else the supplier receives from other entities in connection with or response to or for the inducement of the supply, or any related supplies; and
- > supplier direct or indirect costs of making supply/supplies but does not include return on capital costs measured on opportunity cost or forgone revenue.

(reference: Australian Taxation Office ('ATO') website, 'GST and payments between government related entities' last modified 27 October 2014).

### 3.4.1 Fees set under ACT legislation

Agencies who charge fees set by determination such as a disallowable instrument need to establish if the fee is set at a non-commercial or commercial rate.

The *Legislation Act 2001* on determination of fees part 6.3, sections 55-58 addresses cost or commercial rates for fees. Therefore, agencies need to review the respective determination for example:

- > The Emergency Services ACT Fees determination under the respective Explanatory Statement states that 'fees are at cost recovery, increased by the wage index rate' (*Emergencies (Fees) Determination 2019*) and would satisfy the non-commercial test.

## 4. FINANCIAL MANAGEMENT ACT 1996 (FMA)

This section discusses the FMA as it relates to identifying appropriation and Own Source Revenue in Territory law, to satisfy section 9-17 of the GST Act in its application to Directorates and Territory Authorities. The key sections in the FMA are:

- > section 6 Necessity for Appropriation;
- > section 8 Form of Appropriations; and
- > section 9 Net Controlled Recurrent Payments.

The discussions on these FMA sections are included below under subsections:

- > Appropriation – (sections 6 and 8 FMA)
- > Own Source Revenue – (section 9 FMA)
- > Application to Directorates and Territory Authorities

### 4.1 Appropriation – sections 6 and 8 of the FMA

Section 9-17(3)(b)(i) requires that a qualifying appropriation is made under an Australian Law. The FMA authority to meet this requirement comes from the dictionary definitions, section 6 *Necessity for Appropriation* and section 8 *Form of Appropriations*.

The FMA application and form of appropriation in the ACT is as follows:

- > Section 6 of the FMA Necessity for Appropriation in which 'no payment of public money must be made otherwise than in accordance with an appropriation';

- > FMA Dictionary definitions provide that:
  - Appropriation means ‘an appropriation of public money by any Act including this Act’; and
  - Appropriation Act means ‘an act that makes appropriations for a financial year in accordance with section 8 of the FMA’.
- > Section 8 of the FMA provides that an Appropriation Act may make separate appropriations for each of the different types of entities in the ACT which includes Directorates and Territory Authorities. The appropriation can be in relation to:
  - Controlled Recurrent Payments (CRP) which is ‘an amount provided, or to be provided to a territory entity for the delivery of goods and services provided by the territory entity, or a person providing goods and services on behalf of the territory entity’ (FMA Dictionary);
  - Capital Injection (CI); and
  - any payments to be made by Directorates on behalf of the Territory.

### Summary Appropriation – sections 6 and 8 of the FMA

*An appropriation (section 8) is for public money (section 6) under the FMA and an Appropriation Act is for ACT entities such as Directorates and Territory Authorities, including for Controlled Recurrent Payments (section 8) for or to be provided for the delivery of goods and services on behalf of a territory entity.*

## 4.2 Own Source Revenue – section 9 of the FMA

The question of whether Territory Own Source Revenue is covered by appropriation under an Australian law is provided for under section 9 of the FMA as follows:

- > Section 9(1) of the FMA provides that ‘appropriation for Controlled Recurrent Payments may be expressed to be made for Net Controlled Recurrent Payments’.
  - The definition of Net Controlled Recurrent Payments is not explicitly defined in the FMA, however, it is taken to mean a Controlled Recurrent Payment with a further authority to apply any payments a territory entity is entitled to receive for providing goods and services (colloquially referred to as ‘Territory Own Source Revenue’) to its expenses and liabilities.

Sections 9 (2) and (3) sets out the rules as to how an Appropriation Act is to operate, these are:

- > Section 9(2) of the FMA provides that, ‘despite section 6 (necessity for appropriation), if an appropriation is for Net Controlled Recurrent Payments, the **Directorate** may apply [the payments it is entitled to receive for providing goods and services] in paying the expenses and liabilities of the Directorate’.
  - That is, despite the amount of ‘Own Source Revenue’ and therefore the amount of the Net Controlled Recurrent Payments being unknown at the time of passing of the relevant Appropriation Act, those payments are authorised, provided that the Appropriation Act is expressed to be made for Net Controlled Recurrent Payments for Directorates.
- > Section 9(3) of the FMA provides that, ‘if the appropriations made by an Appropriation Act for a Directorate do not state an amount, or state a ‘0’ appropriation, for Controlled Recurrent Payments, the appropriations have effect as if they included an appropriation for Controlled Recurrent Payments for the Directorate at no net cost to the Territory’.

- In this case, the absence of an appropriation for Controlled Recurrent Payments, or an appropriation for Controlled Recurrent Payments of '0', is taken to be authorisation.

## Summary Own Source Revenue section 9 of the FMA

*In summary, section 9 of the FMA provides that, for Directorates, a payment from Territory Own Source Revenue (Net Controlled Recurrent Payments), is a payment that is covered by an Appropriation. Section 9(2) however does not include Territory Authorities.*

## 5. APPLICATION – DIRECTORATES AND TERRITORY AUTHORITIES

This section covers the application of the policy and includes a checklist and examples.

### 5.1 Conclusion – Appropriation and Own Source Revenue

Notwithstanding the need to meet all four elements of section 9-17 of the GST Act, there are differing eligibility requirements for Directorates and Territory Authorities regarding Own Source Revenue within section 9 of the FMA. As a result, the following applies:

- > Directorates Controlled Recurrent Payments under section 8(1) FMA and Net Controlled Recurrent Payments (Own Source Revenue) under section 9(2) FMA are both considered appropriated. (See subsection 5.4 Directorate Examples).
- > Territory Authorities Controlled Recurrent Payments under section 8(2) FMA are considered appropriated. However, Territory Authorities are not specifically covered in section 9(2) of the FMA for Own Source Revenue (Net Controlled Recurrent Payments). Therefore, for Territory Authority's Own Source Revenue to satisfy the test in section 9-17(3)(b)(i), being appropriated under an Australian law, applicability of section 9-17, needs to be considered on a case by case basis, taking into account:
  - the establishing Act for each Territory Authority; and
  - the nature of the appropriations that the relevant Territory Authority receives.

See section 6 Territory Authorities Guide and examples below.

### 5.1 Procedures for Applying Section 9-17 and the FMA

To apply section 9-17 of the GST Act and the FMA (see section 4 above), all Directorates and Territory Authorities should prepare detailed procedures for determining and documenting whether payments are made between GRE's, confirming that they have met the requirements of the Act outlined in section 3.

This information will be used not only for agency financial assurances but to support the Whole of Government (WhoG) system approach described below.

## 5.2 Whole of Government Systems Approach

Where possible and feasible a WhoG approach will be taken to support compliance with section 9-17 of the GST Act and the FMA. The WhoG approach is for the Shared Services Finance System to disable GST collection on transactions that meet the criteria for exemption.

The application of the WhoG systems approach is different for Directorates and Territory Authorities:

- > For Directorates a WhoG systems approach can be undertaken for transactions that meet the criteria.
- > For Territory Authorities additional consideration and actions are required – see section 6.3 below.

## 5.3 Check List – s9-17 GST Exemption

A checklist of the 4 requirements to apply section 9-17 of the GST Act to ascertain if a payment made between GREs is subject to GST in table below.

**5.3 Table: Checklist –s9-17 GST Exemption GRE's**

Section Details	Are Payments Subject to GST?	
3.1 Supply	<div>Is the Payment for supply</div> <div>No</div> <div>Yes</div>	<div>No GST under the basic rules in the GST ACT</div>
3.2 Government Related Entities (GRE)	<div>Is the Payment made between GREs</div> <div>No</div> <div>Yes</div>	<div>Payment is subject to GST if the basic rules apply</div>
3.3 Appropriation 4 Financial Management Act (FMA)	<div>Is the payment covered by an appropriation or made under a specified intergovernmental health reform agreement</div> <div>No</div> <div>Yes</div>	<div>Payment is subject to GST if the basic rules apply</div>
3.4 Non-Commercial Test	<div>Does the payment satisfy the non-commercial test</div> <div>No</div> <div>Yes</div>	<div>Payment is subject to GST if the basic rules apply</div>
<div>Payment is not Subject to GST</div>		

## 5.4 Application Examples for Directorates and Business Units

The eight examples below relate to Directorates/Business Units with emphasis on applying the requirements in Table 5.3 above for:

- > payments between GREs (s3.2);
  - > payments covered by an appropriation (s3.3 and s4); and
- unless otherwise stated, the examples meet the requirements for:
- > a Supply (s3.1); and
  - > satisfaction of the non-commercial test (s3.4).

If further examples are required from that of the below examples, they will be published in a separate document and periodically updated on the accounting policy webpage <https://apps.treasury.act.gov.au/accounting>.

### Examples 1 to 8

1. Controlled Recurrent Payments from the Territory Banking Account (TBA) to a Directorate?

**Answer:**

*This transaction would not be subject to GST as it represents a payment covered by an appropriation and therefore is not a consideration for GST purposes.*

2. Controlled Recurrent Payments from the Territory Banking Account (TBA) to the Transport Canberra and City Services Directorate (TCCS)), which is then on passed to Transport Canberra Operations (TCO) Territory Authority?

**Answer:**

- > *The first transaction between TBA and TCCS would not be subject to GST, as it represents a payment covered by an appropriation and no goods, services or property rights are transferred.*
- > *The second transaction would not be subject to GST, as it represents a funding transaction (transfer payment) between two government related entities TCCS and TCO, for which no goods, services or property rights return to TCCS.*

3. Emergency Services ACT, a business unit of JACS (Directorate) charges fees in accordance with a fees determination to Events Canberra, a business unit of CMTEDD (Directorate) for ambulance services at an event.

**Answer:**

*Both these agencies are business units of Directorates. As a Directorate, the Events Canberra payment for the supply of ambulance services is appropriated. The fee charged is in accordance with the fee determination explanatory statement which states it was at cost (see above section 3.4.1 fees set under ACT legislation). This transaction is GST exempt.*

4. A Grant from the Education Directorate to Non-Government Schools?

**Answer:**

*This transaction would be subject to GST, as it represents a transaction between a government registered entity and a non-government registered entity and therefore falls outside the scope of being a transaction between two government related entities and the appropriation provision.*

*The receipt of funds (specific purpose payments) by the Territory from the Commonwealth for non-government schools includes a GST equivalent gross up payment which is on-passed to the non-government schools' sector.*

5. Capital Grants from the Health Directorate and Local Hospital Network to Calvary Public Hospital?

**Answer:**

*This transaction would be subject to GST, as it represents a transaction between a government registered entity and a non-government registered entity, and therefore falls outside the scope of being a transaction between two government related entities and the appropriation provision. Also note this is a capital grant not a supply grant and so would not qualify for the exemption on the supply rule basis.*

6. CMTEDD (Directorate) sublets office space to a Commonwealth Department for use and charges an amount for the office space based on the cost of the office space and administrative costs associated with the subletting?

**Answer:**

*CMTEDD and the Commonwealth Department are both GREs and a this is a non-commercial transaction for GST purposes, and therefore exempt from GST under section 9-17(3) of the GST Act.*

7. TCCS (Directorate) is tasked with undertaking a mail-out to the public to communicate a Whole of Government initiative. TCCS engages Australia Post (commonwealth Government) to provide the postal services for the mail-out. The payment made by TCCS is covered by an appropriation. Australian Post charges TCCS at standard corporate commercial rates for bulk mail?

**Answer:**

*Both TCCS and Australia Post are government related entities, the exchange is a supply and appropriated funds are used for payment. However, the transaction is at commercial rates and will be subject to GST.*

8. Payments from EPSDD (Directorate) to Shared Services for the provision of computing services on a cost recovery basis?

**Answer:**

*The EPSDD transaction is a payment for an input (good or service) provided directly back to the purchaser on a cost recovery basis, however, is not subject to GST as EPSDD is a Directorate and their funds are appropriated and the section 9-17(3) exemption applies.*

## 6. TERRITORY AUTHORITIES GUIDE AND EXAMPLES

The following is a guide to applying the exemption for GRE transactions under section 9-17 of the GST Act and the requirements under the relevant sections in the FMA (see section 4) for Territory Authorities related to particularly to Own Source Revenue.

## 6.1 Identifying Own Source Revenue as Appropriated

Unlike Directorates, Territory Authority's Own Source Revenue is not considered appropriated (Net Controlled Recurrent Payments) under section 9 of the FMA (see section 4.2).

Therefore, for Territory Authorities Own Source Revenue payments to GREs for non-commercial supply to satisfy the test in section 9-17(3)(b)(i) of the GST Act as being appropriated under an Australian law, each Territory Authority will need to consider on a case by case basis the:

- > establishing Act for each Territory Authority:
  - the establishing Act of a Territory Authority may have specific references or the ability to identify Own Source Revenue as being considered appropriated, but it must be clearly identified under the establishing legislation; and
- > nature of the appropriations that the relevant Territory Authority receives (that are not under a direct Appropriation Act), this includes but is not limited to the following:
  - Territory Authority receives a payment or subsidy from another GRE. The Territory Authority being a recipient of appropriated funds are considered appropriated (see section 3.3.2 On-Passing Appropriation to another GRE).
  - Payment to a third-party GRE made by a Directorate on behalf of the Territory Authority. The payment will be considered appropriated to the Territory Authority.

## 6.2 Appropriation, Own Source Revenue, WhoG System

For Territory Authorities to apply section 9-17 of the GST Act, separation of Appropriation and Own Source Revenue is required using a WhoG systems approach. To achieve this, the following will need to be undertaken:

### Separation of Appropriation and Own Source Revenue

Territory Authorities will need to separate appropriated and Own Source Revenue payment/s. While section 3.4.1 of this policy provides that a payment from an appropriation does not need to be specific to be covered by an appropriation, Territory Authorities Own Source Revenue are not covered in section 9(2) of the FMA and therefore are not considered appropriated.

It is necessary for Territory Authorities who receive appropriation to identify and clearly:

- > separate appropriated money and the payments the appropriation is being attributed to, as distinct from Own Source Revenue; and
- > demonstrate that the payment being paid is fully covered from appropriated funds and not a mixture of Appropriated and Own Source Revenue. (see subsection 3.3.3).

Territory Authorities should assess the feasibility of determining the source of funding and GST applicable as the process may be time consuming and not cost effective to apply. Where this is the case, the payments should continue to be subject to GST.

### Whole of Government System

Where Territory Authorities use the WhoG Shared Services Finance System, and the payments are being made from appropriated funds that are clearly separated from Own Source Revenue, the WhoG



Shared Services Finance System may be used to support disabling GST collection on transactions that meet the criteria for exemption under section 9-17 of the GST Act.

## 6.3 Application Examples for Territory Authorities

The five examples below relate to Territory Authorities with emphasis on applying the requirements in Table 5.3 above for:

- > payments between GREs (s3.2);
  - > payments covered by an appropriation (s3.3 and s4); and
- unless otherwise stated, the examples meet the requirements for:
- > a Supply (s3.1); and
  - > satisfaction of the non-commercial test (s3.4).

If further examples are required from that of the below examples, they will be published in a separate document and periodically updated on the accounting policy webpage <https://apps.treasury.act.gov.au/accounting>.

### Examples 1TA to 5TA

1TA. Controlled Recurrent Payments from the Territory Banking Account to a Territory Authority?

**Answer:**

*This transaction would not be subject to GST as it represents a payment covered by an appropriation and therefore is not consideration for GST purposes.*

2TA. Controlled Recurrent Payments from the Territory Banking Account (TBA) to the Transport Canberra and City Services Directorate (TCCS)), which is then on passed to Transport Canberra Operations (TCO)?

**Answer:**

*>The first transaction between TBA and TCCS would not be subject to GST, as it represents a payment covered by an appropriation and no goods, services or property rights are transferred.*

*>The second transaction would not be subject to GST, as it represents a funding transaction (transfer payment) between two government related entities TCCS and TCO, for which no goods, services or property rights return to TCCS.*

3TA. Payments from CIT/SLA (Territory Authority) to Shared Services for the provision of computing services on a cost recovery basis?

**Answer:**

*> CIT/SLA transaction represents a payment for an input (good or service) that is provided to the purchaser and is subject to GST.*

- *Note: CIT/SLA are Territory Authorities, if the payment was fully covered from appropriated funds and able to identify as that, then it would not be subject to GST.*

4TA. A Directorate pays a Territory Authority, the Territory Authority then passes on some/all of the payment to another GRE e.g. Property Group/Shared Services?

**Answer:**

*Where one GRE (Territory Authority) receives a payment from another GRE (Directorate) provided through an appropriation, the GRE (Territory Authority) receiving the payment can pass on some or all of the payment received to a third GRE (Property Group/Shared Services);*

- *the subsequent payment to the third GRE may continue to be considered as appropriated by the Territory Authority assuming the transaction meets all the four rules of section 9-17(3) of the GST Act outlined at section 3 above.*

STA. The purchase of insurance by agencies is centralised through ACTIA, a Territory Authority which brokers the insurance from external insurance sellers then on-supplies to individual agencies. Individual agencies pay ACTIA an amount equal to their portion of the actual premium (which includes GST) and ACTIA administration costs incurred in purchasing the insurance.

**Answer:**

*The transaction ACTIA has with external insurance sellers is subject to GST as a commercial transaction for taxable supply.*

*The transaction ACTIA has between ACT government agencies is between GREs for supply on a non-commercial cost recovery basis:*

- > *Directorates are appropriated therefore their payments to ACTIA are not subject to GST.*
- > *Territory Authorities need to identify if the payment is fully covered by Appropriation:*
  - *If the payment is fully covered by appropriation then it is not subject to GST.*
  - *if not fully covered by appropriation but part or fully from own source revenue then the payment to ACTIA is subject to GST.*

## ATTACHMENT A – DIRECTORATE AND TERRITORY AUTHORITY APPLICATION STATUS

The table below provides a list of Directorates and Territory Authorities and whether or not this policy is applicable.

This list is current as at March 2021 based on the 2020-21 Budget and is subject to annual review.

### Territory Authorities

Agency	Appropriation status	Policy application status
<b>General Government Sector (GGS)</b>		
ACT Insurance Authority (ACTIA)	No	No
ACT Teacher Quality Institute	No (part of Education Directorate)	Yes
Cemeteries and Crematoria Authority	No	No
ACT Gambling and Racing	Yes	No
Canberra Institute of Technology (CIT)	Yes	No
Cultural Facilities Corporation (CFC)	Yes	No

Independent Competition Regulatory Commission for the ACT (ICRC)	Yes	No
Legal Aid Commission (ACT)	Yes	No
Motor Accident Injuries Commission (MAIC)	No	No
Office of the Work Health and Safety Commissioner (Worksafe ACT)	Yes	No
Public Trustee and Guardian for the ACT (PTG)	Yes	No
<b>Industry Funded (IF)</b>		
Building and Construction Industry Training Fund Authority (BCITFA)	No	No
Long Service Leave Authority (LSLA)	No	No
<b>Public Trading Enterprises (PTE's)</b>		
Suburban land Agency (SLA)	No	No
University of Canberra	No	No
City Renewal Authority (CRA)	Yes	Yes
CIT Solutions	No	No

## Territory Owned Corporations

Agency	Appropriation status	Policy application status
<b>Public Trading Enterprises (PTE's)</b>		
ICON Water Ltd	Yes	No

## Directorates

Agency	Appropriation status	Policy application status
<b>8 FMA s133 Prescribed Admin unit (directorates)</b>		
Lifetime Care and Support Fund	No	Yes
Public Sector Workers Compensation Fund	No	Yes
Territory Banking Account	No	Yes
Transport Canberra Operations	No	Yes
ACT Executive	Yes	Yes
ACT Local Hospital Network	Yes	Yes
Housing ACT	Yes	Yes
Superannuation Provision Account	Yes	Yes
<b>AO - Admin Unit (Directorates)</b>		
ACT Health	Yes	Yes
Canberra Health Services	Yes	Yes
Education	Yes	Yes
Chief Minister Treasury and Economic Development (CMTEDD)	Yes	Yes
Transport Canberra and City Services (TCCS)	Yes	Yes
Justice and Community Safety (JACS)	Yes	Yes
Community Services (CSD)	Yes	Yes
Environment, Planning and Sustainable Development (EPSDD)	Yes	Yes
Major Projects Canberra	Yes	Yes
<b>Officer of the Legislative Assembly</b>		
Auditor-General	Yes	Yes
Integrity Commissioner	Yes	Yes
Electoral Commissioner	Yes	Yes
Office of the Legislative Assembly	Yes	Yes



Chief Minister, Treasury and Economic  
Development Directorate

April 2021