1. **Statement**

This Standard seeks to assist officers in determining when GST will apply to grants made to or received from the department and HHSs. It also addresses the requirement to report all Grant payments to the ATO.

2. **Scope**

Compliance with this standard is mandatory.

This standard applies to all employees, contractors and consultants within the Department of Health divisions and commercialised business units as well as Hospital and Health Services.

3. **Content**

**Introduction**

One of the first rules of GST is that there must be a “supply for consideration”. Under normal circumstances a payment of money (such as in a grant) is not itself a supply of anything but is rather the provision of consideration. The trick is determining if there is any supply for this consideration which would lead to the transaction being a Taxable Supply and GST thus applying.

Various labels may be given to the financial assistance: grants, direct grants, contributions, subsidies, co-payments and similar meanings. It is important, however, to never accept the accuracy of a label that has been given to a particular payment. You should instead determine the true nature of the payment before you arrive at the correct GST treatment.

It is convenient to use four categories when analysing the GST treatment of funding payments.

These are:

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<th>Type of Funding</th>
<th>Description</th>
<th>GST Standard</th>
<th>Tax Codes</th>
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<tr>
<td>Grants</td>
<td>A binding obligation will exist between grant provider and grant recipient – Taxable Supply when grant recipient is GST registered</td>
<td>Grants</td>
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<td>Appropriations</td>
<td>Funding of a non-commercial nature between government related entities may be an Appropriation – Out of Scope supply</td>
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<td>Donations &amp; Gifts</td>
<td>Most donations/gifts will be out of scope for GST purposes where there is “no supply” or nothing is received in exchange for the donation/gift.</td>
<td>Donations, Gifts &amp; Sponsorships</td>
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</table>
The department and HHSs are regularly both the provider and recipient of various types of funding as described above. This GST Standard addresses Grants only.

‘Grants’ is a generic term encompassing all funding payments which do not fall into one of the three other categories. Hence, this GST Standard should be read in conjunction with:

- GST Standard – Appropriations

### Summary of Tax Codes

#### For grants when Queensland Health is providing the grant (the grant provider).

<table>
<thead>
<tr>
<th>Description</th>
<th>Information</th>
<th>Tax Code</th>
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<tbody>
<tr>
<td>QH provides a grant to a <strong>GST registered</strong> grant recipient AND the grant recipient is making “a supply” to QH in exchange for the grant i.e. A binding obligation (usually supported by a written agreement) exists between QH and the grant recipient.</td>
<td>Taxable Supply – Compliant tax invoice required to claim Input Tax Credits</td>
<td>P0</td>
</tr>
<tr>
<td>QH provides a grant to a grant recipient that is <strong>NOT registered for GST</strong> AND the grant recipient is making “a supply” to QH in exchange for the grant i.e. A binding obligation (usually supported by a written agreement) exists between QH and the grant recipient.</td>
<td>No GST in the price</td>
<td>P5</td>
</tr>
<tr>
<td>QH provides a grant where there is “no supply” (no obligation or transfer of material benefit) by the grant recipient to QH in exchange for the grant.</td>
<td><strong>Refer GST Standard - Donations, Gifts &amp; Sponsorships</strong></td>
<td>P9</td>
</tr>
</tbody>
</table>

#### For grants when Queensland is receiving the grant (the grant recipient).

<table>
<thead>
<tr>
<th>Description</th>
<th>Information</th>
<th>Tax Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>QH (a GST-registered entity) is making “a supply” to the grant provider in exchange for the grant i.e. A binding obligation (usually supported by a written agreement) exists between the grant provider and QH.</td>
<td>Taxable Supply</td>
<td>S0</td>
</tr>
<tr>
<td>QH (a GST registered entity) is making “a supply” to the grant provider in exchange for the grant. The grant provider is an overseas entity.</td>
<td>GST Free Supply</td>
<td>S6</td>
</tr>
<tr>
<td>“No supply” no obligation or transfer of material benefit is being made by QH in exchange for the grant.</td>
<td><strong>Refer GST Standard - Donations, Gifts &amp; Sponsorships</strong></td>
<td>S9</td>
</tr>
</tbody>
</table>
Determining the GST Treatment of a Grant

The GST treatment of a grant depends primarily on whether the grant represents consideration that has relevant connection the supply. This will depend on the particular facts and circumstances of each grant program.

In determining if there is a taxable supply, the following tests need to first be satisfied:

1. Is there a supply for consideration?
2. Is the supply made in the course or furtherance of an enterprise that is carried on by the supplier?
3. Is the supply connected with Australia?
4. Is the person making the supply registered for GST, or required to be registered for GST? and
5. Is the supplier making a GST-free or input taxed supply?

Grants fulfilling criteria one to four will be taxable supplies. If they also meet criteria five, then they will be GST-free or input taxed.

Is There a Supply Made for Consideration?

As stated above, a taxable supply cannot exist unless there is a supply for consideration. There are three questions that are relevant to determining this:

- Is there a supply?
- Is there consideration? and
- Does the necessary relationship exist between supply and consideration?

Is there a supply?

Essentially, a supply is something that passes from one entity to another. As per section 9-10(2), a supply may include, but is not limited to:

- A supply of goods
- A supply of services
- A provision of advice or information
- A grant, assignment or surrender of 'real property'
- A creation, grant, transfer, assignment or surrender of any right
- A financial supply and
- An entry into, or release from an obligation, to do anything, to refrain from an act, or to tolerate an act or situation.

Where there is a clause in the agreement that requires repayment of the grant if the purpose of the grant is not fulfilled (i.e. funds are provided to upgrade an entities computer system and this is not done), a supply in the form of an obligation is not received.

Supplies of information or the provision of a report can constitute a supply only if the supply of information relates to the purpose of the grant.
The definition of ‘supply’ in the GST law specifically includes providing advice or information. However a grant will not be payment for such a supply unless the grant provider derives some benefit from the information or the grant is made for the purpose of obtaining such information.

**Example 1:**

QH makes a grant to a market research company to undertake specific research on patient satisfaction at a hospital. As QH will realise a benefit from the research information it may be deemed a supply and in this case GST should be added to the value of the supply.

**Example 2:**

QH provide a grant to the Cancer Council to install a new computer system. The Cancer Council are required to provide a progress report outlining which equipment has been purchased. The report is incidental to the provision of the grant and in this case the report itself will not be considered a supply. Tax Code S5 would be used.

The provision of a report to an overseas organisation may be regarded as a supply, being the supply of services.

Sometimes a service may involve both work being done and the creation of a product. However, this does not alter the supply as one for the performance of a service.

**Is there consideration?**

Consideration means, in effect, just about anything of value (s 9-15). It extends beyond payments of cash to include such things as acts and forbearances to act. It may include voluntarily made payments, and payments made by persons other than the recipient of a supply. The consideration of a supply may in turn be a supply itself (barter transactions).

When discussing grants though, the consideration is usually the monetary amount agreed to be paid by the grant provider to the grant recipient.

**Does the necessary relationship exist between supply and consideration?**

It is common for the grant provider and the grant recipient to enter into an agreement that establishes rights and obligations between them. There will only be a supply in exchange for the grant (the consideration) if the rights and obligations are binding on the parties. There is “no supply” if there is merely an expectation among the parties.

Examples of arrangements that will indicate an agreement binds the parties include:

- A contract, such as a purchaser-provider agreement;
- A provision that the grant must be repaid in specified circumstances;
- A guarantee or lien over property of the grant recipient; or
- An agreement such as a deed that is enforceable on its own terms, even without specific remedies being provided for in the event of a breach.

For further information regarding funding payments where there is “no supply” (no obligation or exchange of material benefit), please refer to GST Standard – Donations, Gifts and Sponsorships.
Written Agreements & GST clauses

Queensland Health regularly enters into written agreements regarding funding assistance with non-government organisations that support or provide health services to the community. Generally, the entry into such written agreements creates an obligation that binds the grant recipient to do something. For GST purposes, this obligation will represent “a supply” for which the grant is consideration and hence the funding assistance is likely to be subject to GST.

In the preparation of a written agreement such as a ‘deed’ or ‘memorandum of understanding’ (MOU), it is important to ensure appropriate references are made to GST and related matters.

The Legal Services Unit has provided generic clauses for Queensland Health to use in written agreements (often referred to as ‘contracts’). For example:

27.2 The Organisation acknowledges that in terms of the GST legislation it will, under this Agreement, be a “supplier” and may be required to pay GST to the Commissioner of Taxation.

27.3 The parties agree that the agreed prices for the goods or services under the Agreement are GST exclusive prices.

27.4 The Organisation will ensure that all tax invoices and adjustment notes rendered to the department under the Agreement are in a format that identifies any GST paid, and which permits the department to claim an input tax credit.

Please be aware that any standard GST clause provided in this advice is provided as a precedent standard clause for reference and guidance purposes only. Each transaction and agreement must be considered individually as no two transactions or agreements are alike.

For more detailed information regarding GST clauses, please refer to GST Standard – Contracts.

Registration Status of Grant recipient

In determining whether a supply should be treated as taxable and hence subject to GST, it is necessary to test whether or not the person making the supply is registered for GST, or required to be registered for GST. When discussing grants, the person making the supply will be the grant recipient. That is, the grant recipient will be receiving the funds in exchange for the supply being made to the grant provider.

Where the grant recipient is GST registered

Where the grant recipient is GST-registered, and a binding obligation exists between the grant recipient and grant provider, the funding payment will be subject to GST and should be ‘grossed up’ by 10%.

If the grant provider is also GST registered they will be able to claim Input Tax Credits for any GST component of the grant if the supply is a creditable acquisition, i.e. for the grant provider’s business purposes. If the grant provider is not GST-registered, then they will not be entitled to claim back any GST component of the grant from the Australian Taxation Office (ATO).

Where the grant recipient is NOT GST registered

Where the grant recipient is neither GST registered, nor required to be registered, they will not be required to remit 1/11th of the grant to the ATO, and should not ‘charge’ GST on the grant. Hence, the grant payment to be made by the grant provider will be the agreed GST exclusive amount of funding.
In this case, as no GST will be paid by the grant provider, there will be no Input Tax Credits available to be claimed.

**Where the grant recipient has no Australian Business Number (ABN)**

Grant recipients who do not have an ABN, may incur additional hardship due to the withholding obligations placed on providers of grants and other sources of income. Although, this would be a very unusual scenario, should it arise, it is recommended that the grant recipient in question be advised to apply for an ABN.

For further information, refer to GST Standard – No ABN Withholding Obligations.

**Grossing Up Grants to Allow for GST**

‘Grossing up’ a grant means increasing the agreed GST exclusive amount of funding by 10% to cover the GST. It is common, where GST is applicable, for the provider of the grant (the grant provider) to ‘gross up’ the grant in order to cover the GST liability of the grant recipient that is making the taxable supply.

This ensures that the amount of funding is not negatively affected by the GST payable. As the grant provider can claim back the amount of GST as an Input Tax Credit the result is revenue neutral.

**Tax Invoices/Recipient Created Tax Invoices**

Under the normal GST rules where a taxable supply has been made, it is necessary for the provider of the grant to hold a Tax Invoice issued by the recipient of the grant, before they may make a claim for Input Tax Credits. However, in certain circumstances the grant provider will be able to issue its own Tax Invoices. These Tax Invoices, issued by the grant provider on behalf of the grant recipient, are known as Recipient Created Tax Invoices (RCTI’s).

For further information, refer to GST Standard – Tax Invoices or GST Standard – Recipient Created Tax Invoices (RCTI’s) & Recipient Created Adjustment Notes (RCAN's)

**Defining who the Recipient of the Supply is**

The recipient of the supply is usually the entity the grant recipient has contracted with to make the supply. Yet it may be that, in the performance of the supply it is actually provided or delivered to another entity. However, the grant provider will still be the recipient if the grant recipient contracted with them to provide the supply to another entity.

As a general principal, a supply is made to the grant provider where:

- The grant provider engages the grant recipient to provide something to them or to someone else (e.g. their client);
- The grant provider, by agreement with the grant recipient, determines what is required to be provided to them or to their client; and
- The agreement creates a binding obligation between the grant recipient and the grant provider for the thing to be provided to another entity.

A distinction needs to be made between a supply of particular services and the supply of an obligation to provide services to other people.

For example, a grant recipient may enter into an agreement with a grant provider to provide goods or services to unspecified people in the community. In this situation, the grant recipient would make separate supplies through two separate transactions:
• A supply (entering into an obligation) to the grant provider that they will provide goods or services to the unspecified people in exchange for the grant; and

• A subsequent supply of particular goods or services to those people.

Therefore, the two supplies above would need to be considered separately. The supply to the grant provider would generally be a taxable supply. The supply from the grant recipient to the client may be taxable, GST-Free or input taxed depending upon the type of supply involved.

**Timing Rules – Attribution of GST Relating to Grants**

The tax period to which consideration is to be allocated depends upon the nature of the supply and the basis on which the grant recipient accounts.

For QH, GST on a grant received is allocated to the month in which the earlier of the following events occur:

- The grant monies are received, or
- A Tax Invoice is issued by QH relating to the supply for which the grant is Consideration.

Where the supply for which the grant is consideration is made on a periodic or progressive basis and the grant is paid periodically or progressively, GST will apply to each component of the grant as it is received, i.e. each instalment period.

For grants QH provides to other entities, the GST will be accounted for in the month in which the grant is paid, provided QH holds a compliant Tax Invoice at the time.

**Grants from Overseas based Entities**

A supply will be GST-Free where the supply is made to an overseas entity. This will be the case even where the entity has a permanent establishment in Australia provided that the permanent establishment is not representing the overseas company in Australia in relation to that supply.

**Example 3:**

QH receives a grant from an overseas based research arm of a medical supply company to test a new product in Australia. The company supplies materials to test as well as funds to pay for the extra time medical staff need to conduct the tests, prepare reports and perform any required follow up. As the provision of a report is supply of something it would normally be a taxable supply, but as it is being sent overseas, it becomes a GST-Free supply.

This would be the case even if the company had an office in Australia whose sole purpose was taking orders for products delivered from overseas. This is provided that the report was still sent to the research arm of the company overseas and not through the office in Australia.

**Taxable payments annual report**

From the financial year starting 1 July 2017, the department will be required to report to the ATO on any payments made for services provided as well as grants made to other entities with an ABN. This will include details such as the name of the entity receiving the grant, their ABN, address, amount of the grant, amount of GST, and the name of the grant. If several grants are made under different programs, each grant will be reported separately.

The purpose of this reporting requirement is so that entities that are required to pay income tax on these grants can have them pre-populated in their tax return and also for data matching purposes; ensuring that other tax requirements are adhered to.
Currently this requirement to report is applicable only to grants made by the department. Grant payments by hospitals have been excluded by regulation.

4. Related legislation and documents

- A New Tax System (Goods and Services Tax) Act 1999
- GSTR 2012/2 – Financial Assistance Payments
- GSTR 2000/31 – Supplies Connected with Australia
- GST Standard – Appropriations
- GST Standard – Donations, Gifts & Sponsorships
- GST Standard – Contracts
- GST Standard – No ABN Withholding Obligations
- GST Standard – Tax Invoices
- GST Standard – RCTI’s and RCAN’s
- ATO Grants and GST – Recipient Created Tax Invoices (Nat 7038)
- Subdivision 396-B of Schedule 1 to the Taxation Administration Act 1953

5. Definitions

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Version Control

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