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ARTS ISSUES

No one knows your arts business like you do

In the work that the Australia Council and the States have undertaken in response to the New Tax System to date, the most consistent factor in the arts sector has been the lack of consistency in the issues that people have identified as being of greatest importance to them.

This chapter aims to address issues particular to the arts. The issues discussed and the examples given are the result of conversations with artists and arts organisations of varying sizes, services and focus. However, it is not possible at this stage and within the context of this publication to provide answers to all specific concerns.

Essentially, no-one knows your arts business like you do, and no publication can identify and assess the contracts, agreements and relationships that are the framework for the work you do or services you provide better than you!

The following are intended to assist you to identify the tax implications of the way in which you run your practice or business and, in conjunction with our discussion of arts specific issues, better enable you to apply the general information we have provided to your own circumstances.

Every effort has been made in this publication to address a wide and representative range of issues arising from The New Tax System. However, the diversity of relationships and activities within the arts sector are sure to confound our best efforts.

Regardless of what you do or how you do it, these will provide you with guidance in answering your own questions, or in identifying issues where you may need to seek further information or expertise.

Pay As You Go Withholding

Which of my activities may be subject to the new PAYG withholding tax of 48.5% for contractors who do not provide an ABN?

1 Am I an individual, partnership, body corporate or association carrying on an enterprise?

- > **If I am not carrying on an enterprise**, the PAYG withholding tax **does not apply**.
- > **If I am an individual or a partnership** and I need more guidance about whether I am engaged in an enterprise, **go to 2**
- > **If I am carrying on an enterprise**, the PAYG withholding tax **may apply**.
Go to **4**

2 If I am an individual or partnership, am I paid a salary or wage for my activity, or is my activity undertaken as a hobby or as a private or domestic pursuit or am I undertaking my activity without a reasonable expectation of profit or gain?

- > **If yes**, I am not carrying on an enterprise and the PAYG withholding tax **does not apply**.
- > **If no**, I may be carrying on a business, trade or profession. **Go to 4**

3 Am I an organisation who is exempt from income tax and the payment being made is exempt from income tax?

> **If yes**, PAYG withholding **does not apply**.

> **If no**, PAYG withholding **may apply**. Go to **4**

4 In undertaking my enterprise, am I supplying someone with goods or services or other supply for the purposes of the GST Act?

> **If no**, PAYG withholding **does not apply**.

> **If yes**, PAYG withholding **may apply**. Go to **5**

5 Am I entitled to be paid, or to receive something else, either in goods or in services, in return for the goods or services I am supplying?

> **If yes**, PAYG withholding will apply in relation to the GST-inclusive market value of the thing provided. Go to **6**

> **If no** I am likely to be paid in cash and PAYG withholding **does apply**.

6 Is the person or organisation paying me or providing me with something else in return for my goods or services doing so in the course of their own business or enterprise?

> If the person or organisation paying me or providing me with something else in return for my goods or services is **not** making that payment as part of their business or enterprise, but is making the payment for a personal purpose or for carrying out a hobby or as part of an overall activity without a reasonable expectation of profit or gain, then PAYG withholding **does not apply**.

> If the person or organisation paying me or giving me something in return for my goods or services **is** making the payment as part of their own business or enterprise, then PAYG withholding **may apply**.

Note: PAYG only applies in regard to business to business transactions.

Also Note: If I am being paid by being given goods and services, then the person paying me will be entitled to recover the amount that they remitted to the ATO from me.

7 Do I have an ABN for my business or enterprise, and have I provided that ABN to the person or organisation paying me or providing me with something else in return for my goods and services?

If yes, PAYG withholding **does not apply**.

If no, then PAYG withholding **applies**. The person or organisation paying me must withhold 48.5% of my payment or 48.5% of the market value of what they are providing me and forward the withheld amount to the ATO.

Goods & Services Tax

How do I know if I should be collecting GST on anything I provide, or in anything another provides to me?

1 Am I registered for GST?

- > **If no**, I **do not** collect GST and I **do not** include GST in the price of anything I sell or provide.
- > **If yes**, I **may** have to account for GST. **Go to 2**

2 Am I entitled to receive payment or something else, either as goods or services, in return for what I am providing?

- > **If no**, GST is based on the payment I receive for providing the goods or services.
- > **If yes**, I **may** have to account for GST. **Go to 3**

3 Have I supplied my goods or services in the course of my enterprise or my business?

- > **If no**, I **will not** have to account for GST.
- > **If yes**, I **may** have to account for GST. **Go to 4**

4 Has the supply of goods and services been connected with Australia?

- > **If no**, I **will not** have to account for GST.
- > **If yes**, I **may** have to account for GST. **Go to 5**

5 Is the supply either GST-free or input taxed?

- > **If no**, I **may** have to account for GST. **Go to 6**
- > **If yes**, I **will not** have to account for GST on the supply.

6 If...

- > I am registered for the GST
- > I am entitled to receive payment or something else in exchange for my goods or services
- > I have supplied goods or services to another person or organisation
- > I have supplied goods or services in the course of my enterprise or business and this transaction has been connected with Australia and/or the goods or services supplied are **not** GST-free or input taxed

1/11th of the price I have charged, or the GST inclusive market value of the goods or services I have received is GST which must be accounted to the ATO.

How do I know if I can claim an input tax credit for GST I have to pay to someone else?

1 Am I registered for GST?

- > **If no**, I am **not** entitled to an input tax credit for any GST I pay to someone else.
- > **If yes**, I **may** be entitled to an input tax credit. **Go to 2**

2 Is the person or organisation I am paying or providing something to in return for goods and services registered for GST?

> **If no**, I am **not** entitled to an input tax credit because they are not able to charge GST.

> **If yes**, I **may** be entitled to an input tax credit. **Go to 3**

3 Am I obliged to pay or provide something else in return, either in goods or services, for what I am acquiring?

> **If no**, then there is no consideration to this transaction, GST does not apply, and I am **not** entitled to an input tax credit.

> **If yes**, I **may** be entitled to an input tax credit. **Go to 4**

4 Am I acquiring the goods or services in the course of my enterprise or business?

> **If no**, I will **not** be entitled to an input tax credit.

> **If yes**, I **may** be entitled to an input tax credit. **Go to 5**

5 Is the supply of goods and services connected with Australia?

> **If no**, there is no GST, and I will **not** be entitled to an input tax credit.

> **If yes**, I **may** be entitled to an input tax credit. **Go to 6**

6 Are the goods or services I am acquiring GST-free or input taxed?

> **If no**, I **may** be entitled to an input tax credit. **Go to 7**

> **If yes**, the goods and services will not have included GST, and I will **not** be entitled to an input tax credit.

7 Are the goods or services I am acquiring for the purpose of providing input taxed supplies?

If no, I **may** be entitled to an input tax credit.

If yes, I will **not** be entitled to an input tax credit.

8 If...

> I am registered for GST

> The person providing me with goods and services is registered for GST

> I am obliged to pay or provide something else in return for the goods and services

> I have acquired the goods or services in the course of my enterprise or business

> This transaction has been connected with Australia

> The goods or services acquired are not GST-free or input taxed

1/11th of the price I am charged, or of the market value of the goods or services I have is GST for which I am entitled to claim an input tax credit.

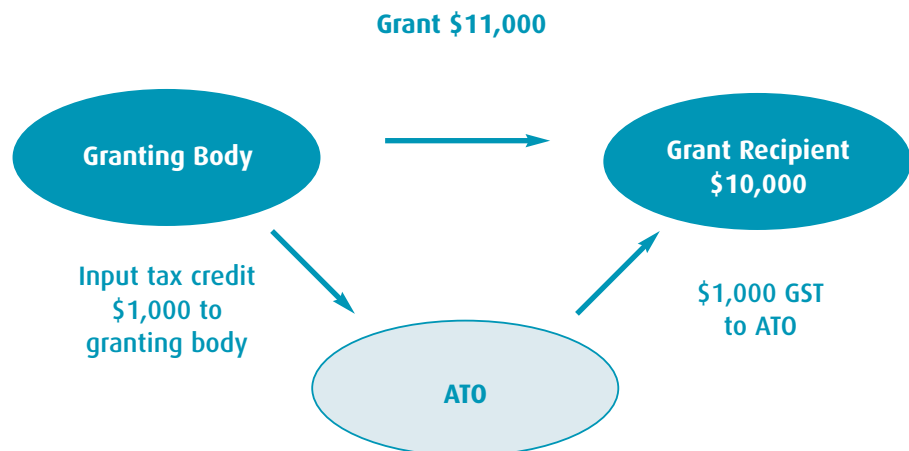
Grants

Where you are registered for GST

Where a grant is made to you, either as an organisation or as an individual, for a specific purpose, or is tied to an identified outcome, or is otherwise made conditional on the doing or provision of something in return for that grant, whether the provision of those things is to the grantor or you, either as an organisation or as an individual, are registered for GST, **you will be subject to GST on the value of the grant.**

You are considered to be providing a service or undertaking for payment.

If registered for GST, you will be required to provide to the granting body your tax invoice for the amount of the grant **inclusive** of GST. On the assumption that the body making the grant will be registered for GST, it will be entitled to an input tax credit for the GST component of the payment. The amount of GST collected by you on the grant and the amount of the input tax credit to which the granting body is entitled will be 1/11th of the grant.



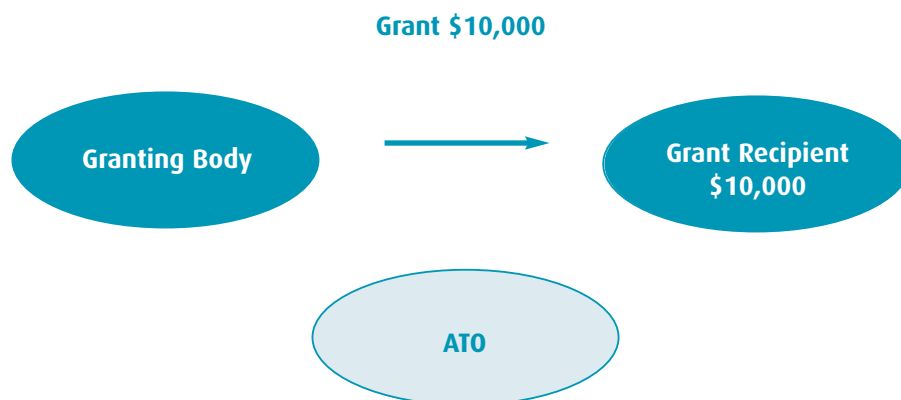
In order to maintain existing levels of funding, some granting bodies have made the decision to increase grants to registered applicants by 10%. On the basis of the above diagram, if you were registered for the GST and applied for a grant of \$10 000, the granting body would provide \$10 000 plus \$1000 GST. You would be liable to account for the \$1000 GST to the ATO, the granting body would be entitled to an input tax credit of \$1000, and the amount of the grant would be preserved at \$10 000.

In addition, you would be entitled to input tax credits for all GST incurred in expenditure of the grant, which would preserve the true value of the grant at \$10 000.

If you are intending to apply for a grant in the future, or are dependent on grants regularly for any elements of your activity, it is important that you contact the relevant granting body now to find out how it will be managing GST.

Where you are not registered for GST

Where you are not registered for GST, no amount will be payable as GST to the ATO, and the granting body will not be entitled to an input tax credit.



Where you are not registered for GST, there is a potential loss of purchasing power in grants to you. As prices may rise after 1 July 2000, you may require a larger grant to carry out the same project as you would have undertaken prior to 30 June 2000 their costs. **Where you do not provide an ABN, the granting body will withhold 48.5% of the grant, if you are considered to be in business and an organisation or entity which is subject to income tax.**

Funding on a progressive basis

If your arts organisation is funded on a triennial or other multi-year basis, or receives any grant payments over time, it is the general rule that such arrangements constitute progressive contracts, that is, payments are made subject to your ongoing provision of services. However, each funding contract should be considered individually, and you should consult with your funding body.

If you are party to a progressive contract for funding, and you are registered for GST, 1/11th of each individual payment will be GST collected by you, and the granting body will be entitled to 1/11th of each payment as an input tax credit. You will be required to account for each payment at the time it is made or due to be made under the contract.

Only one tax invoice need be provided for all payments to be made over the course of the funding contract where the cash is received. The GST validity arrives in the tax period. However, if there is a variation in the payments, an adjustment note must be issued to reflect that variation.

What are the implications for budgets that are part of applications for funding?

You should consult with individual funding bodies about the specific guidelines they may implement for budgets submitted in support of applications for funding.

If you are registered for GST, it is likely that you will be required to provide a budget for your activity or project which does not include GST. This is because you will be able to claim GST you will have to pay out in undertaking your project or activity as an input tax credit from the ATO, and because GST you collect will actually be money belonging to the ATO and is not part of your income.

If you are not registered for GST, it is possible that you will be able to include GST-inclusive costs in your expenditure. The GST element of your costs will be a real cost to the project or to your activities for which you will not be entitled to any reimbursement from the ATO. There will be no GST component to your income.

Grants to undertake activities overseas

Generally, exports are not subject to GST because the export activity is not an enterprise connected with Australia. However, if you are applying for a grant for an activity or project that is to occur overseas, and you are registered for GST, that grant will still be subject to GST. The actual transaction, the parties and the payment of money for a service, are all in Australia.

EXAMPLE

You are a visual artist. You have received a grant to take an exhibition of your work to New York. The granting body is located in Australia. The contract for funding is made in Australia. If you are registered for GST, your grant will be subject to GST.

Auspecting

It is possible that there will be an increase in the call by individuals or smaller groups and organisations for the auspecting of grants by another organisation.

Auspecting arrangements usually operate where the auspecting organisation applies for a grant for a project on behalf of an individual, a group of individuals or small organisation. The project will be undertaken by the body being auspected, with the financial matters being handled by the auspecting body.

This arrangement is approved by granting bodies on the basis that auspecting organisations are likely to have financial systems in place to properly account for the expenditure of the grant and the generation of income from the project which are not available to the actual applicant.

What often happens in practice is that the auspecting organisation will pay out the grant on the presentation of receipts by the body undertaking the project. On implementation of The New Tax System, it is probably worth considering formalising the agency arrangement between the auspecting organisation and the body being auspected, so that expenses incurred by the people undertaking the project can be reclaimed from the auspecting body without Pay As You Go (PAYG) withholding applying to that transaction.

The PAYG withholding tax only relates to the payment of fees to a contractor who does not provide an ABN. Where there is an agency relationship between an auspecting organisation and the people or organisation undertaking the project, then the payment by the auspecting body to the people undertaking the project for costs incurred is not payment for contract services.

The GST effect of this arrangement is that GST liability, 1/11th of the grant received by the auspic body, arises when the auspic body receives the grant. The Principal is liable for that. The project entity will be entitled to GST paid in expenses for the project. The

project entity will obtain tax invoices for the expenses incurred. The auspice body will issue the tax invoice to the provider of the grant on behalf of the project entity. The project entity will be liable for GST in the tax period that the auspice body provides an invoice to the grantor or when it receives the first part of their funds.

Prizes

If you are registered for GST, prize money you receive as a result of your arts practice, will be subject to GST. The prize money is considered part of your business income.

EXAMPLE

You are a writer. You are registered for GST. You have won prize money of \$2 200 under a competition run by your state government. You are liable to account for 1/11th of that prize money as GST, that is \$200 of the prize money will be GST accountable to the ATO.

If you are not registered for GST, there is no liability for GST on the prize, but you cannot claim input tax credits for the GST charged when using the prize money to purchase goods and services.

Income Tax Issues

If you are registered for GST, you are able to claim your GST-exclusive business expenses as tax deductions. You will be reimbursed for GST through your entitlement to input tax credits.

If you are not registered for GST, you are able to claim your GST-inclusive business expenses as tax deductions. This will provide you with less of a cash advantage than claiming an input tax credit directly against the cost incurred.

QUESTION

What are the income tax consequences of my receiving a grant on behalf of a number of people involved in project, but where I am the only one with an ABN?

ANSWER

If you or your organisation is putting together a project involving a number of people, and you apply for the grant on behalf of everyone because you are the only one with an ABN, the full amount of that grant will appear as income to you. It is likely that you will be entitled to claim business expense deductions against your income for expenditure of the grant in the course of undertaking the project. However, the PAYG withholding may still apply if you are wanting to make a payment to any of the others involved in the project. If the other members of the project are considered to be in business you will be required to withhold 48.5% of their payment if they do not provide you with an ABN.

Applying for an ABN

If you apply for an ABN and are not successful, it will either be because the ATO has judged that you are not actually carrying on an enterprise, that is, either the activity you are undertaking is a hobby or private or domestic in nature, or is not being undertaken with a reasonable expectation of profit or gain.

In that event, you will be able to provide a declaration in relation to that activity that it is not subject to the withholding tax, and any person paying you for that activity will not be obliged to withhold the 48.5%.

It is anticipated that the principles in applying the enterprise test for ABN & GST will be similar to those relevant to determining whether you are classified as being in business for income tax purposes.

There is no strict rule about whether a person is actually carrying on a business or not, but the following factors, to be considered in combination and as a whole, are relevant:

- > Whether your activity has a significant commercial purpose or character
- > Whether you have more than just an intention to engage in business
- > Whether you have a purpose of profit as well as a prospect of profit
- > Whether there is repetition and regularity to your activity
- > Whether your activity is of the same kind and carried on in a similar manner to businesses in your industry
- > Whether your activity is planned, organised and carried on in a business-like manner
- > The size, scale and permanency of your activity
- > Whether your activity is better described as hobby, recreation or sporting activity

In addition to these factors, there are new proposals in relation to quarantining losses which may mean that you will only be able to claim a deduction for arts related losses against other income if:

- > Gross income from the activity exceeds \$20 000 per annum
- > Assets of the activity cost more than \$100 000
- > The activity has produced taxable income in three of the last five years

QUESTION

What if I am under 18 years of age, or am only just starting my arts practice? Do I still need an ABN to avoid the withholding tax? When can a person paying for my services know that they do not have to apply the withholding tax if I do not provide an ABN?

ANSWER

These proposals stem from the Ralph Review of Business. If you are an artist still developing or emerging, and either being paid for services you provide or receiving a grant, it may be that you would not be eligible for an ABN because your activities are not considered to be a business or an activity with a reasonable expectation of profit. Therefore it would not be subject to the 48.5% withholding tax.

Rulings have not yet been issued about the circumstances in which a person or organisation need not apply the withholding tax when paying someone without being at risk of incurring a liability to the ATO.

QUESTION

I have just graduated from the School of Visual Arts. I have already commenced operating as a professional artist, keeping records, working regularly, methodically seeking opportunities for the sale of my work. I am also looking for additional employment to supplement my income, but with little luck. I have an ABN. What impact does this have on my eligibility for Centrelink benefits.

ANSWER

To date Centrelink has been unable to advise.

Charities

The general rule is that supplies of goods and services by charities and non-profit organisations with gift deductible status for less than 50% of their market value or less than 75% of the cost of providing the service are GST-free.

If your arts organisation is a charity or has gift deductible status, the prices of tickets, memberships, training, subscriptions and other goods and services provided by your organisation may be GST-free if those prices are less than 50% of the market value for those goods and services, or less than 75% of the cost of providing the services.

Rulings as to how the costs of production and market value can be calculated are being sought from the ATO.

EXAMPLE

Ballet Plus has gift deductible status. The company's core funding is provided by the Australia Council and the relevant state arts funding body. The average ticket price for performances is \$35. The average cost for each production is \$400 000. The average attendance for each production is 500 people. On these figures, it appears that the price charged for each ticket is less than 75% of the costs of production. If the theatre company is a charity or has gift deductible status, the tickets will be GST-free.

Donations

A donation or gift made to you or to your organisation without any conditions attached, made either in cash or by the supply of goods or services, is not subject to GST.

GST only applies to agreements or arrangements where consideration has passed in return for a supply. Consideration is the element of an agreement which gives parties the right to enforce that agreement against each other. There is no such thing as a contract without consideration. Consideration is usually the money that is paid for something, but it is broader than just money. Consideration is the exchange of one thing for another between the parties to an agreement or arrangement which, by the nature of the agreement or arrangement, results in the parties becoming obliged to perform their part of the agreement or arrangement.

EXAMPLE

Your organisation is bumping in a show at the Cummins Theatre in Merridin. A Merridin resident and theatre buff, Richard, offers to lend you his ute to assist with the bump in. You say thank you, take the ute and bump in your show. There has been no obligation on Richard to lend you the ute, and he could change his mind without penalty. For your part, there has been no obligation to take the ute or to do anything in return if you do take it. After using the ute, you provide Richard and some of his friends with free tickets to the show.

No consideration - No GST

Compare with this example:

EXAMPLE

Your organisation is bumping in a show at the Cummins Theatre in Merridin. Richard offers to lend you his ute to assist with the bump in in return for a couple of free tickets. You say thank you, take the ute and bump in your show. You are obliged to provide Richard with the tickets on acceptance of the ute, and there has been an obligation on the part of Richard to lend you the ute on your agreement to provide free tickets.

Consideration - Subject to GST

In the above example, there are some special guidelines which apply to the valuing of in-kind arrangements. The GST in these arrangements is 1/11th of the GST-inclusive market value, or 10% of the GST-exclusive market value of the goods or services provided in consideration for the supply. An example of how these transactions operate is given and explained more fully in the section about sponsorship.

What is important is the nature of the agreement or arrangement, regardless of what it is called. It is of little matter what you and the person providing the "gift" or "donation" call it. The Australian Tax Office will always look to the "substance of the transaction", that is, to the exact nature of the agreement or arrangement, to assess whether there has been consideration and therefore whether it is subject to GST.

EXAMPLE

An arts festival is given \$5000 as sponsorship by a local accounting firm. The firm has made no conditions on the provision of the “sponsorship”, nor has it requested anything in return. Even though this has been called a sponsorship, the arrangement is by its nature a gift.

No GST

Compare with this example:

EXAMPLE

An arts festival is given a \$5000 gift by a local accounting firm on the basis that an advertisement of the firm’s services will appear on all promotional material. Even though this payment has been called a gift, the arrangement is by its nature a contractual arrangement with consideration.

Subject to GST

How far can you go in acknowledging a gift or donation before it becomes an agreement subject to GST?

It is difficult to provide a definitive statement as to when a “thank you” becomes an agreement subject to GST. The important issues are:

> **Does the person or organisation making the gift or donation have the right to enforce you to provide a public “Thank you” or other acknowledgment?**
The answer will normally be “yes” where the requirement to provide a “thank you” was understood by the partner as being a condition of making the payment. (In these cases it is more likely that the arrangement will be subject to GST).

> **Does the person or organisation making the gift receive any recognisable benefit from the “thank you” or other acknowledgment?**

If the thank you is by way of a banner hung across centre stage of a recipient theatre company, it is more likely that the ATO would assess the “gift” as being subject to GST. This is to be compared to a small acknowledgment of donors contained on the bottom of the last page of a program. Each case has to be considered within its own circumstances, with the critical factor not being the size of acknowledgment, but whether the transaction giving rise to it actually gave rise to obligations and entitlements on the parts of each of the parties.

In relation to acknowledgments, careful thought must be given as to the true nature of the gift or donation, and as to whether the acknowledgment is merely a gratuitous thank you as opposed to an act undertaken in exchange for that gift or donation.

Sponsorship

The provision of goods or services to arts organisations in exchange for goods, such as free tickets, or services, such as advertising or promotion, are common types of sponsorship. Sponsorships are subject to GST on the basis that there is consideration in the arrangement or agreement. The GST consequences of sponsorship are different for cash sponsorship and sponsorship provided in kind.

Sponsorship provided in money

Cash sponsorship is a payment in return for goods or services provided by the arts organisation. The goods or services most commonly provided are advertising and promotional services, access to free tickets, special subscriptions and other packages.

Where both you and the organisation providing the sponsorship are registered for GST, 1/11th of the amount of the sponsorship received will be the GST liability, and your sponsor will be entitled to an input tax credit equivalent to 1/11th of the amount.

EXAMPLE

Wheatfields Contemporary Art Space is registered for GST. The art space receives sponsorship of \$22 000 from a local rural supplies firm in return for signage. The art space will have to account for 1/11th of \$2 200 (\$200) as GST it has charged for its services. The rural supplies firm will be entitled to an input tax credit equal to 1/11th of the sponsorship.

What happens to the value of current sponsorships?

On introduction of GST, the current value of sponsorships for the period after 1 July 2000 will be reduced by 1/11th, being the GST which must be remitted to the ATO.

On the basis that your registered sponsors will be entitled to an input tax credit for their sponsorship, it is worthwhile considering whether you should approach sponsors to increase the amount of their sponsorship by 10% in order for the true value of the sponsorship to be preserved, and on the basis that they will receive that amount back as an input tax credit.

EXAMPLE

On introduction of GST, Wheatfields Contemporary Art Space will have to account for 1/11th of the sponsorship it receives of \$22,000 (\$2 000) as GST it has charged for its services. The actual value of the sponsorship will become \$20 000. Its sponsor will be entitled to an input tax credit equal to 1/11th of the sponsorship (\$2 000) and the actual amount paid by the sponsor will now be \$20 000.

Upon an approach by Art Space, the sponsor agrees to increase the sponsorship by 10%. The art space now receives sponsorship of \$24 200. Arts Space has to account for 1/11th of \$24 200 (\$2 200) as GST. The actual value of the sponsorship will be preserved at \$22 000. The rural supplies firm will be entitled to an input tax credit equal to 1/11th of the sponsorship (\$2 200) and the real cost of the sponsorship will be preserved at \$22 000.

In approaching your sponsors, it is important that you consider their position and needs as well as your own - which is what you are likely to have done in initially establishing the sponsorship arrangement. On implementation of the many elements of The New Tax System, all businesses will be undergoing significant change. Your sponsors will need to be certain of the benefits to them in making changes to existing arrangements over and above the changes already required in implementing The New Tax System.

EXAMPLE

Where Wheatfields Contemporary Art Centre is not registered for GST, it does not have to account for any portion of that sponsorship as GST. At the same time, however, the value of the sponsorship may be affected by potential increases in prices for which the arts centre is unable to claim input tax credits. The sponsor will not be entitled to an input tax credit for the sponsorship.

Sponsorship provided in kind

Where a sponsor provides you with goods and services in return for goods and services from you, there are in fact **two** supplies being made.

EXAMPLE

A theatre is given timber by the local hardware store to rebuild a stage. In return, the theatre provides free tickets to its next production and includes advertising for the hardware store in all promotional material. In this case, the hardware store is supplying timber to the theatre. At the same time, the theatre is supplying the hardware store with tickets and advertising.

Where both you and your sponsor are registered for GST, each is liable to pay GST on the supply to the other and you will each issue the other with a tax invoice.

The general rule in relation to in kind transactions is that the amount of GST is equal to 1/11th of the GST-inclusive market value, or 10% of the GST-exclusive market value of the supply.

Where you are making the supply of something, the value of which is determined in the market, such as advertising, the general rule is that GST is 1/11th of the GST-inclusive market value of whatever the sponsor is prepared to supply you and that you are prepared to accept. In this way, the value of your supply, say advertising, is determined by the GST-inclusive market value of what you receive. For the other party, the GST-inclusive market value of the advertising that they have acquired, is based on what the market has been prepared to pay for that advertising. Accordingly, the sponsor who provides \$5500 worth of goods or services for advertising, is acquiring advertising which is worth \$5500. In these cases the two registered parties will exchange invoices which will show the same monetary value for the two supplies. Both you and your sponsor will still have to account for the GST payable and claim the input tax credits to which you are entitled. However, when non-monetary sponsorships are undertaken in this way, the GST and input tax credits on the transaction net each other out and the end result is nil.

EXAMPLE

A theatre is given timber by the local hardware store to rebuild a stage. In return, the theatre is providing advertising for the hardware store in all promotional material. The hardware store and the theatre agree that the GST-inclusive market value of the timber is \$5 500. The hardware store will provide a tax invoice to the theatre for \$5 500 including \$500 GST for the supply of timber. The theatre will provide a tax invoice to the hardware store for \$5 500 including \$500 GST for the supply of advertising.

The hardware store is liable to the ATO for \$500 GST collected on its invoice for the supply of timber, but at the same time is entitled to a \$500 input tax credit on the invoice provided by the theatre for acquiring advertising. The input tax credit and the GST collected cancel each other out, and there is no GST liability to the ATO.

To further ensure that there is no GST liability arising in any tax period, you and your sponsor should provide each other with your tax invoices in the same tax period. This means that your entitlement to your input tax credits and your liabilities for GST collected on the transactions will arise in the same accounting period, and will cancel each other out in that period.

What if you are not registered for GST

If you are not registered for GST, your sponsor will not be entitled to an input tax credit for your supply, and there is likely to be an additional tax liability on the sponsor which shall have to be taken into account when negotiating the sponsorship agreement.

EXAMPLE

A theatre is given timber by the local hardware store to rebuild a stage. In return, the theatre is providing free tickets to its next production and including advertising for the hardware store in all promotional material. The theatre is not registered for GST.

The hardware store and the theatre agree that the GST inclusive market value of the arrangement is \$5 500. The hardware store will provide a tax invoice to the theatre for \$5 500 including \$500 GST for the supply of timber. The theatre will provide an invoice to the hardware store for \$5000 for the supply of tickets and advertising

The theatre has no GST liability or entitlement to an input tax credit because it is not registered for GST. The hardware store is liable to the ATO for \$500 GST collected on its invoice for the timber. There is no entitlement to an input tax credit because the theatre is not registered for GST.

Issues to consider

The actual amount of the sponsorship received by you will not be affected by the GST as you will not be required to account for any part of it as GST.

However, what the sponsorship actually buys may be reduced in the event that there is a rise in some of your costs due to the 10% GST. As you are not registered you are not entitled to input tax credits for the GST you pay on goods and services.

Your sponsor will not be entitled to an input tax credit for 1/11th of the sponsorship. Your sponsor shall have to distinguish this transaction in his or her accounts from the bulk of transactions that are likely to include an entitlement to input tax credits.

Any increase in sponsorship that you request from a registered sponsor, to take into account any extra costs you may incur due to GST and which you cannot claim back, will be a real increase in the cost of the sponsorship to them. They will not be entitled to an input tax credit for any increase because you are not registered.

Fundraising

If you are registered for GST, generally GST will be payable on fundraising activities. The GST treatment of fundraising activities varies according to the nature of the activity, and each will need to be assessed individually.

Most non-profit organisations will be able to access flexible registration arrangements so that GST does not necessarily apply to activities such as fetes or fundraising dinners.

Raffles and lotteries are treated as gambling and must comply with State or Territory laws. Raffles and lotteries undertaken by charities and deductible gift recipients (for Income Tax purposes) will be treated as GST-free supplies.

Raffles

Unless you are a charity or deductible gift recipient, GST will apply. However, the method of calculating the GST liability depends upon the type of prizes being provided. Where cash is paid out, GST is calculated on the net amount. Where a non-cash prize is paid out, GST is calculated on the gross takings and an input tax credit allowed for GST included in the cost of the prizes (where applicable).

The following table demonstrates this method. Note that GST liability overall is the same for both methods.

Fundraising via a gambling event		
Prizes	Cash	Non-cash
Receipts	330	330
Cash Prizes of \$110	110	Nil
Net cash	220	330
GST payable by 1/11	20	30
Input tax credit for non-cash prize of \$110	Nil	10
Net GST payable	20	20

CASH PRIZE

You are registered for the GST and you run a fundraising raffle with a cash prize of \$550. A total of \$1210 was collected from the raffle. Therefore, the margin, the total collected minus the total cash prize, is \$660. The amount of GST payable is 1/11th of \$660 (\$60). You make \$600 from the raffle.

NON-CASH PRIZE

You raffle a television purchased for \$550. In purchasing the television, you paid GST of \$50 to the television store. A total of \$1,210 was collected from the raffle. Your margin is \$1,210 because there is no cash prize. The amount of GST payable on the margin is 1/11th of \$1,210 (\$110). You claim an input tax credit of \$50 for purchase of the television. The amount of GST payable on income from the raffle is \$110 less \$50 (\$60). You make \$600 from the raffle.

COMBINATION OF CASH AND NON-CASH PRIZE

You raffle a cash prize of \$275 and a weekend for two at a country resort purchased for \$275. In purchasing the weekend for two, you paid \$25 GST to the resort. A total of \$1,210 was collected from the raffle. Your margin is \$934, being the \$1,210 collected less the \$275 cash prize. The amount of GST payable on income from the raffle is 1/11th of \$934, which is \$85. You claim an input tax credit of \$25 for purchase of the weekend for two. The amount of GST payable is the \$85 you have collected less \$25 for your input tax credit, which is \$60. You make \$600 from the raffle.

Auctions

If you are registered for GST, you would normally stipulate in the conditions of the auction whether the bidding is GST-inclusive or exclusive.

If you only ever auction your own goods and you are registered, then the conditions of auction will always be GST-inclusive.

If you are a gallery or agent and are selling another person's goods, you should stipulate whether the auction lot is GST-inclusive or exclusive. This will depend on the status of the owner for whom you are selling. If the owner is registered for GST, the bidding should be specified as GST-inclusive. If the owner is not registered for GST, then the bidding will be GST-exclusive.

Normally, in charity auctions, you are auctioning goods that are yours through either by purchase or donation.

EXAMPLE

You are an arts centre registered for GST. You are auctioning drawings donated by members of the art centre. 1/11th of the winning bid for each drawing will be GST.

Non-profit organisations with gift deductible status

If you are a non-profit organisation with smaller branches or units to your operation, you have the option of treating units as separate entities for the purpose of GST. To be identified as independent, a unit must keep its own accounting records and must be separately identifiable to the remainder of the organisation by the nature of its activities and its location.

If a unit has a turnover of less than \$100 000 per annum, it may choose not to register for GST, and its fundraising activities would not then be subject to GST. However, any transfers or transactions between the units would be subject to GST as the units become separate entities for tax purposes.

The obligation for GST compliance rests with the persons responsible for the management of the unit. If choosing to have part of your activities treated as a unit, you cannot revoke that choice for 12 months.

EXAMPLE

Ballet Plus is a non-profit organisation. Ballet Plus runs a fundraising dinner each year. The dinner is organised and managed by volunteers on behalf of Ballet Plus. The annual turnover for the dinner is \$25 000. Ballet Plus nominates the dinner as a separate unit. The volunteers organising and managing the dinner are now responsible for GST compliance of the dinner. Financial records for the dinner must be kept separately to the financial records of Ballet Plus. The dinner unit decides not to register for GST. As the dinner unit is not entitled to input tax credits, the additional costs of providing the dinner are built into the price charged for people to attend. There is no GST liability on the income from the dinner.

Ticketing

Free tickets

If your organisation provides free tickets without any condition being put on the provision of those tickets, GST does not apply. However, if the tickets are provided as part of a sponsorship agreement, in return for services, or otherwise related to something done on the part of the person or organisation receiving the tickets, consideration may apply and therefore the arrangement could be subject to GST.

EXAMPLE

You provide free tickets to a number of journalists and theatre critics to your show. There is no obligation on the part of those receiving the tickets to attend the show or write about it. It is simply your hope that they will attend and write something favourable. There is no consideration in this arrangement, therefore the provision of tickets is not subject to GST.

Compare with:

EXAMPLE

You provide free tickets to a journalist and for a number of his or her friends in exchange for an article to be written and placed in an agreed publication. This transaction will be subject to GST.

What about tickets provided in relation to someone's employment with you?

EXAMPLE

You provide free tickets to some staff as part of their employment contract. If the staff members are employees, this transaction is not subject to GST. The provision of the tickets is part of the employees' salaries and wages, and will be subject to Fringe Benefits Tax.

However, if the staff are in fact contractors, the provision of the tickets will be subject to GST.

Ticket sales

If you are registered for GST, 1/11th of the ticket price will be GST. If tickets are being sold at a discount or concession rate, the amount of GST will be 1/11th of that discounted price or concession.

Subscriptions

If you are registered for GST, 1/11th of your subscription receipts (such as for annual membership or season theatre tickets) will be the GST amount.

In addition, subscriptions that apply for any period after 30 June 2000, either wholly or partly, will be subject to GST even if fully paid up before that date. However, there is a requirement for an apportionment of the price of subscriptions and the GST between the amount of the supply occurring before 1 July and the amount occurring after 30 June 2000.

EXAMPLE

Membership annual fee is \$400 for a calendar year.

2000 membership includes 6 months from 1 July 2000.

The organisation is liable to the ATO for 1/11th of membership revenue for the period 1 July 2000 to 31 December 2000.

On apportionment, the price of membership would be \$200 for the first 6 months, and \$200 for the last 6 months of the calendar year.

In order to accommodate the GST, the organisation should increase the membership price for the last 6 months by 10%, which is \$20.

The total membership price for 2000 should be \$420.

The total membership price for 2001 should be \$440.

If you have already taken in membership payments without accounting for GST, you may like to consider including a special note with your next round of renewal notices confirming that GST will apply to payments which have already been collected but which relate to periods after 1 July 2000 and requesting payment of an additional amount specified in the note and calculated as above. Such action would merely constitute a request. Members are unlikely to be obliged to pay the additional amount, though your organisation's constitution may provide for this. You must exercise caution where you offer a subscription payable by instalments and you account on an accruals basis.

Under the accounting rule, you will be liable to account for GST on the whole price of the subscription as soon as you receive the first instalment. Remember, you are liable to account for GST in the accounting period in which you receive payment or part payment. Payment of an instalment is part payment.

Payment of an instalment is not the same as payment under a progressive contract. Payment of an instalment is part payment of one total price set for the supply of defined goods or services. Payment under a progressive contract is in return for the supply of goods or services, with both payment and the supply being ongoing within the terms of the contract.

EXAMPLE

You are a large theatre company, and account on an accruals basis. You offer a subscription series for 4 shows over 12 months for \$110. The subscription is payable on a first instalment of \$35, with the balance to be paid in 3 equal instalments of \$25. On receipt of the first payment of \$35, you are liable to account for the total GST on the transaction, 1/11th of \$110, (\$11).

ARTS ISSUES

4.10

Sales of artwork

If you are registered for GST as an individual artist, 1/11th of your income from art sales is the GST component. If you do not add 10% to the value of your work, you will be out of pocket. However, you must also make some assessment of the ability of your market to take on any increase in the price of your work, especially if such increase takes you to a new pricing point.

As an individual artist, it is recommended that you discuss the possible impacts of new pricing with your gallery or other outlet for your work, with professional bodies representing your practice, and with other artists working in your artform. As with all elements of implementing GST and The New Tax System generally, decisions about what is best for you, cannot be made in isolation from all those with whom or for whom you work.

If you provide work to a gallery or other outlet on consignment, it is likely that the gallery is acting as your agent, and that there is no transfer of ownership in your work to the gallery.

EXAMPLE

The Red Gallery takes 3 of your paintings on consignment. One sells for \$110 000.

On placement of the paintings on consignment, there is no GST implication. Nor is there any GST in relation to the return of unsold works to the artist.

You have a GST liability of \$10 000 on the sale of \$110 000.

Red Gallery takes its margin on the sale, and remits the net proceeds to your agent. In this case a commission was agreed at 30% of the GST-inclusive sale price. Therefore the amount paid to your agent is \$100 000 less \$33 000, which is \$77 000. The GST liability on the gallery commission is \$3,000.

Your agent charges you commission at a rate of 20% on the GST-inclusive price, so deducts \$22 000 and provides you with the net proceeds of \$44 000. The GST liability on the commission is \$2000

The Gallery will issue a tax invoice to the purchaser for \$110 000 on your behalf.

The Gallery will issue a tax invoice to you for \$33,000 for its commission.

Your agent will also issue a tax invoice to you for \$22,000 for commission, including GST of \$2,000.

You will be entitled to claim input tax credits of \$3,000 (regarding the gallery) and \$2,000 (regarding your agent). This can be offset against the \$10,000 GST liability on the sale.

Commissions

If you are registered for GST, commissions you receive for arranging the sale of artworks are subject to GST. You are providing a service to the artist, and the commission is payment by the artist for that service.

In relation to the artist selling work on commission, the GST included in the price charged for the work is 1/11th of the gross sale price, not 1/11th of the net amount paid to the principal artist.

EXAMPLE

You are a painter and are registered for GST. You have sold a painting through your local gallery for \$1100 on consignment. The gallery is paid a commission for selling the painting of 20%, being \$220. As the gallery is registered for GST, 1/11th of the payment, or \$20 is GST. The gallery must pay \$20 GST to the ATO. As you are registered for GST, you can claim an input tax credit for \$20 GST. You are liable for GST of \$100, and are entitled to an input tax credit of \$20.

The total payable to the ATO is \$80. You have made \$800 on the sale of the painting.

If you are not registered for GST:

EXAMPLE

You have sold a painting through your local gallery for \$1100 on consignment. The gallery is paid a commission for selling the painting of 20%, being \$220. As the gallery is registered for GST, 1/11th of the payment, or \$20 is GST. The gallery must pay \$20 GST to the ATO. As you are not registered for GST, you cannot claim an input tax credit for the \$20 GST. At the same time, you are not liable for GST on the price of the painting.

You have made \$880 on the sale of the painting.

But, this example does not take into account the costs you have incurred in purchasing materials, in travelling or other expenses associated in making the painting. All these expenses are likely to include GST, none of which you are entitled to claim from the ATO as input tax credits as you are not registered for GST. In making your decision about whether to register for the GST or not, if you have the option, you must look at all of your transactions, and assess the implications if you are registered, and if not.

Thought also needs to be given to the pre-GST and post-GST position of parties working on a "commission on sales" basis.

Royalties

If you are registered for GST, royalties you receive for the use of your work by others will be subject to GST.

It is very important to define your current royalties entitlements in order to assess the implications of The New Tax System, and possibly renegotiate current royalties arrangements. There may be different outcomes, depending on whether you register for GST or not.

Pre-GST, you are entitled to royalties of 25% on the production of a play you have written. If income from the performance is \$20 000, you are entitled to \$5000 and the producer would receive \$15 000.

Post-GST, GST inclusive income from the production would be \$22 000, on the basis that the producer is registered and has increased prices by 10%.

If you are not registered for GST, and your 25% royalty is calculated on the GST-inclusive income of \$22 000, you would receive \$5 500. The producer owes 1/11th of the \$22 000, or \$2000 to the ATO as GST. The producer would only receive income of \$14 500 plus any input credit tax credit entitlement. In dollar terms your position has improved and your percentage royalty has increased in real terms from 25% to 27%.

Alternatively, if your 25% royalty is calculated on the GST -exclusive income of \$20 000, you would receive \$5000. The producer would receive \$15 000, and your position in dollar terms would be preserved.

If you are registered for GST, 1/11th of your royalty payment is GST. You must account for that to the ATO, whilst the producer paying that GST would be entitled to an input tax credit.

If your 25% royalty is calculated on the GST-inclusive income of \$22 000, you would receive \$5 500 less \$500 GST, leaving you \$5000. The producer owes 1/11th of the \$22 000, or \$2000 to the ATO as GST but is entitled to \$500 as an input tax credit for GST paid to you.

Alternatively, if your 25% royalty is calculated on the GST-exclusive income of \$20 000, you would receive \$5000. 1/11th of that income, \$472.73 would be GST and your final receipt would be \$4 527.27, again less than your pre-GST position. The producer would receive \$15 000, plus an input tax credit of \$472.73, more than received pre-GST. If your contract specifies that royalty payments are based on the GST-exclusive amount, you should specify that it will be grossed up for GST.

The same principles apply to commissions on sales.

Both royalties agreements and commissions on sales need to be considered on a case by case basis. However, important common elements to consider and accommodate are whether the % royalty or commission is based on GST-inclusive or exclusive income or prices, and the probable need to increase the % royalty or commission to take into account the extra charge for GST. All parties should examine their existing royalty agreements.

Bands

There are significant issues to be addressed by bands in the way they operate and the impacts of The New Tax System.

Firstly, if a band is unable to provide an ABN, 48.5% of their fee will be withheld by the person hiring them unless they fulfil the requirements for establishing that they are just a hobby or undertaking a private or domestic activity.

If the band as a whole applies for an ABN, they will be considered to be a partnership and each member of the band will be jointly and severally liable for the liabilities of the band. This means that any one band member is jointly responsible for the liabilities of the band with the other band members, at the same time as being separately and independently liable for the entire liabilities of the band. In practice, this is not often what is intended in the way bands form and perform.

One band member may apply for an ABN and receive the fee. The entire income will be included in that band member's income tax, and payments made to other band members will only be deductions against that income. Payments could be made to other members without an ABN if they can show that they are not subject to the 48.5% withholding, that is that they are not undertaking an enterprise.

All band members could seek individual ABNs as professional musicians.

It is possible that musicians or other artists may receive one ABN for the group that they perform in, as, for example, a partnership, and another for themselves as an individual.

The Australia Council recognises that performing artists often work in a number of bands, groups or ensembles - resulting in a complex situation to consider.

Overseas artists or companies or other organisations

If you are engaging an overseas artist, company or other organisation to perform, work or otherwise provide services in Australia, the Pay As You Go (PAYG) system obliges you to withhold 48.5% of the fee unless they are able to provide you with an ABN. Non-residents, both individuals and corporate, are able to apply for ABNs in relation to their activities in Australia.

Non-residents are subject to the same GST rules as any other person or organisation. Turnover includes Australian income only. If that turnover is less than \$50 000 per annum, there is an option to register. If over \$50 000, the artist or organisation must register for GST if undertaking their enterprise in Australia.

It is important to remember that the PAYG withholding liability is with the payer. The liability to register for GST is the responsibility of the person or entity carrying on the activity.

International collaborations

International collaborations involve both in-bound and out-bound travel of artworks, artists and others involved in the project. All will involve supplies and a GST analysis will focus on identifying which of those supplies are taxable, GST-free, input taxed or beyond the GST net.

Outbound collaborations involve the temporary movement of artworks and personnel from Australia to overseas for exhibition or performance. This loan will be GST-free. No GST liability will arise in respect of fees paid to Australian artists to attend such events.

The manager or coordinator of the tour or exhibition will be able to claim input tax credits on related costs incurred in Australia where those costs are taxable supplies.

Classes and Training

Where you undertake a class or masterclass relating directly to your ability to generate your income as a professional artist, you may claim an input tax credit for GST included in the course fees where the course is not GST-free.

EXAMPLES

Donna is a highly regarded choreographer and dance teacher. In addition to her work as a choreographer, Donna also runs dance courses. Donna is registered for GST. The fee for undertaking a dance course with Donna is \$330, including \$30 GST. The dance course does not qualify as an education supply.

Maria is a recognised dancer and is registered for GST. Maria enrolls for a dance course with Donna to refine elements of her technique, and therefore improve her prospects for employment and improve her negotiating power with respect to the fees she may charge. Maria is able to claim an input tax credit of \$30 against the \$330 course fee.

Jim is a young dancer still developing his skills. He is not registered for GST. In enrolling for Donna's dance course, he will pay \$330 without any entitlement to an input tax credit.

Venues

Sponsorship

The issues identified previously in relation to sponsorship apply equally to sponsorship arrangements entered into by venues.

The important issue to be identified is who is the sponsor actually contracting with - the venue, the promoter or the company putting on the production? This is an issue of contract law, and is to be decided by assessing the contractual relationships in each case. A key factor to look for is who is receiving the benefit from the sponsorship, and it is possible that the contract is one between multiple parties.

EXAMPLE

Big Petrol sponsors Open Opera's tour season at the Princely Theatre. Big Petrol provides all fuel in transporting the production to Princely Theatre. In addition, Big Petrol provides wine for Princely Theatre's subscription members at interval. Big Petrol is included in all of Open Opera's publicity for the season, and receives free tickets from the venue's house allocation.

The options...

Big Petrol may be sponsoring Open Opera only on the basis of a separate contractual arrangement for subscribers.

OR

Big Petrol is jointly sponsoring Open Opera and Princely Theatre. Therefore the GST liabilities and entitlements to input tax credits would be shared between Open Opera and Princely Theatre.

OR

Big Petrol is separately sponsoring Open Opera and Princely Theatre, and the GST liabilities and entitlements to input tax credits would have to be tracked separately through the tax invoices issued by the parties.

If either Open Opera or Princely Theatre have the option of registering or not, in making their decision they would have to look at not just GST implications for themselves in such arrangements, but the impacts on potential partners.

Providing venue at less than market rate

Where a venue is provided cheaper than usual rates, GST is charged on the actual price paid where the parties are not "associated". Where a venue is provided free without any return being made by the user, there is no consideration and no GST is payable.

Free tickets

Where a venue provides free tickets, and the tickets are not given in return for any service or provision of goods by the person receiving the tickets, there is no consideration and therefore there is no GST payable on the tickets.

Education use

Where a venue is hired by a school or other provider of education supplies recognised by The New Tax System, the venue will charge the school GST on the hire fee. The school will be entitled to an input tax credit for that GST, but will not be charging GST to the students in the use of the venue where the use is part of the curriculum of an education course.

EXAMPLE

The Little Theatre is hired by the local primary school for 3 nights for the annual school play at a discounted rate of \$77 per night. The Little Theatre is registered for GST, and therefore includes GST of \$7 in the fee for each night. The annual play is part of the curriculum for children attending the school. In charging students attending the play, the school does not include GST. The school will be charging parents and friends attending the play GST. The school will be entitled to an input tax credit of \$21 for the hire of the venue.

Ticket Agents

An agent is a person or body that is empowered to act, within the terms of the actual agency agreement, as if they were the person or body who has appointed them as their agent. The person who has appointed the agent is referred to as the Principal. The agent, again within the terms of the actual agreement, is able to contract, sue, make representations, meet obligations, and generally act as if they were the Principal. In contracting with an agent, we are at law contracting with the Principal. If buying things from an agent we are buying things from the Principal.

The relationship between ticket agents, venues and promoters/producers is currently subject to clarification with the ATO nationally. It appears that the usual practice of ticket agents holding all funds until venue costs are met, and then passing proceeds less their fees to promoters may not necessarily reflect the legal relationships that the parties have presumed to hold. Until these relationships have been clarified, it is not possible to assess GST implications.

> If ticket agents are agents of the venue

If ticket agents are agents for the venue, the ticket agent is selling tickets as if it were the venue, and all income received from sales by the ticket agent would be income received by the venue.

If this is the case, venues would be required to account for GST sold on tickets in the accounting period they were sold by the ticket agent. In practice this means that venues may be required to account for GST months before funds are ever actually released to them by the agent.

In this case, the promoter/producer may merely have the status of simply of being the hirer of the venue.

> If ticket agents are agents of the promoter/producer

In practice, it is usual for agents to withhold funds from the promoter until receiving authorisation from the venue that all costs have been met. If ticket agents are agents of the promoter, it means that the agent is the promoter and the promoter may have control of the funds as soon as tickets are bought.

In relation to the GST consequences of such an interpretation, promoters would be required to account for GST sold on tickets in the accounting period they were sold by the ticket agent. In practice this means that promoters may be required to account for GST months before funds are ever actually released to them by the agent, and often not until the venue has authorised such a release.

> If ticket agents are not agents at all

On this interpretation, ticket agents would require to have some property or ownership in the tickets being sold in their own right in order to sell them. In Australia, it may be that a right to sell the tickets transfers to the “agent”, but this is dependant on the actual contractual relationships that exist.

However, if this were the case, sales of tickets by the ticket agent in their own right would mean that the ticket agent would be responsible for accounting for the GST on their own sales, with separate contracts with venues and promoters with separate GST consequences.

The ATO is aware of this issue and is working with venues, ticket agents and promoters to clarify. A ruling on principal and agent relationships is expected.

Performer's agents

Where your agent is an agent at law

Where you as an individual artist have an agent who is empowered not just to identify opportunities for you but to negotiate and enter into contracts on your behalf, it is likely that your agent is your agent as the legal definition provides.

If this is the case, all contracts entered into by your agent on your behalf are the same as if you had actually entered into those contracts yourself.

If you are registered for GST, all GST liabilities and input tax credit entitlements flowing from contracts entered into by your agent on your behalf will be your direct responsibility.

EXAMPLE

You are an actor registered for GST. Your agent identifies opportunities for you, negotiates your contracts, and finally enters into contracts on your behalf.

The commission charged by your agent is 10%.

Your agent negotiates a contract for you to provide a voiceover in a commercial for \$605 including GST. Your agent takes his or her commission from your fee including GST, which is \$55 including GST of \$5. Your agent makes a total of \$50 from the deal.

The invoice to the advertising firm on your behalf is for \$605. Of that amount, \$55 is agent's commission, and 1/11th or \$55 is GST, giving a total of \$110. On the other hand, you are entitled to an input tax credit for the GST paid to your agent of \$5. Your total payment to the agent is \$55, to the ATO is \$50, and you take home \$495.

The pre-GST position would have been:

EXAMPLE

Your agent negotiates a contract for you to provide a voiceover in a commercial for \$550, there is no GST included. Your agent takes his or her commission from your fee, which is \$55. Your agent makes a total of \$55 from the deal.

The invoice to the advertising firm is for \$550. Of that amount, \$55 is agent's commission. You take home \$495

If you are not registered for GST:

EXAMPLE

Your agent negotiates a contract for you to provide a voiceover in a commercial for \$605. The \$605 does not include GST, but there has been an increase in your costs due to GST you are unable to claim back as an input tax credit. On a commission of 10%, your agent takes his or her commission from your fee, which is \$60.50 including GST of \$5.10. Your agent takes a total of \$55.40 from the deal.

The invoice to the advertising agency is for \$605. Of that amount, \$55.40 is agent's commission. You take home \$549.60.

Where your agent is not an agent at law

If you engage a person to seek out opportunities for you as an artist, perhaps even to undertake some limited negotiation on your behalf, but you finally negotiate and execute all contracts for yourself, then that person may not be your agent “at law”.

If the agent is merely seeking out opportunities for you, then you are in fact contracting directly with the purchaser of your services. The timing of your GST liabilities is based on you signing contracts, issuing tax invoices and receiving cash.

Alternatively, your agent may contract directly with businesses wanting to hire talent, and then contract with you to provide that talent. In that case, the agent is separately liable to the business wanting the artist, and separately liable to you. There is no contractual relationship between you and the ultimate hirer.

EXAMPLE

The agent contracts with an advertising firm to provide voiceover services for \$605 including \$55 GST. The agent contracts with you to provide voiceover services for \$550 including \$50 GST.

You take home \$500. The agent takes home \$50, being \$605 less your fee and less the GST collected of \$55, but includes an input tax credit for the GST paid to you of \$50.

Is there anything to watch out for if my agent, or the person I call my agent, always collects the money on any deal and forwards the proceeds on to me after taking his or her commission?

- > Timing
- > Who issues tax invoices
- > Agent may raise “recipient created tax invoice” for their fee only
- > Principal liable to GST on the gross amount, not the net amount received

If you have contracted with the person hiring your services, either on your own behalf or through an agent, the tax period in which payment for those services is made, (if you account on an accruals basis, then the tax period in which you are required to account for GST to the ATO is the earlier of the tax periods in which the invoice was issued or any part of the consideration/payment was received), is the tax period in which you will be obliged to account for GST. If your agent does not forward the proceeds within that same tax period, you may be liable to pay GST to the ATO before you have actually received any funds.

You will be entitled to your input tax credit on payment of the agent’s commission either when you issue your agent with a tax invoice for it, if you work on an accruals basis, or when your agent actually draws it from the proceeds of the deal.

EXAMPLE

Your agent receives \$605 from the advertising firm on 14 September. The agent draws his or her commission on that payment on 31 October, and sends you the proceeds on 14 November. If the contract is between you and the advertising firm, either direct or because your agent has entered into the contract on your behalf, you will be liable to account for GST of \$55 on or before 21 October, before you have actually received payment. Further, you will not be entitled to claim your input tax credit for GST of \$5 to the agent until the next reporting period.

ARTS ISSUES

4.18

The Big Picture

EXAMPLE ONE: COMMUNITY RADIO

An Aboriginal community broadcaster receives an annual grant of \$22 000 from the State Government to provide information and entertainment to the local community. As the broadcaster is registered for GST it must account for \$2000 GST payable on the grant received. The State Government can claim a \$2000 input tax credit.

A local newspaper provides the broadcaster with ads worth \$2200 (including \$200 GST) in exchange for radio advertising worth \$2200 (including \$200 GST). GST is payable by the broadcaster on the market value of the radio advertising they receive in exchange for the print advertising they receive. GST is also payable by the newspaper on the market value of the radio advertising they receive in exchange for the print advertising. Both parties are entitled to input tax credits equal to the amount of GST payable.

The broadcaster offsets the \$200 input tax credit on the print advertising against the \$2000 GST payable on the grant and \$200 GST payable on the radio advertising. The broadcaster pays \$2000 GST to the ATO.

There is no taxable supply by the broadcaster of the radio broadcast to listeners because there is no payment (money or in kind) made by the listeners.

EXAMPLE TWO: ARTISTS

An artists' cooperative sells \$55 000 (including \$5 000 GST) of artwork at inner city exhibitions. Paint, easels, brushes and canvases used to produce the works cost \$22 000 (including \$2 000 GST).

The cooperative rents a warehouse for \$11 000 (including \$1 000 GST). It sublets half of its studio space to commercial artists for \$6 600 (including \$600 GST). Commercial rents are subject to GST but the cooperative can claim input tax credits on any GST payments made in the course of the business.

It also donates two paintings worth \$3 000 to a charity auction. The paintings cost \$1 100 (including \$100 GST) to produce. Donations are not subject to GST but the cooperative is entitled to an input tax credit for GST included in the paint and canvases and other materials used to paint the donated works.

A public relations company promotes the cooperative's exhibitions in return for several sketches. The promotional activities and the artwork each have a market value of \$2 200. This is called 'contra sponsorship'. GST of \$200 is payable by the cooperative that is 1/11th of the market value of the promotion received. GST of \$200 would also be payable by the PR company. Both parties are entitled to input tax credits equal to the amount of GST payable.





Supplies		GST
Artwork	\$ 55,000	\$ 5,000
Studio rent	\$ 6,600	\$ 600
Artwork to sponsor	\$ 2,200	\$ 200
GST to pay		\$ 5,800
Donations	\$ 3,000	Nil
Input tax credits		
	Cost	GST
Materials	\$ 22,000	\$ 2,000
Rent	\$ 11,000	\$ 1,000
Donations	\$ 1,100	\$ 100
Promotions	\$ 2,200	\$ 200
Input tax credits		\$ 3,300
Business Activity Statement		
GST on supplies		\$ 5,800
Less input tax credits		\$ 3,300
GST to be paid by cooperative to ATO		\$ 2,500

Sample cash book

(Non-Profit Company, Income Tax Exempt)

South West Theatre

Cash book for the 2000/01 Financial Year

Cash Receipts

Date	Details	Bank	Membership	Sponsorship	Other	GST Payable
2000						
2-Jul	Membership receipts	250.00	227.27			22.73
6-Jul	Sponsorship - ArtsWA	600.00		545.45		54.55
7-Jul	Commissions on sales	150.00			136.36	13.64
14-Jul	Sales	3,000.00			2,727.27	272.73
TOTAL		4,000.00	227.27	545.45	2,863.64	363.64

Cash Payments

Date	Details	Cheque #	Bank	Equipment	Wages	Other	GST Credit
2000							
3-Jul	Postage	1	45.00			40.91	4.09
4-Jul	Wages	2	800.00		800.00		0.00
5-Jul	Purchase Equipment	3	1,250.00	1,136.36			113.64
7-Jul	Purchase Stationery	4	75.00			6.82	68.18
13-Jul	Advertisement	5	440.00			400.00	40.00
TOTAL			2,610.00	1,136.36	800.00	509.09	164.55

Example of Profit and Loss Statement

The following figures for a hypothetical arts business compare the pre-GST and post-GST bottom line

South West Theatre Business Activity Statement Summary for the Quarter ending 30 September 2001

Comparison between GST and post GST reporting

Income				
	Pre GST	Post GST Total Received (Total Paid)	(GST Liability) Income Tax Credit	Net Impact Profit & Loss
Box Office	100,000	110,000	(10,000)	100,000
Sponsorship	50,000	55,000	(5,000)	50,000
Government Grants	50,000	55,000	(5,000)	50,000
Membership	200,000	220,000	(20,000)	200,000
Workshops	80,000	88,000	(8,000)	80,000
Sub total	480,000	528,000	(48,000)	480,000
Expenses				
Salaries and Wages	(100,000)	(100,000)	—	(100,000)
Administration	(220,000)	(242,000)	22,000	(220,000)
Other	(100,000)	(110,000)	10,000	(100,000)
Sub total	(420,000)	(452,000)	32,000	(420,000)
Profit/Loss Pre GST	60,000	76,000		
Net GST			(16,000)	
Profit/Loss	60,000			60,000