
The Impact of a Goods and Services Tax (GST) on Sport

Dale Pinto
School of Business Law
Curtin University of Technology

Abstract

The introduction of a Goods and Services Tax (GST) in Australia will have a profound impact on many sporting bodies that will now have to understand and operate within the complexities of this new system of indirect taxation. Many issues arise in this context, including whether such bodies need to register under the new rules, as well as how to treat the various supplies that are made to sporting bodies, including sponsorships, grants and prize monies. The purpose of this article is to explain how the new rules will affect sporting bodies, as well as highlighting important features of the new rules that sporting bodies need to be aware of.

Introduction

As part of fundamental tax reform in Australia, a Goods and Services Tax (GST) was passed into law in July 1999 and took effect from 1 July 2000. The changes introduced as part of these reforms will impact significantly on Australia's many sporting bodies, not just in the day-to-day affairs of running these organisations but on the sporting industry and economy as a whole. The introduction of a GST heralds a new era for the sporting industry as it will mean that many such organisations will, for the first time, have to come to grips with the complexities of the Australian tax system.

The first part of this article will examine the background to the introduction of the GST, including an explanation of how the GST system works. Under the GST, a threshold issue for sporting bodies is whether such organisations need to register under the new rules. These rules will be covered in the second part of the article, along with an analysis of the consequences of registering and not registering. The third part of the article will then apply these rules to sporting bodies, having regard to the different structures that sporting bodies typically operate under.

Finally, the article will examine typical supplies that may either be made to sporting bodies or by sporting bodies, with a view to analysing the GST treatment of these supplies.

Background to the Introduction of the Goods and Services Tax in Australia

As part of its tax reform package, the Commonwealth Government announced its intention to introduce a broad-based Goods and Services Tax (GST). The legislative package¹ to implement the GST was

¹ There are a number of Acts of the Commonwealth Parliament that govern the imposition and rate of the GST. These include: *A New Tax System (Goods and Services Tax) Act 1999* (Cth), *A New Tax System (Goods and Services Transition) Act 1999* (Cth), *A New Tax System (Goods and Services Tax Imposition - Customs) Act 1999* (Cth), *A New Tax System (Goods and Services Tax Imposition - Excise) Act 1999* (Cth), and *A New Tax System (Goods and Services Tax Imposition - General) Act 1999* (Cth). Also of relevance are the *Taxation Administration Act 1953* (Cth), as amended by the *A New Tax System (Goods and Services Tax Administration) Act 1999* (Cth), *A New Tax System (Australian Business Number) Act 1999* (Cth), *A New Tax System (Luxury Car Tax) Act 1999* (Cth), *A New Tax System (Wine Equalisation Tax) Act 1999* (Cth), *A New Tax System (Wine Equalisation Tax and Luxury Car Transition Tax) Act 1999* (Cth), and *A New Tax System (End of Sales Tax) Act 1999* (Cth).

introduced into the House of Representatives on 2 December 1998 and promptly passed by that House, but it was partially rejected by the Senate. Subsequent to this, amendments were made to the package to take into account recommendations by the Australian Democrats. Significant among those amendments was the exclusion of basic food from the GST rules. The legislative scheme was finally passed by both Houses of Parliament on 30 June 1999, and received Royal Assent on 8 July 1999. The GST took effect on 1 July 2000.

What is a GST?

A GST is commonly described as an indirect, broad-based consumption tax. It is *indirect* in the sense that it is levied on goods, services and related activities, rather than directly on personal income. It is *broad-based* in that it applies generally to a wide range of transactions, with only limited exceptions. It can be contrasted with more specific taxes, such as a sales tax, which generally only applies to transactions in goods. In fact, despite its name, a GST is not limited to goods and services in the usual sense of these words. The fact that it includes real estate and the creation of rights is evidence of how wide-ranging the tax is.

It is a *consumption tax* as it applies generally to expenditure (amounts spent) rather than income (amounts earned or received). Ultimately, it is a tax that is finally borne by consumers, rather than producers or suppliers. Finally, a GST is similar to taxes known in other countries by its European title of Value Added Tax (VAT),² reflecting the fact that the

² GST and VAT are terms that are generally interchangeable. New Zealand, Canada, Singapore, South Africa and Australia use the term GST while France, Germany, the United Kingdom and other European Community Member Countries use the term VAT. In principle, the two systems are very similar. Perhaps one main difference between the two systems lies in the number of exemptions – European VAT

tax is imposed on the valued-added by enterprises at each stage of production.

GST Terminology

To assist in understanding the basic operation of the GST system, a number of key terms need definition.

Supply: Is defined widely³ and includes a supply of *goods*,⁴ a supply of services, provision of advice or information, a grant, assignment or surrender of *real property*,⁵ whether the acts constituting the supply are legal or not. The meaning of supply is not restricted to sales.

Taxable supply: GST is payable on taxable supplies. A taxable supply is defined to mean a *supply connected with Australia*⁶ for *consideration*,⁷ made in the course or furtherance of an *enterprise*⁸ carried on by a *registered person* (see below). However, a supply is not a taxable supply if it is *GST-free* or *input taxed* (see below).

*Input taxed*⁹ *supply*: If a supply is input taxed, it means that there is no GST payable on it, but the supplier cannot claim *input tax credits* (see below) for the things that are acquired by the supplier to make

systems generally have more exemptions than the GST systems of countries like New Zealand and Australia.

³ Section 9-10 *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (*GST Act*). Legislative references in subsequent footnotes (including Sections, Divisions and Parts) are to the *GST Act* unless otherwise stated.

⁴ Defined as any form of tangible personal property: s 195-1.

⁵ Defined as any interest in or right over land; or a personal right to call for or be granted any interest in or right over land; or a licence to occupy land or any other contractual right exercisable over or in relation to land: s 195-1.

⁶ Elaborated on in s 9-25. For present purposes, a supply of real property is connected with Australia if the real property is in Australia: s 9-25(4).

⁷ Widely defined to include any payment, or any act or forbearance in connection with a supply of anything: s 9-15.

⁸ Defined to essentially mean a business but excluding activities carried out as an employee or as a private recreational pursuit or hobby: s 9-20.

⁹ Has the meaning given by s 9-30(2) and Division 40.

the supply. Examples of input taxed supplies are financial services and residential rents. The difference between this type of supply and a *GST-free supply* (see below) is that no input tax credit is available to the supplier of input taxed supplies, while input tax credits are available to suppliers of GST-free supplies.

Input tax credit:¹⁰ Means a credit that is available to *registered persons* (see below) for GST paid on the supply of goods or services used in connection with a taxable supply. In other words, it is a credit for the GST payable on business inputs.

*GST-free*¹¹ *supply*: If a supply is GST-free, this means that no GST is payable on it (i.e. supplies are zero-rated), however the supplier is entitled to claim credits for the GST payable on the things acquired by the supplier to make the GST-free supply (i.e. its business inputs). Supplies which are GST-free fall into various categories including health, education, food, child care, supplies of water and sewerage services (including the emptying of septic tanks), and precious metals.

Registered entity:¹² An entity can only be registered if they are carrying on an enterprise (i.e. business). Registration is compulsory if the annual turnover for an entity exceeds a certain threshold.¹³ Below the threshold requirement, registration is optional.

The Mechanics of the GST System

GST is imposed when a 'taxable supply' is made. The rate of GST is 10%. This is included in the price paid to a supplier by a customer. The supplier must account for this amount of GST to the Australian Taxation Office ('ATO'). If the supplier acquires goods or services as part of their business, they can

claim a credit for the GST that has been included in the price. This is called an 'input tax credit' and refers to the credit applicable on business inputs.

The overall effect of the GST system is that the ultimate burden of the GST falls on end-users, or private consumers. Businesses that form part of the chain of supply act as collectors of the tax, but by virtue of the input tax credit mechanism, they do not bear the burden of it. It is much easier to understand the operation of the GST system in the context of an example, and as the key concepts have now been defined, a simple example follows to illustrate how the GST operates.

Example

John buys a woollen jumper from a retailer. The retailer acquired the jumper from a manufacturer of woollen jumpers, who acquired the wool from a wool merchant. The GST system would apply as follows:

1. The *wool merchant* sells the wool to the manufacturer for \$20 plus 10% GST (\$2). The manufacturer therefore pays the wool merchant \$22. When the wool merchant completes its GST return, it takes the GST on its sale (called output tax, \$2), subtracts any GST it paid for its business inputs (its input tax credits, in this case \$0) and sends the difference (\$2 - \$0 = \$2) to the ATO.
2. The *manufacturer* processes and treats the wool and makes the jumper, selling it to a retailer \$50 plus 10% GST (\$5). The retailer therefore pays \$55 for the jumper. When the manufacturer completes its GST return, it takes the GST it collected from the sale to the retailer (\$5), subtracts the GST it paid for its business inputs

¹⁰ Defined in s 195-1.

¹¹ Has the meaning given by s 9-30(1) and Division 38.

¹² Registration is covered by Part 2-5.

¹³ Initially set at \$50,000 per annum, or for non-profit bodies \$100,000 per annum: s 23-15.

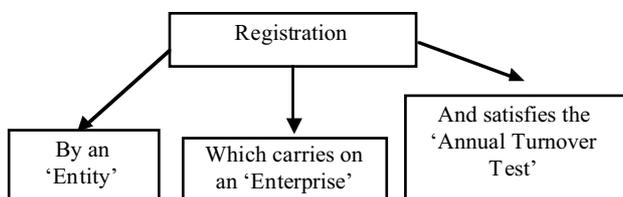
(\$2 paid to the wool merchant on the purchase of the wool) and sends the difference (\$5 - \$2 = \$3) to the ATO. The ATO has therefore collected \$5 in total so far.

3. The *retailer* sells the jumper to John for \$90 plus 10% GST (\$9). John therefore pays \$99. When the retailer completes its GST return it takes the GST it collected from the sale to John (\$9), subtracts the GST paid to the manufacturer for the jumper (\$5), and sends the difference (\$9 - \$5 = \$4) to the ATO. The ATO has now collected \$9 in total.

This simple example shows that the total GST payable on the jumper was \$9, which represents the total amount sent to the ATO. It also shows that through the input tax credit mechanism, businesses did not bear the GST, which was ultimately borne by the final customer and included in part of the price paid.

Registration and its Consequences

A threshold issue for sporting bodies is whether or not to register for the GST. The following flowchart summarises the main considerations that need to be borne in mind to understand whether sporting bodies can register for the GST.



Entity

The first requirement that a sporting body must satisfy to be registered is that it must be an 'entity' as defined.¹⁴ The definition is widely cast and includes a body corporate (which would include a company and

¹⁴ Sections 23-5, 23-10.

an incorporated association), as well as unincorporated associations or bodies. In light of the width of the definition of entity, most sporting bodies would satisfy this requirement.

Enterprise

An entity cannot be registered unless it is carrying on an 'enterprise'.¹⁵ Accordingly, this is an important threshold requirement and many sporting bodies may fail this test. A sporting body may satisfy the definition of an enterprise if its activities are:¹⁶

- In the form (nature) of a business; or
- Carried on by a charitable institution or by a trustee of a charitable institution; or
- Carried on by a governmental body, or by a body corporate, established for a public purpose.

Excluded from the definition of enterprise are activities undertaken as 'a private recreational pursuit or hobby'.¹⁷ However, it would seem that the ambit of this exclusion would be limited in a sporting context, because while the members of a sporting body may participate in sport as a recreational pursuit or hobby, the sporting body generally does not.¹⁸

Annual Turnover Test

Registration is compulsory if the annual turnover for an entity exceeds a certain threshold. Below the threshold requirement, registration is optional. Different thresholds apply depending on whether the entity is a non-profit body or not.

If the entity is a non-profit body (as many sporting bodies would be) and if it carries on an enterprise that yields an annual turnover for GST purposes of \$100,000 or more, then it *must* register for GST. If its

¹⁵ Ibid.
¹⁶ Section 9-20.
¹⁷ Ibid.

turnover is less than \$100,000, then it can *choose* to register if it wishes.¹⁹ If the entity is not a non-profit body, then the corresponding threshold is \$50,000.²⁰

Consequences of Registration

Registration is relevant for a number of reasons including: (1) GST is not payable on a supply unless the supplier is registered; (2) GST credits can only be claimed if an entity is registered (hence, some entities may wish to optionally register despite being below the specified thresholds for compulsory registration); and (3) GST returns and other requirements must be completed by registered entities.

Tied in with the registration requirements are the rules relating to the Australian Business Number (ABN). When a registered person issues a tax invoice when supplying goods and/or services, they will be required to include their ABN. Therefore, to issue a tax invoice (if registered for GST), a sporting body will need an ABN. It would seem that as there is very little downside to obtaining an ABN (apart from filling in yet another form), sporting bodies that carry on an enterprise should normally apply for one. Also, it is worthy to note that if no ABN is quoted on invoices provided to other businesses, they may be required to withhold tax at the top marginal rate (plus Medicare levy), currently 48.5%.

Finally, on this point, if a sporting body does register for GST purposes, it will need to appoint someone to attend to the administrative requirements of the system, which are already causing many businesses many concerns. Also, the members of the organisation will need to ensure that they are familiar with the GST

system, as the law imposes the obligations of an unincorporated sporting body to comply with the GST rules on each member of its management committee.²¹

Consequences of Not Registering

If a sporting body does *not* meet the requirements for registration as discussed above (e.g. because its annual turnover is below the threshold and it chooses not to register for the GST), then it will be treated in a similar way to an ordinary consumer. This means that it will have no GST liability on supplies it makes and no entitlement to claim input tax credits on its acquisitions.²² This will have two practical consequences for many sporting bodies:²³

- Membership fees will likely rise to cover increased costs. For example, a softball club that purchases bats, gloves and other protective equipment will now have a 10% GST liability on their supply to the club, whereas under the previous sales tax system, they would have been exempt items.
- Sponsorship may be difficult to obtain, as sponsors will not be able to claim input tax credits on sponsorship monies that are paid to sporting bodies. This is because if the sporting body is not registered for GST, the supply of sponsorship monies would not be a taxable supply, hence the sponsor would not be entitled to claim input tax credits for this supply. Of course, this may not be an issue for all sponsorships, at least one's where tax reasons are not a primary reason for the sponsorship.

¹⁸ See Paul Stacey, 'GST and Sport' (2000) 20 *GST Today* 6, where this point is developed.

¹⁹ Section 23-15. Registration must occur if either the annual turnover (current or projected) exceeds the relevant thresholds. If several fundraising events per year are undertaken by a non-profit body, then the annual turnover threshold could be exceeded.

²⁰ *Ibid.*

²¹ Section 52 of the *Taxation Administration Act* (Cth) 1953.

²² Stacey, above n 18, 8.

²³ *Ibid.*

The Application of the Registration Rules to Sporting Bodies

The application of the registration rules discussed above needs to be viewed in the context of the differing structures that sporting bodies may operate through. The flowchart below summarises the main forms of sporting bodies.

Incorporated Sporting Bodies

Incorporated sporting bodies will be eligible to register for GST as they are bodies corporate established for a public purpose (see definition of 'enterprise' above). Participation in sport would be regarded as a public purpose, and it would not matter whether this participation operates under an amateur or professional code.

Unincorporated Sporting Bodies

While an incorporated sporting body would be able to register for GST, the position with an unincorporated body is more difficult. An unincorporated sporting body would not be a body corporate established for a public purpose and accordingly could not seek registration under that heading. It would seem that the most relevant basis for an unincorporated sporting body seeking registration would be if it conducts its activities in the *form* of a business (see definition of 'enterprise' above). This may be difficult to establish in the case of an amateur club as these types of sporting bodies are, by definition, non-profit making bodies. However, it is important to note that for GST purposes, a sporting body does *not* have to conduct its activities with the express purpose of making a profit, so long as its activities are conducted in the *form* of a business.

This will be a question of fact, and various factors will be looked at by the courts in deciding whether the activities of a club are conducted in the form of a

business. Indicators of activities that display the requisite connection include activities that are:²⁴

- recognisable and identifiable;
- conducted on a continuous, regular, organised or structured manner;
- subject to some form of control, management or accountability; and
- are conducted in a coherent fashion.

Charitable Sporting Bodies

A charitable sporting body that is carried on by a charitable institution or by a trustee of a charitable institution would be able to register for GST.²⁵ Sporting bodies that are also charities will enjoy considerable fundraising advantages over non-charitable sporting bodies.

Supplies Made By and To Sporting Bodies

To analyse supplies that may be made in connection with sporting bodies, three categories of supplies need to be considered: taxable supplies, GST-free supplies, and input-taxed supplies. The technical meaning of these terms was discussed earlier in the article and accordingly will not be repeated here.

Taxable Supplies

In considering whether a supply is taxable in a sporting context, an important issue is to determine whether a gift is involved (which implies that something is given for nothing in return), or whether there is a consideration involved (which implies that something is given for something in return - 'something for something'). The distinction is important because if the supply is characterised as a gift, then the supply may not be taxable, while if consideration is involved, it will usually be a taxable

²⁴ Ibid 6.

²⁵ In any event, regardless of whether a charitable sporting body registers for GST or an ABN, it will need to be registered with the ATO as a charity.

supply. Good examples in the sporting context are sponsorships, grants and prize monies, and they will be presently considered.

Sponsorships

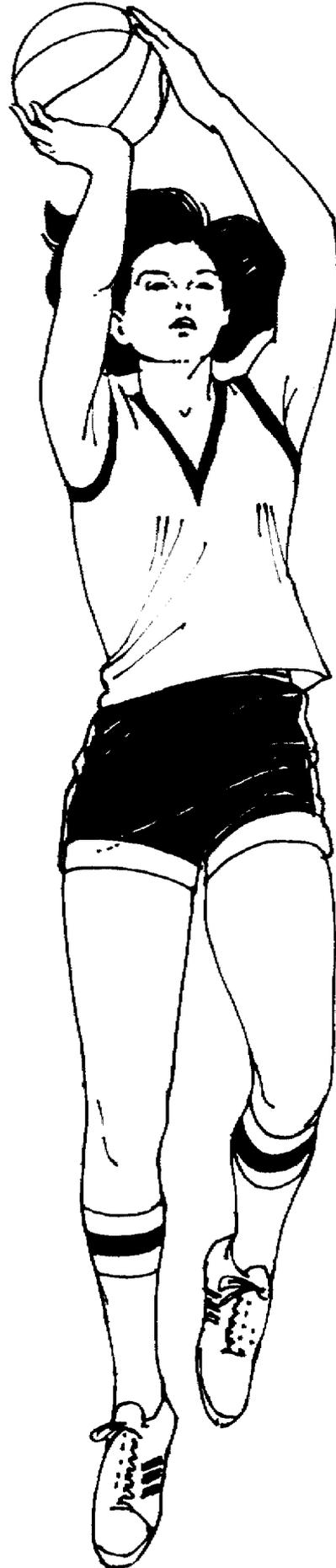
If sponsorship is given to a club as a gift by the sponsor with no benefits accruing to the sponsor in return, then the club would have no GST liability in respect of such a receipt. However, if sponsorship is given on the basis of having the sponsor's name prominently displayed on team uniforms, as well as advertising signage at the club's home ground, then this would be a taxable supply as there would be a consideration - sponsorship being exchanged for advertising.

Grants

Grants normally would trigger a GST liability, especially where the grant is given for a specific purpose. For example, if the government was concerned as to the performance of its State football teams and made a grant to its clubs to upgrade their facilities, then again something is exchanged for something, thereby constituting a consideration, and a taxable supply for GST purposes.

Prize monies

If a club that is registered for GST has a team that is entered in a competition and if that team wins the competition and there is prize money attached to the victory, the question becomes whether the receipt of that prize money is in consideration for the making of a taxable supply. Again, it would seem that it would be, on the basis that the supply is one of releasing the competition organiser of its obligation to pay the prize money.²⁶



²⁶ Stacey, above n 18, 9.

GST-free Supplies

Most sporting bodies will not make GST-free supplies. Therefore, raffles run by sporting bodies, for example, will generally be taxable supplies. An important exception, however, is raffles that are conducted by charitable sporting bodies. In this case, no GST liability will accrue on the money raised and at the same time, the body will be able to claim input tax credits on the cost of any prizes purchased.²⁷ As input tax credits cannot be claimed on cash prizes offered, many charitable sporting bodies will most likely not structure raffles in this manner.²⁸ The GST-free treatment of charitable sporting bodies conducting raffles constitutes a substantial fundraising advantage compared to other sporting clubs.²⁹

Input-Taxed Supplies

Most sporting bodies will not make input-taxed supplies. An exception exists for fundraising events, such as fetes and balls conducted by charitable sporting bodies. The government has introduced amendments to the GST legislation which will allow charitable bodies to treat these types of supplies as input-taxed rather than taxable supplies where they meet ATO guidelines.³⁰

The removal of a GST liability on such proceeds is a considerable concession given that sporting bodies generally incur little (if any) costs with such events, as many such events are conducted by volunteers. Also, given this concession is not available to other non-profit sporting bodies, they are at a disadvantage compared to bodies that can avail themselves of the concession.

Conclusion

The GST has ushered in a new indirect tax system that will have far-reaching consequences for many sporting organisations, who will have to deal with the complexities and administrative burdens associated with this new tax. As mentioned in the introduction of the article, this will be the first time many sporting clubs will have to deal with the Australian taxation system.

A clear understanding of the new system is essential for all sporting organisations, to ensure that their legal obligations are discharged and also for the general welfare of the club. Apart from education, good administrative systems will need to be put in place to manage the on-going compliance associated with the new tax system.

Particular issues will arise in relation to the various supplies made in connection with sporting bodies, especially in relation to fundraising activities, and this article has attempted to demystify some of the complexity associated with these rules.

²⁷ Ibid 10.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.