



Australian Government

The Treasury

GST-FREE HEALTH SUPPLIES

SUMMARY OF CONSULTATION PROCESS

In the 2011-12 Budget the Government announced that it will amend the goods and services tax (GST) law to ensure that certain supplies made to health insurers in the course of settling health insurance claims will be GST-free. The Government later announced some changes to the measure on 23 September 2011 when it released exposure draft legislation for comment.

The measure was included in Tax and Superannuation Laws Amendment (2012 Measures No. 1) Bill 2012, which was introduced into Parliament on 1 March 2012.

Consultation process

- Public consultation on a discussion paper for the proposed measure was conducted between 7 June 2011 and 6 July 2011. Six submissions were received. There were four public submissions and two confidential submissions.
- Public consultation on the draft legislation was conducted between 21 November 2011 and 19 December 2011. Four submissions were received. There were three public submissions and one confidential submission.

Public submissions can be viewed by clicking on the following link.

<http://www.treasury.gov.au/contentitem.asp?NavId=066&ContentID=2329>

Summary of key issues

Discussion paper

Issues raised

Stakeholders raised concerns that the amendments did not extend far enough to restore the policy intent after the decision in Commissioner of Taxation v Secretary to the Department (Victoria) [2010] FCAFC 84 (Department of Transport). In particular, some stakeholders were concerned that other payment arrangements also gave rise to a separate taxable supply to the third party providing the consideration, despite the underlying supply being GST-free. The other payments that are affected arise under general insurance, workers' compensation and compulsory third party arrangements, and under government health funding arrangements.

Stakeholders also suggested the inclusion of chronic disease management programs under Subdivision 38-B of the GST Act to give these programs GST-free status.



Australian Government

The Treasury

Response

The Government extended the measure to cover other arrangements where payments made by a third party were previously treated as consideration for a GST-free supply made to an individual. Specifically, the measure was extended to apply to: taxable insurance policies where the underlying supply to the insured (policy holder or third party) is GST-free; government health funding arrangements where the underlying supply of health goods or services to the individual is GST-free; and compulsory third party schemes where the underlying supply of health goods or services to the individual is GST-free.

The objective of the amendments is to restore the policy intent after the Department of Transport decision. Amending the GST Act to exempt chronic disease management programs from GST is beyond the scope of the measure.

Draft legislation

Issues raised

Stakeholders were concerned that the legislation did not extend to cover statutory compensation schemes under Schedule 10 of the GST Regulations.

Stakeholders were also concerned that the measure did not cover supplies made to entities that act as the agents of insurers in the acquisition and settlement of claims against insurers.

Stakeholders suggested that as the legislation allows suppliers an option to treat the supply as GST-free, there should be a requirement for the agreement to be in writing to limit the potential for disputes.

One submission further suggested that the legislation should apply retrospectively as health professionals may be held liable for failure to pay GST on insured services between 1 July 2000 and 1 July 2012.

Response

The legislation was redrafted to include statutory compensation schemes listed in Schedule 10 of the GST Regulations. To distinguish between compulsory third party schemes and statutory compensation schemes would result in additional compliance costs for health service providers who have previously treated both as GST-free supplies.

The issue of agents of insurers is outside the scope of this measure, which is to restore the intended operation of the law following the Department of Transport decision.

The express provision for agreement in writing is not necessary. Where a supply is treated as a taxable supply, a tax invoice is required to be issued under subsection 29-70 of the GST Act. Any agreement will thus be evidenced by established requirements in the GST law.



Australian Government

The Treasury

Retrospective application is not considered necessary. If taxpayers have relied on the Commissioner of Taxation's Ruling GSTR 2006/9, they are protected from unfavourable effects of the Department of Transport decision until 1 July 2012, when the legislation comes into effect.

Feedback

Feedback on the consultation process for this measure can be forwarded to consultation@treasury.gov.au . Alternatively, you can contact Joanne Croft on 6263 2079.

Thank you to all participants in the consultation process.