

GST and certain supplies to health insurers

Consultation Paper
7 June 2011

© Commonwealth of Australia 2011

ISBN 978-0-642-74711-2

Ownership of intellectual property rights in this publication

Unless otherwise noted, copyright (and any other intellectual property rights, if any) in this publication is owned by the Commonwealth of Australia (referred to below as the Commonwealth).

Creative Commons licence

This publication is licensed under a Creative Commons Attribution 3.0 Australia Licence.



Creative Commons Attribution 3.0 Australia Licence is a standard form licence agreement that allows you to copy, distribute, transmit and adapt this publication provided that you attribute the work. A summary of the licence terms is available from

<http://creativecommons.org/licenses/by/3.0/au/deed.en>. The full licence terms are available from

<http://creativecommons.org/licenses/by/3.0/au/legalcode>.

The Commonwealth's preference is that you attribute this publication (and any material sourced from it) using the following wording:

Source: Licensed from the Commonwealth of Australia under a Creative Commons Attribution 3.0 Australia Licence.

The Commonwealth of Australia does not necessarily endorse the content of this publication.

CONSULTATION PROCESS

REQUEST FOR FEEDBACK AND COMMENTS

The Treasury is seeking your feedback and comments on the detailed design of a measure to retrospectively amend the GST law to ensure that certain supplies to health insurers are GST-free.

While submissions may be lodged electronically or by post, electronic lodgement is preferred. For accessibility reasons, please email responses in a Word or RTF format. An additional PDF version may also be submitted.

All information (including name and address details) contained in submissions will be made available to the public on the Treasury website, unless you indicate that you would like all or part of your submission to remain in-confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain in confidence should provide this information marked as such in a separate attachment. A request made under the *Freedom of Information Act 1982* (Commonwealth) for a submission marked 'confidential' to be made available will be determined in accordance with that Act.

Closing date for submissions: 6 July 2011

Email: gstpolicyconsultations@treasury.gov.au

Mail: The General Manager
Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Enquiries: Enquiries can be initially directed to Ms Joanne Kennedy

Phone: 02 6263 2079

CONTENTS

- CONSULTATION PROCESS III**
 - Request for feedback and comments iii

- OVERVIEW1**
 - Introduction.....1
 - Purpose of this paper1

- BACKGROUND2**
 - Operation of the current law.....2
 - Issue2
 - Government decision3

- PROPOSED AMENDMENT4**

OVERVIEW

INTRODUCTION

1. The intent of the GST law is that certain supplies of health related goods and services as well as supplies of private health insurance are GST-free. This includes supplies of medical and hospital services that are covered by health insurance policies and provided to a policy holder in settlement of an insurance claim.
2. A recent court decision¹ has impacted on the GST treatment of health related supplies. In particular, one of the implications of this decision is that health insurers may face unrecoverable GST costs for acquisitions made in settlement of an insurance claim under a health insurance policy.
3. The Government has decided to respond to this implication of the court decision by retrospectively amending the GST law to restore the intent of not applying GST to such supplies. This is to be achieved by treating certain supplies by a health care provider to a health insurer in settlement of a health insurance claim as GST-free. The relevant supplies being the service of making a supply to an individual where the underlying supply is GST-free under Subdivision 38-B of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act). In effect, the proposal will result in similar GST outcomes to how such supplies were treated by health insurers and administered by the Commissioner of Taxation (Commissioner) prior to the Court's decision.

PURPOSE OF THIS PAPER

4. The purpose of this paper is to provide additional information on how the announced measure might operate and to seek feedback on its design and implementation.
5. Conducting consultation on announced Government measures is in line with the Government's in-principle agreement in 2008 to implement the recommendations of the Tax Design Review Panel, including conducting consultations with stakeholders on the basis of the level of detail similar to drafting instructions that Treasury provides to the Office of Parliamentary Counsel.

1 *Commissioner of Taxation v Secretary to the Department of Transport (Victoria)* (2010) FCAFC 84. While this decision has not directly dealt with the issue of GST treatment of health insurance, it nevertheless impacted on the GST treatment of health insurance through its broader approach to characterising multi-party arrangements than previously taken by health insurers and the Commissioner of Taxation.

BACKGROUND

OPERATION OF THE CURRENT LAW

6. Under Subdivision 38-B of the GST Act certain health related supplies are GST-free. This includes supplies of private health insurance.² This means that no GST applies to supplies made by a GST registered entity and the entity can claim input tax credits for GST included in the price of its inputs to making such a supply.
7. Section 78-30 provides that an insurer cannot claim an input tax credit for goods or services it acquires in settlement of a claim if the policy was GST-free. This includes goods or services that the insurer acquires that are provided to the insured by the supplier.

ISSUE

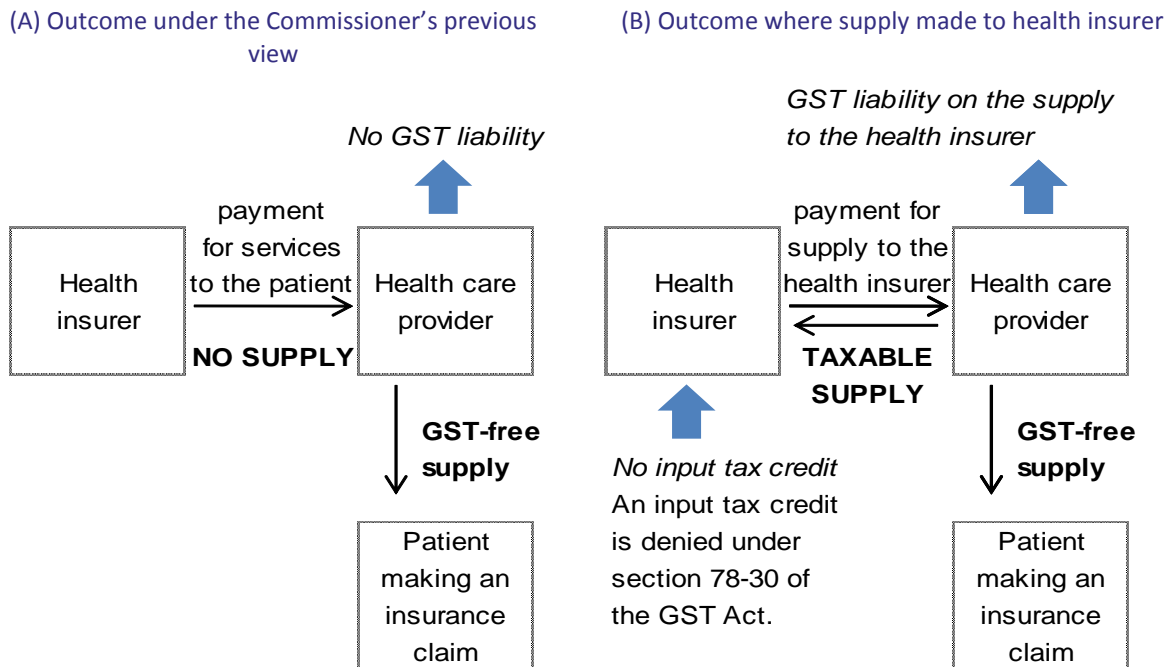
8. The Commissioner has administered the GST law on the basis that a payment made by a health insurer to a health care provider would often be consideration for a GST-free supply the health care provider made to a policy holder. In these circumstances, the payment was not consideration for a supply made to the health insurer. The Commissioner expressed this view of the application of the GST Act in GST Ruling GSTR 2006/9 *'Goods and services tax: supplies.'*³
9. Effectively, the Commissioner's interpretation of the GST law meant that the supplies of hospital or other health care providers that were provided to the policy holder were treated as a single GST-free supply to the policy holder. Accordingly, no net GST revenue was collected because the GST did not apply to the supply from the health care provider to the policy holder.
10. In *Commissioner of Taxation v Secretary to the Department of Transport (Victoria)* (2010) FCAFC 84 (*Department of Transport*) the Court considered whether the Victorian Department of Transport (DoT) made a creditable acquisition in relation to subsidy payments made to taxi operators providing subsidised taxi services to disabled passengers. The Court held that the taxi operator made a taxable supply to the DoT and that the DoT was entitled to an input tax credit in relation to the GST component of the payment of the subsidy to a taxi operator.
11. In its decision, the Court took a considerably broader approach in characterising third-party arrangements than that previously taken by the Commissioner. One of the implications of such an approach is that, contrary to the Commissioner's view expressed in GSTR 2006/9, health related supplies provided via third-party arrangements in the course of settling insurance claims can in some contractual circumstances be characterised as involving two supplies: a GST-free supply from a health care provider to a policy holder, and a taxable supply from the health care provider to the private health insurer liable to make payments to the health care provider.
12. Effectively, in those circumstances, health care providers will need to account for GST on supplies to health insurers and those insurers will be unable to claim offsetting input tax credits for GST paid on their acquisitions from the health care providers as such acquisitions are not creditable acquisitions under section 78-30 of the GST Act.

2 The GST Act, section 38-55.

3 GSTR 2006/09, example 9: hospital services and preferred provider at paragraphs 198 to 204.

13. Diagram 1 outlines the GST outcomes under the Commissioner’s administration of the GST law prior to the Court’s decision and the GST outcomes where a supply is now considered to be made by a health care provider to a health insurer.

Figure 1: Payments by a health insurer in settlement of an insurance claim — Comparison of GST outcomes under the Commissioner’s previous view and the GST outcome where a supply is made to the health insurer



Result: No GST revenue is collected as the health supply is a single GST-free supply to the patient who makes an insurance claim.

Result: The insurer incurs GST costs as there are two supplies (GST-free supply to the patient who makes an insurance claim and a taxable supply to the insurer). The health care provider is liable to remit GST but under section 78-30 of the GST Act the insurer is denied an input tax credit.

Focus question

Q1: Are there any other circumstances involving GST-free supplies of health related goods and services that are adversely impacted by the Court’s decision in *Department of Transport* case?

GOVERNMENT DECISION

14. In the 2011-12 Budget, the Government announced that it will amend the GST law to ensure that supplies made to health insurers in the course of settling insurance claims will be GST-free, with effect from 1 July 2000. This measure is aimed at providing certainty and reinstating the overall GST outcomes in these circumstances by addressing adverse implications following the Court’s decision in *Department of Transport* that now results in

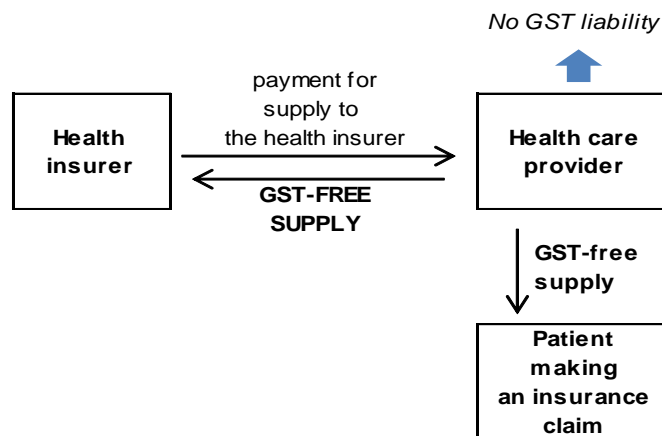
certain supplies to health insurers being taxable supplies for which those health insurers are unable to claim input tax credits.

15. The measure is subject to the unanimous agreement of the States and Territories.

PROPOSED AMENDMENT

16. To give effect to this decision it is proposed to amend Subdivision 38-B to make certain supplies from an entity to a health insurer GST-free. The supply will be GST-free provided that:
 - the supply to the health insurer is the service of making a supply to an individual, where the underlying supply made to the individual is GST-free under Subdivision 38-B; and
 - the supply to the health insurer is in the course of the settlement of an insurance claim between that individual and the health insurer.
17. It is envisaged that the proposed amendments will ensure that health insurers will not incur GST on supplies referred to in paragraph 16 for which health insurers are currently unable to claim an input tax credit by operation of section 78-30 of the GST Act. Thus the proposed amendment will result in similar GST outcomes to how these arrangements have previously been administered by the Commissioner.
18. Figure 2 illustrate the GST outcomes that are sought to be achieved under the proposed amendments.
19. The amendments are to apply from tax periods starting on, or after, 1 July 2000.

Figure 2: GST outcomes under the proposed amendment



Result: No net GST revenue is collected as both supplies (the first one from the health care provider to a health insurer and the second one from the health care provider to a patient who makes an insurance claim with the insurer) are GST-free supplies.

Focus question

Q2: Will the proposed amendment address the adverse implications of the Court's decision in *Department of Transport* on supplies to health insurers in an efficient and effective way?

Focus question

Q3: Will the proposed amendment have any unintended consequences or cause implementation difficulties for taxpayers?