GSTR 2000/36 - Goods and Services Tax: insurance settlements by making supplies of goods or services

Goods and Services Tax Ruling

Goods and Services Tax: insurance settlements by making supplies of goods or services

Preamble

This document is a ruling for the purposes of section 37 of the ***Taxation Administration Act 1953****. You can rely on the information presented in this document which provides advice on the operation of the GST system.*

What this Ruling is about

1. This Ruling discusses whether Division 11 or Division 78 of *A New Tax System (Goods and Services Tax) Act 1999* (the Act) applies to a payment or supply made by an **insurer** in the course of settling a claim under an insurance policy.

2. This Ruling applies to insurers that provide, or are liable to provide, consideration for a supply in settlement of an **insurance** claim.

3. Certain terms used in this ruling are defined or explained in the Definitions section of the Ruling. These terms, when first mentioned elsewhere in the Ruling, appear in **bold type**. Unless otherwise stated, all legislative references in this Ruling are to the Act.

Date of effect

4. This Ruling applies on and from 1 July 2000.

Ruling

5. If an insurer pays a supplier for providing goods or services to another entity in settling a claim under an insurance policy, then the manner in which the insurer arranges for the acquisition or payment for those goods or services will determine whether Division 11 or Division 78 applies.

6. An insurer provides or is liable to provide consideration for an acquisition when it pays one entity to make a supply to a third entity if it:

- chooses the supplier;
- instructs the supplier about the supply; and
- enters into a contractual relationship with the supplier for a right to have the supply made to the insured and is liable to pay for the supply of the goods, services or anything else to the insured.

7. The existence of these three criteria shows that there is an acquisition by the insurer which may entitle the insurer to an input tax credit. As explained in paragraphs 13 and 19 of this Ruling, these criteria do not limit the scope of when an acquisition is made by an insurer in terms of Division 11.

8. Also, if the insurer purchases new replacement items and acquires title in the goods before supplying the goods to the **insured,** then Division 11 applies and the insurer may be entitled to an input tax credit.

9. Where the insurer merely facilitates the payments as part of a settlement (and the criteria in paragraph 6 are not met), Division 78 may apply to allow a decreasing adjustment. However, where the insurer supplies a voucher with a monetary value stated on the voucher to an insured as settlement for a claim, that supply is not a taxable supply according to section 100-5. The insurer may be entitled to a decreasing adjustment on the supply of the voucher in settlement of the claim. Also, if an insurer reimburses the insured for costs incurred, or to be incurred, then Division 78 may apply to allow a decreasing adjustment.

Background

Settlement of claims

10. Generally, there are a number of options available to an insurer in settling a claim under a general insurance policy. For example, if an item is damaged, lost or stolen an insurer may:

- replace or repair it;
- reimburse the insured with an agreed monetary value for replacing or repairing it;
- pay a supplier to repair it or supply a replacement item; or
- provide the insured with a voucher to replace the item.

11. Accordingly, in the case of a motor vehicle accident claim, the insurer may pay to the insured an agreed amount, agree to pay the

repairer for the cost of repairs or provide the insured with a replacement vehicle.

12. Also, if a person is injured at work and makes a workers' compensation claim against the employer (and the employer's insurer accepts liability for the workplace injury), then the insurer may pay the person some appropriate benefits. The benefits paid for by the insurer may include payments for:

- medical costs for treatment of the injury (for example, the injured worker may be referred to a medical specialist for treatment);
- time off work;
- permanent impairment benefits;
- referral to the workers' compensation insurer's nominated medical provider for a report on his/her condition (including any travel costs);
- other health services (including those listed in section 38-10, such as physiotherapy and acupuncture);
- costs associated with reconsideration and review of entitlements (including legal costs for the insurer);
- aids and appliances, home help and attendant care;
- travel and associated costs (for example accommodation); and
- participation in workplace rehabilitation programs.

Division 11

13. Under Division 11, a registered entity is entitled to input tax credits that arise on creditable acquisitions. The amount of the input tax credit is equal to the amount of the GST included in the price paid or payable for the supply. However, the amount of input tax credit is reduced if the acquisition is only partly for a creditable purpose or the entity only provides part of the consideration for the acquisition. Note that section 11-10 provides that an acquisition 'is any form of acquisition whatsoever'.

Division 78

14. Section 78-20 provides that the payment of money, and/or the making of a supply, by an insurer in settlement of a claim is not treated as consideration for an acquisition by the insurer. Accordingly, the insurer is not entitled to an input tax credit for the

creditable acquisition that may otherwise arise under section 11-5 for the payment and/or the supply.

15. Furthermore, section 78-45 provides that the payment of money, and/or the making of a supply by an insurer in settlement of a claim, is not consideration for a supply by the entity insured or any other entity that was entitled to an input tax credit on the premium for the policy. That is, the insured does not have a GST liability for the consideration payable on the settlement.

Decreasing adjustment on settlements

16. Division 78 also provides for a decreasing adjustment for insurers in respect of such payments or supplies made in settlement of a claim. Certain conditions that are stated in section 78-10 have to be met for a decreasing adjustment to be available.

17. If there is no entitlement to claim a full input tax credit for premiums paid on the insurance policy, the insurer is entitled to a decreasing adjustment of $1/11^{th}$ of the settlement amount under subsection 78-15(1). On the other hand, if there is an entitlement to a full input tax credit for premiums paid, the insurer is not entitled to a decreasing adjustment under section 78-10.

18. If there is entitlement to only a partial input tax credit, the decreasing adjustment is less than $1/11^{th}$ of the settlement amount. The amount of the decreasing adjustment is determined by the extent of the entitlement to claim an input tax credit on the premiums under subsection 78-15(2).

Explanations

Creditable acquisitions

19. As noted in paragraph 13 above, section 11-10 provides that an acquisition is any form of acquisition whatsoever. Hence, the following discussion does not limit the scope of when an acquisition is made. It merely identifies some circumstances in which the Commissioner considers there to have been an acquisition. However, not every third party payment gives rise to an acquisition (see paragraphs 31 to 35).

20. The Commissioner's views about when 'you provide or are liable to provide, consideration for the supply' under paragraph 11-5(c) for creditable acquisitions, are supported by cases decided in another jurisdiction. The revenue consequences of one entity paying a second entity to make a supply to a third entity was considered by the House of Lords in the United Kingdom case of *Customs and Excise*

Commissioners v. Redrow Group plc [1999] 2 All ER 1; [1999] STC 161; [1999] 1 WLR 408 (*Redrow case*).

21. Redrow Group plc (Redrow) operated a sales incentive scheme that expedited sales of its homes to prospective purchasers. To expedite the sale, Redrow selected the estate agent, instructed the agent to value the existing home and handle the sale. Redrow monitored progress in the marketing of the property to maintain pressure on the agent to achieve a sale. As an incentive to the prospective purchaser, Redrow entered into an agreement with both the agent and the prospective purchaser that it pay the estate agent's fee plus VAT if the prospective purchaser completed the purchase of a home from Redrow. The instructions to the agent could not be changed without Redrow's agreement. On being recruited into the scheme, the agent was advised by Redrow to enter into a separate agreement in the normal terms with the prospective purchaser.

22. Lord Millett stated at All ER page 11; STC page 171; WLR page 418 that:

> 'The solution lies in two features of the tax to which I have already referred. The first is that anything done for a consideration which is not a supply of goods constitutes a supply of services. This makes it unnecessary to define the services in question. The second is that unless the services are rendered for a consideration they cannot constitute the subject matter of a supply. In fact, of course, there can be no question of deducting input tax unless Redrow has incurred a liability to pay it as part of the consideration payable by him for a supply of goods or services.
>
> In my opinion, these two factors compel the conclusion that one should start with the taxpayer's claim to deduct tax. He must identify the payment of which the tax to be deducted formed part; if the goods or services are to be paid for by someone else he has no claim to deduction. Once the taxpayer has identified the payment the question to be asked is: did he obtain anything - anything at all - used or to be used for the purposes of his business in return for that payment? This will normally consist of the supply of goods or services to the taxpayer. But it may equally well consist of the right to have goods delivered or services rendered to a third party. The grant of such a right is itself a supply of services.'

23. Lord Millett continued and provided the following tests:

> 'In the present case, Redrow did not merely derive a benefit from the services which the agents supplied to the householders and for which it paid. It chose the agents and instructed them. In return for the payment of their fees it obtained a contractual right to have the householders' homes

> valued and marketed, to monitor the agents' performance and maintain pressure for a quick sale, and to override any alteration in the agents' instructions which the householders might be minded to give. Everything which the agents did was done at Redrow's request and in accordance with its instructions and, in the events which happened, at its expense. The doing of those acts constituted a supply of services to Redrow.'

24. The key facts from the case are that Redrow chose the estate agents, instructed them and had a contractual relationship with them. These factors meant that Redrow was supplied a right to have a another entity supplied a service.

25. The issue of one entity paying a second entity to make a supply to a third entity was also considered in the United Kingdom case of *British Airways plc* 16446 [2000] BVC 2207. In a second decision of the VAT Tribunal (after the matter was heard by the High Court and referred back to the VAT Tribunal), it decided that the input tax should be allowed to British Airways which payed a second entity to supply its passengers with food and drink.

26. British Airways had an arrangement whereby airside food outlets provided food to passengers of delayed flights. British Airways did not itself provide anything other than in-flight catering. When there was a delay, an announcement was made to passengers that vouchers of a specified amount were available and could be used at airside restaurants. Vouchers were not always available, in which case passengers could use their boarding pass in place of a voucher.

27. As part of the arrangement, there was a memorandum between British Airways and the restaurants. Passengers were able to pay more than the amount allowed by the voucher – they could use their own money for any amounts over the value of the voucher.

28. When the VAT Tribunal in British Airways reconsidered the facts of the case in light of the Redrow decision, it posed itself the following question at paragraph 9 of its decision:

> 'Did the Appellant in the instant case obtain anything - anything at all? Yes - it obtained the right to have its delayed passengers fed at its expense - and that was clearly for the purpose of its business. That is enough to enable it to succeed.'

29. Also, at paragraph 11 of the decision, the Tribunal stated:

> 'It is not every third party payment which can give rise to an input deduction as a result of *Redrow*. There must have been a prior agreement that the goods or services should be supplied

> to a third party, and that agreement - those supplies - must be for the purpose of the payer's business. Once those conditions have been satisfied, it is entirely in accordance with the basic principles of VAT - in fact, fiscal neutrality demands - that the input tax should be allowed.'

30. From the cases above, it can be seen that one entity can supply to a second entity the right to have goods (such as the food and drink in the *British Airways* case) or services (such as real estate services as in the *Redrow* case) supplied to a third entity.

31. For this to occur, the second entity must have:

- chosen the supplier;
- instructed the supplier about the supply of the goods, services or anything else to the third entity; and
- entered into a contractual relationship with the supplier for a right to have the supply performed, such contract providing that the goods, services or anything else be supplied to the third party, and is liable to pay for the supply.

32. Therefore, if an insurer chooses a supplier to provide goods to the insured as a result of a claim under the insurance policy, has a contract with the supplier for a right that provides that the goods are to be supplied to the third party, is obliged to pay for the supply under the contract to the insured and instructs the supplier about the supply, then the insurer makes an acquisition to which Division 11 applies. Accordingly, an input tax credit may be available to an insurer on this acquisition.

33. The contract between the insurer and the supplier of the goods, services or anything else has to be for the supply to the insurer of the right to have the goods, services or anything else supplied to the insured. An arrangement, whether or not contractual, between the insurer and the supplier merely to pay for any services supplied to the insured is not sufficient.

34. For example, XYZ Insurance Co. has an arrangement with medical practitioners, hospitals and ambulance services whereby they forward all invoices to it for payment rather than to the patient. The arrangement is merely for the payment of the invoices and is entered into to save administrative costs. There is no contract for the supply of the right to the insurer for services to be supplied to the clients of the insurer.

35. As the insurer has not entered into a contract for the supply of a right to have goods, services or anything else supplied to the patient, the medical practitioners, hospitals and ambulance services are only making a supply to the patient. Therefore, unless there is an

acquisition by the insurer, Division 11 will not apply to the payment from the insurer to the medical practitioners, hospitals and ambulance services.

Repairers

36. The insured may take a damaged car to a motor vehicle repairer and leave the claim form with the repairer for it to be provided to the insurer. Alternatively, the claim form may have been submitted directly to the insurer.

37. The repairer will provide and submit to the insurer a quotation for the repairs. The quotation will be assessed by the insurer and any adjustments made in respect of the items to be repaired (for example, excluding damage not caused during the relevant motor accident). Also, there may be changes to the price and, in some cases, the method and approach to complete the repair.

38. The insurer may then authorise the repairer to undertake the repairs. In the case of third party claims, where the claim is made directly to the insurer of the 'at-fault' vehicle, the authority of the third party will also be obtained.

39. On completion of the repairs, the insured may pay to the repairer the excess and any amount referrable to damage not covered under the policy. The repairer may then release the vehicle to the insured and submit an invoice to the insurer. In some cases, the insured will pay the excess to the insurer rather than the repairer. Accordingly, the repairer (after receiving an authority from the insurer) will repair the motor vehicle for a third party for a consideration to be paid by the insurer.

40. In our view, the transaction as described above between the repairer and the insurer is no different than that between Redrow and the real estate agents, and that between British Airways and the food outlets. It is relevant to look at whether something is being done on behalf of the insurer for which the insurer has paid consideration that has been subject to GST. The fact that someone else (the insured) has also received a supply of the repair services is not relevant. However, there must have been a prior agreement between the insurer and the repairer that the repair services should be supplied to the insured and that the insurer is liable to pay for the supply provided by the repairer.

41. Therefore, an insurer may be entitled to an input tax credit (under Division 11 of the Act) for payments made to a repairer in respect of the repairs made to the motor vehicle for the insured if the insurer:

- chooses the repairer;
- instructs the repairer;

- has a contractual relationship with the repairer for a right to have the supply performed, such contract providing that the goods, services or anything else be supplied to the insured, and is liable to pay for the supply of the goods/services to the insured; and
- holds a tax invoice for the amount payable.

Approved repairers

42. An insurer is regarded as having chosen the repairer if the insured has to take the vehicle to a repairer that is selected from a list of approved repairers the insurer provides to the insured. This is because it is considered that the insurer has already chosen the repairers on the list. The insurer is also considered to have chosen the repairer where, although the insured initially chooses the repairer, the insurer has the ability to determine whether that repairer will or will not be used.

43. The insurer is considered to have instructed the repairer if the insurer has to authorise the repairs before they can be made. As discussed above, insurers generally are able to assess the repairer's quote and make adjustments in respect of the quote, and in some cases the method and approach to the repair.

44. Whether or not there is a contractual relationship between the insurer and the repairer depends on the particular circumstances of each case.

45. If the insured pays an excess to the repairer, the insured is also entitled to an input tax credit, providing it is registered for GST purposes and it has acquired those repair services for a purpose of its enterprise (for example, the vehicle in question is a business vehicle). The excess is consideration for the supply of the repair services to the insured. This is distinct from the payment by the insurer, which is consideration for the supply to the insurer of the right to have the repair services supplied to the insured.[1]

[1] The issue of whether there are two supplies made by the repairer – one of repair services to the insured and one to the insurer of the right to have those repair services performed for the insured, is also supported by the case law of another jurisdiction where the contractual situation between the three parties has been considered. See, for example, the United Kingdom case of *Brown & Davis Ltd v. Galbraith* [1972] WLR 997, where there were two contracts – 'one between the repairers and the insurance company, and one between the repairers and the owner' of the vehicle (Buckley LJ at page 1006). The latter was a contract for the repair services to be done with reasonable skill and within a reasonable time.

Example 1

46. Ivano has a motor vehicle policy with XYZ Insurance Co. The cost of the repairs, as agreed by Sekul's Smash Repairs and XYZ Insurance Co, is $5 500. This is the GST inclusive price. The transaction between Sekul's Smash Repairs and XYZ Insurance Co. meets the requirements of paragraph 6.

47. Under the insurance policy, XYZ Insurance Co. is required to pay for the cost of the repairs net of any excess amount payable by the insured. Under the insurance policy, the total excess payable is $110. Therefore, XYZ Insurance Co. pays Sekul's Smash Repairs $5 390 ($5 500 less $110). Sekul's Smash Repairs must also issue a tax invoice to Ivano (if requested) for the amount of excess of $110 paid by him.

48. Providing the requirements under Division 11 are met, both XYZ Insurance Co. and Ivano may be entitled to an input tax credit to the extent that they each pay for a supply from Sekul Smash Repairs.

Reinstatement of goods

49. Reinstatement may be made where the insurer provides the insured with vouchers, replaces the goods by acquiring them and supplying them to the insured, or pays a supplier for goods to be supplied to the insured.

Vouchers

50. As part of a settlement, an insurer may provide an insured with a voucher for the supply of replacement items. For example, the insurer may provide the insured with a voucher to replace a stolen video cassette recorder. The supply of the voucher by a retailer to the insurer is not a taxable supply if on redemption the holder of the voucher is entitled to supplies up to a monetary value stated on the voucher (see paragraph 100-5(1)(a)). Also, the consideration provided for the voucher must not exceed that monetary value (see paragraph 100-5(1)(b)).

51. Instead, GST is payable when the insured redeems the voucher for the replacement video cassette recorder. Therefore, the insurer is not entitled to an input tax credit as the supply of the voucher is not a taxable supply.

52. When the insurer supplies the voucher to an insured as settlement for the claim, that supply is not a taxable supply according to section 100-5. The insurer may be entitled to a decreasing adjustment on the supply of the voucher in settlement of the claim.

53. This result occurs as the method statement in subsection 78-15(4) sets out how to work out the settlement amount. It states that the GST inclusive market value of supplies (other than supplies that would have been taxable supplies but for section 78-25) made in settlement of a claim, are included in working out the decreasing adjustment. As the supply of the voucher is not a taxable supply because of section 100-5, section 78-25 does not apply to it. The value of the supply is therefore included in working out the decreasing adjustment.

Example 2

54. Mark's house is damaged by fire. XYZ Insurance Co. buys a $1 500 voucher from Ivano's Department Store and supplies that voucher to Mark. The voucher can be used to buy up to $1 500 worth of goods that are sold by Ivano's Department Store.

55. GST is not payable when the voucher is purchased from Ivano's Department Store. GST is payable by Ivano's Department Store when the voucher is redeemed. XYZ Insurance Co. is not entitled to an input tax credit but may be entitled to a decreasing adjustment.

56. Where an insurer provides a voucher to an insured as part of a settlement of an insurance claim and the voucher is for goods or services (rather than for monetary value), then the supply of the voucher to the insurer is a taxable supply. The insurer is entitled to an input tax credit on the acquisition of the voucher. The insurer is not entitled to a decreasing adjustment on the supply of the voucher to the insured in settlement of the claim.

Example 3

57. XYZ Insurance Co. purchases a voucher for a new video cassette recorder from Ivano's Department Store. XYZ Insurance Co. pays $1500 for the voucher. There is no monetary amount shown on the voucher. XYZ Insurance is entitled to an input tax credit on the purchase of the voucher.

Acquisition of goods

58. Under a general insurance policy, goods that have been damaged or stolen may be replaced. Where the goods are replaced, the insurer may purchase the goods (so that title passes to the insurer) and then may supply them to the insured. As the insurer acquires the goods, the insurer may be entitled to an input tax credit under Division 11.

Example 4

59. Michael has his video cassette recorder stolen. Michael is not registered for GST. His insurance company buys a new video cassette recorder for $550 and supplies it to Michael in settlement of the claim. The insurance company is entitled to an input tax credit on the purchase of the video recorder of 1/11th of the price, that is $50.

60. When it supplies the video cassette recorder to Michael it is not making a taxable supply. Therefore, GST is not payable. The insurance company is not entitled to any decreasing adjustment.

Acquisition of right to supply

61. There may be instances where an insurer will not acquire the goods but simply acquires a right for goods to be supplied to the insured. Accordingly, the insurer pays the supplier for certain goods to be supplied to the insured.

62. Providing the conditions stated in paragraph 6 are satisfied, there is an acquisition under Division 11 by the insurer and it may be entitled to an input tax credit.

Example 5

63. From Example 4, if the insurer does not purchase the video cassette recorder but pays $550 to the supplier for it to supply the video cassette recorder to the insured, then the insurer may be entitled to an input tax credit for the payment made to the supplier of 1/11th of the price (that is, $50). The entitlement arises where the insurer chooses the supplier, instructs the supplier and has a contractual relationship with the supplier for a right in relation to that supply (see paragraph 6).

Cash settlements

64. If, in Example 5, the insurer pays Michael $550 in money rather than by a voucher to purchase the video cassette recorder, then it is also not entitled to an input tax credit. However, because Michael is not registered and has no input tax credits on the premiums of the policy, the insurer may be entitled to a decreasing adjustment of 1/11th of the settlement amount, that is $50.

Workers' compensation

65. Payments towards or under a **workers' compensation** scheme (and any settlement under such a scheme) are treated in the same manner as payments for an insurance policy (and a settlement of a

claim under an insurance policy) if the cover offered by the scheme is within the definition of an 'insurance policy' in section 195-1 or listed in Schedule 10 of A New Tax System (Goods and Services Tax) Regulations 1999 as a 'statutory compensation scheme'.

66. If an employee is injured at work, makes a compensation claim against the employer and the employer's workers' compensation insurer accepts liability for the workplace injury, then the insurer may pay for certain goods and services to be provided to the employee. The same issues in relation to the payment of similar benefits as for other general insurance settlements arise. Whether the payment is subject to Division 11 or Division 78 depends on the same tests as stated in paragraphs 6. Various examples are discussed further below.

Example 6 - Medical costs

67. Sam's employee Nick is injured at work. Sam is registered for GST and claims a full input tax credit for his workers' compensation insurance premium. Nick receives treatment at the local doctor's surgery for his injury and forwards the bill to Sam's insurance company. After receiving the claim (and accepting liability), the insurance company reimburses Nick for the doctor's bill.

68. The insurer did not choose the doctor, instruct the doctor or have a contractual relationship with the doctor for a right in relation to the supply of medical services to Nick. Therefore, the insurer has not made an acquisition. The payment is made as a reimbursement in settlement of an insurance claim. However, the insurance company is also not entitled to a decreasing adjustment, under Division 78, as Sam is entitled to a full input tax credit on the workers' compensation insurance premium.

Example 7 - Travel costs

69. In attending the local doctor's surgery, Nick incurs travel fares that are GST inclusive. Nick seeks and receives a reimbursement from the workers' compensation insurer for Sam of the travel fares. The payment is in settlement of an insurance claim.

70. Division 11 does not apply to the reimbursement made to Nick if the insurer does not choose the supplier (taxi, train or bus etc.), does not instruct the supplier and does not have any contractual relationship with the supplier. Therefore, the reimbursement is considered under Division 78.

71. However, the insurer is not entitled to a decreasing adjustment because Nick's employer is entitled to a full input tax credit for his workers' compensation insurance premium.

Example 8 - Other medical services

72. Nick is required to have physiotherapy treatment. Nick is instructed by the workers' compensation insurer to attend a nominated physiotherapist of the workers' compensation insurer. The insurer has a contract with the physiotherapist for a right to have the supply of services to Nick. The insurer also instructs the physiotherapist of the services to be provided to Nick. All of the services provided are for the 'appropriate treatment' of Nick. The physiotherapist issues to the insurer a tax invoice for the treatment given to Nick.

73. The physiotherapist is making a supply to the insurer of a right to have health services supplied to Nick. This supply is not GST-free under section 38-10 because the supply is not for the 'appropriate treatment of the recipient of the supply' (the insurer). Therefore, if the physiotherapist is registered or required to be registered, and the other requirements of section 9-5 are met, then the supply will be a taxable supply.

74. The insurer chose and engaged the services of the physiotherapist, gave instructions about the services to be provided to Nick and had the necessary contractual relationship with the physiotherapist. Accordingly, Division 11 entitles the insurer to an input tax credit in respect of any fees paid to the physiotherapist. Division 78 does not apply.

Example 9 - Medical specialist services

75. Due to the time Nick has had off work, he is referred to the nominated medical specialist of the workers' compensation insurer for a report on his condition. As the insurer chose the medical specialist, gave instructions to the medical specialist for a report on his condition and had a contractual relationship with the specialist for a right in relation to the supply, the insurer may be entitled to an input tax credit in respect of any fees paid to the specialist.

76. The report by the specialist is not GST-free under section 38-7. Therefore, the supply to the insurer of the report is not a GST-free supply. In respect of the travel expenses incurred by Nick to attend the medical specialist for the report, see Example 7.

Example 10 - Rehabilitation

77. As part of Nick's therapy, he is required to attend a fitness centre. The workers' compensation insurer provides Nick with a list of fitness centres that he can attend. The insurer has a contractual arrangement with the fitness centres for the supply of the right to have services supplied to its clients, such as Nick.

78. Therefore, the insurer is entitled to an input tax credit in respect of payments made to the fitness centre under Division 11. However, if Nick was given the option to attend any fitness centre of his choice and the insurer did not have a contractual agreement with the fitness centre, then any payment by the insurer to the fitness centre would be a payment in settlement of a claim. Also, the insurer would not be entitled to a decreasing adjustment under Division 78 because Nick's employer would be entitled to a full input tax credit for his workers' compensation premium.

Example 11 – Masseuse services

79. As part of Nick's therapy, he is required to attend a masseuse. The workers' compensation insurer informs Nick that it will pay for the massage services if Nick attends a masseuse mentioned on the insurer's list of approved masseuses. Under an arrangement that the insurer has with those masseuses, they each forward an invoice to the insurer for payment. The arrangement is not for a supply of a right to the insurer to have services performed for workers' compensation patients.

80. The supply of the massage services by the masseuse to Nick is not GST-free. The arrangement between the insurer and the masseuse is for administration purposes only and is not a contract for a right to the supply of that service to a third party. Therefore, Division 11 does not entitle the insurer to an input tax credit in respect of payments to the masseuse. Also, Division 78 does not give rise to a decreasing adjustment as the employer is entitled to a full input tax credit for its workers' compensation premium.

Example 12 - Legal costs

81. Following on from the above example, any legal expenses incurred by the workers' compensation insurer (for example, its own legal costs), is considered under Division 11, where it chooses its legal representatives and has entered into a contractual arrangement.

82. If, as part of the settlement with Nick, the workers' compensation insurer is ordered or agrees to pay for his legal costs, then the legal costs are part of the settlement and are considered under Division 78. However, the insurer is not entitled to a decreasing adjustment as Nick's employer is entitled to a full input tax credit for its workers' compensation insurance premium.

Compulsory third party motor vehicle insurance

83. Payments towards or under a compulsory third party motor vehicle scheme (and any settlements under such a scheme) are treated in the same manner as payments for an insurance policy (and a settlement of a claim under an insurance policy). However, the cover offered by the scheme must be within the definition of an 'insurance policy' in section 195-1 or listed in Schedule 10 of A New Tax System (Good and Services Tax) Regulations 1999 as a 'statutory compensation scheme'.

84. If a third party (who has sustained personal injuries or damage to their property during a motor vehicle accident) makes a compensation claim against the compulsory third party motor vehicle insurer and the insurer accepts liability, then the insurer may provide for certain goods, services or anything else to be supplied to that third party. The same issues stated in this Ruling for general insurance settlements arise, about whether Division 11 or Division 78 apply to a payment or a supply.

85. However, under section 23 of the *A New Tax System (Goods and Services Tax Transition) Act 1999*, the insured entity is not entitled to claim an input tax credit for premiums paid before 1 July 2003. Therefore, the insurer may be entitled to a full decreasing adjustment on all settlements made in relation to those premiums.

Example 13

86. While stopping at a set of traffic lights, Scott's car is hit by David's car. Scott sustains severe whip-lash and is taken to his local doctor's surgery for treatment. David is not registered for GST and is not entitled to claim any input tax credit for his compulsory third party motor vehicle insurance premiums. After paying the doctor, Scott seeks and receives reimbursement from David's compulsory third party motor vehicle insurer for the fees paid to the doctor.

87. As the insurer did not have a contract with the doctor for the supply of services to Scott, David's compulsory third party motor vehicle insurer is not entitled to an input tax credit under Division 11 for the reimbursement to Scott. However, the insurer is entitled to a decreasing adjustment under Division 78 as David is not registered and therefore never entitled to an input tax credit on the insurance premiums paid before, on or after 1 July 2003.

Alternative views

Vouchers

88. The view was put to the Commissioner that a voucher is distinguishable from a letter of authorisation, which is a document provided by an insurer authorising or instructing a retailer or wholesaler to supply goods to an insured on the presentation of the letter up to a stated value or of a particular type. It was submitted that a letter of authorisation is not a voucher to which Division 100 applies.

89. However, section 100-25 defines a voucher as 'any voucher, token, stamp, coupon or similar article the redemption of which in accordance with its terms entitles the holder to receive supplies in accordance with its terms'. Therefore, as the presentation of a letter of authorisation entitles the insured to receive goods up to a certain value, such a letter of authorisation is a voucher according to the above definition.

Definitions

Indemnity

90. An undertaking to compensate for loss, damage or expense, as in the protection provided by insurance. The measure for the payment is the measure of loss sustained, and the insured cannot recover more than the actual loss.

Insured

91. The party receiving insurance protection (against the risk of loss of an asset or the incurrence of a liability to a third party as a result of negligence or accident).

Insurer

92. The party providing insurance protection (against the risk of loss of an asset by an insured party or the incurrence of a liability by the insured party to a third party as result of negligence or accident).

Insurance

93. The contractual relationship of **indemnity** that exists between insurer and insured.

Workers' Compensation

94. Compulsory insurance cover to be taken out by all employers, except for self-insured employers, according to legislative schemes to cover compensation to employees suffering injury or disease in the course of or arising out of employment.

Detailed contents list

95. Below is a detailed content list for this Ruling:

Commissioner of Taxation
1 November 2000

Previous draft:
Previously released as GSTR 2000/D19

Subject references:
- acquisition of goods
- decreasing adjustment
- insured
- insurer
- repairers
- settlement of claim
- vouchers
- workers compensation

Legislative references:
- ANTS(GST)A99 9-5
- ANTS(GST)A99 Div 11
- ANTS(GST)A99 11-5
- ANTS(GST)A99 11-5(c)
- ANTS(GST)A99 11-10
- ANTS(GST)A99 38-7
- ANTS(GST)A99 38-10
- ANTS(GST)A99 Div 78
- ANTS(GST)A99 78-10
- ANTS(GST)A99 78-15(1)
- ANTS(GST)A99 78-15(2)
- ANTS(GST)A99 78-15(4)
- ANTS(GST)A99 78-20
- ANTS(GST)A99 78-25
- ANTS(GST)A99 78-45
- ANTS(GST)A99 Div 100
- ANTS(GST)A99 100-5
- ANTS(GST)A99 100-5(1)(a)
- ANTS(GST)A99 100-5(1)(b)
- ANTS(GST)A99 100-25

- ANTS(GST)A99 195-1
- ANTS(GST)R99 Sch 10

Case references:
- Customs and Excise Commissioners v. Redrow Group plc House of Lords [1999] 2 All ER 13; [1999] STC 161; [1999] 1 WLR 408;
- Brown & Davis Ltd v. Galbraith [1972] 1 WLR 997;
- British Airways plc 16446 [2000] BVC 2207;

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