



## ***Section 38-10 Other health services -***

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## Health Industry Partnership

### Section 38-10 Other health services

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### Section 38-10 Other health services

1. For section 38-10 to apply the service:
  - i. must be of a kind specified in the table at section 38-10(1)(c)
  - ii. the supplier must be a \*recognised professional (as defined in section 195-1), in relation to the supply of services of that kind, and
  - iii. the supply must be generally accepted in the relevant profession as being necessary for the appropriate treatment of the \*recipient of the supply (as defined in section 195-1).
2. Each of the above elements will be discussed separately and in more detail in the following paragraphs.
3. It should also be noted that certain supplies that would be addressed under section 38-10 will have a Medicare benefit payable in relation to the supply (for example optometry) and will be GST-free under section 38-7 due to the first limb of the definition of medical service.

#### ***Meaning of 'service of a kind specified in the table'***

4. To qualify the service must be the provision of one of those actual services listed and not just something similar to one of the services. Support for this argument is found in the Table where it lists both 'Audiology' and 'Audiometry' at Item 3. If it were intended that it was sufficient that the supply of a service be similar to one mentioned in the table, one of the terms 'Audiology' or 'Audiometry' would be superfluous. Similarly, further down the table there is the inclusion of 'traditional Chinese herbal medicine' under 'Herbal medicine' in Item 8 of the table. One of these terms would be superfluous if the list was not strictly interpreted as the actual service listed in the table.

***Meaning of ‘the supplier is a recognised professional’***

5. Section 38-10(1)(b) requires the supplier of the service of the kind specified in the Table to be a \*recognised professional. \*Recognised professional is defined in section 195-1 of the GST Act as:

... a person is a \*recognised professional, in relation to the supply of a service of a kind specified in the table in sub-section 38-10(1), if:

- (a) the service is supplied in a State or Territory in which the person has a permission or approval, or is registered, under a \*State law or a \*Territory law prohibiting the supply of services of that kind without such permission, approval or registration, or
- (b) the service is supplied in a State or Territory in which there is no State law or Territory law requiring such permission, approval or registration, and the person is a member of a professional association that has uniform national registration requirements relating to the supply of services of that kind, or
- (c) in the case of services covered by Item 3 in the table - the service is supplied by an accredited service provider within the meaning of section 4 of the *Hearing Services Administration Act 1997*.

6. In relation to paragraph (a) above, many State and Territory laws regulate the registration of persons for the services listed in the Table. It is considered that the word ‘prohibiting’ includes a law that regulates the holding out of the provision of certain services. Such restrictions will be sufficient for the purposes of paragraph (a) of the definition of ‘\*recognised professional’ and to constitute an act ‘prohibiting the supply’.

7. Where a person other than the recognised professional provides a component of the supply, for section 38-10 that component will not be GST-free unless that person is also a recognised professional, or the component of the supply is directly supervised by the recognised professional or is GST-free under another provision. It is considered that a person will be directly supervised where the \*recognised professional:

- attends the patient at the commencement of the treatment and at the subsequent commencement of each new treatment, and
- is readily available for the whole of the time that the assistant is working with the patient, and
- that the \*recognised professional be available to take appropriate action in the case of an emergency, and
- determines all of the appropriate treatment to be provided by the assisting person, and
- can satisfactorily prove that they monitor the services of the unqualified staff.

***Meaning of ‘generally be accepted in the profession associated with supplying services of that kind as being necessary for the appropriate treatment of the \*recipient of the supply’.***

8. The third requirement is that the service must be generally accepted in the professions associated with supplying services of that kind as being necessary for the appropriate treatment of the recipient of the supply. ‘Appropriate treatment’ is not defined in the GST Act.

9. In some circumstances, the ‘\*recipient of the supply’ is not the patient of the professional but is a third party such as an employer. Also refer to ‘To whom is the supply made (who is the recipient of the supply)?’ in Issue 3 for detailed discussion of this issue.

10. It is considered that ‘appropriate treatment’ will be established where the recognised professional assesses the recipient’s state of health and determines a process to pursue, in an attempt to preserve, restore or improve the physical or psychological wellbeing of that recipient insofar as that \*recognised professional’s particular area of training allows and will include subsequent supplies for the determined process.

11. 'Appropriate treatment' includes the principles of preventative medicine. Such treatment must be generally accepted in the profession associated with supplying services of that kind, as being necessary. 'Appropriate treatment' will not include supplies undertaken for a third party, which does not encompass treatment.

12. An insurance company is a third party who may be the actual '\*recipient of the supply', where an assessment of a person is made for insurance purposes and there is no appropriate treatment involved so that such a supply will be taxable.

13. As can be seen from the above, the words 'appropriate treatment' are interpreted the same way for section 38-10(1)(c) as the term appears in the definition of '\*medical service' for section 38-7.