



Subrogation - imbalance between sections 78-35 and 78-40 -

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Insurance Industry Partnership

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Subrogation – imbalance between sections 78-35 and 78-40

Issue

1. Section 78-35 provides that a payment to an insurer in settlement of a claim made by an insurer in exercising its rights of subrogation is not to be treated as consideration for a taxable supply. As it is not consideration for a taxable supply, there is no taxable supply and therefore there cannot be an input tax credit available to the entity making the payment to the insurer. However, the effect of section 78-40 is to provide an increasing adjustment in the hands of the insurer in relation to that payment, effectively giving rise to a GST liability for the insurer. Is this imbalance a correct interpretation?

ATO view

2. Section 78-40 does provide an increasing adjustment where an insurer has had a decreasing adjustment under Division 78 and it recovers amounts in exercise of rights of subrogation.

3. Section 78-35 does have the effect that there is no input tax credit available to an entity making a payment to an insurer in settlement of a claim the insurer makes in exercise of its rights of subrogation.