



# ***Drugs and medicinal preparations -***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *29 November 2021*



## Pharmaceutical Health Forum

### Drugs and medicinal preparations

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If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

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#### Section 38-50 Drugs and medicinal preparations

##### *Explanation*

1. Section 38-50 of the GST Act outlines the circumstances in which the supply of a drug or medicinal preparation will be GST-free.

***Subsection 38-50(1) – a supply of a drug or medicinal preparation is GST-free if the supply is on prescription and:***

- a. under a State law or a Territory law in the State or Territory in which the supply takes place, supply of the drug or medicinal preparation is restricted, but may be supplied on prescription, or***
- b. the drug or medicinal preparation is a pharmaceutical benefit (within the meaning of Part VII of the National Health Act 1953)***

2. Paragraph 38-50(1)(a) covers drugs and medicines specified in Schedules 4 and 8 of the Standard for the Uniform Scheduling of Drugs and Poisons that are only available on prescription. Many of these products were formerly labelled 'S4' and 'S8' medications. As at 1 July 2000, it is compulsory to label these products as 'Prescription Medicine' and 'Controlled Drugs', respectively. These include such things as medication for arthritis or for the treatment of depression.

3. Paragraph 38-50(1)(b) covers Pharmaceutical Benefits Scheme drugs and medicines supplied on prescription as a pharmaceutical benefit within the meaning of Part V11 of the *National Health Act 1953*.

***Subsection 38-50(2) – a supply of a drug or medicinal preparation is GST-free if, under a State law or a Territory law in the State or Territory in which it is supplied, the supply of the drug or medicinal preparation to an individual for private or domestic use or consumption is restricted but may be made by:***

- a. a medical practitioner, dental practitioner, or pharmacist, or***
- b. any other person permitted by or under that law to do so***

4. This covers drugs and medicines that can only be supplied by a medical practitioner, dental practitioner or pharmacist. Many of these products were formerly labelled 'S2' and 'S3' medications. As at 1 July 2000, it is compulsory to label these products as 'Pharmacy Medicine' and 'Pharmacy Only Medicine', respectively. These products include pain relief products, antihistamines for seasonal hay fever, insulin, asthma inhalers, tinea creams, day and night flu tablets, and medicated cough and cold products.

***Subsection 38-50(3) – subsection 38-50(2) does not cover the supply of a drug or medicinal preparation of a kind specified in the regulations***

5. To date, no regulations have been released for the purposes of subsection 38-50(3).

***Subsection 38-50(4) – a supply of a drug, medicine or other pharmaceutical item is GST-free if the supply is on prescription and:***

- a. it is supplied as a pharmaceutical benefit (within the meaning of section 91 of the Veterans' Entitlements Act 1986), and***
- b. it is supplied under an approved scheme (within the meaning of that section)***

6. This covers Repatriation Pharmaceutical Benefits Scheme (RPBS) drugs, medicines and other pharmaceutical items supplied under an approved scheme and on prescription as a pharmaceutical benefit within the meaning of section 91 of the *Veterans' Entitlements Act 1986*.

***Subsection 38-50(4A) – a supply of a drug, medicine or other pharmaceutical item is GST-free if the supply is on prescription and:***

- a. it is supplied as a pharmaceutical benefit (within the meaning of section 5 of the Military Rehabilitation and Compensation Act 2004), and***
- b. it is supplied in accordance with a determination made under paragraph 286(1)(c) of that Act***

This covers RPBS drugs, medicines and other pharmaceutical items supplied in accordance with a determination made under paragraph 286(1)(c) of the *Military Rehabilitation and Compensation Act 2004* as a pharmaceutical benefit within the meaning of section 5 of that Act.

***Subsection 38-50(5) – a supply of a drug or medicinal preparation is GST-free if:***

- a. the drug or medicinal preparation is an analgesic that has a single active ingredient the supply of which as a drug or medicinal preparation would be GST-free under subsection (2) if it were supplied in a larger quantity, and***
- b. the drug or medicinal preparation is of a kind the supply of which is declared by the Health Minister to be GST-free, by determination in writing***

7. This subsection covers supplies of small packet analgesics containing aspirin or paracetamol and intended to be taken by mouth. Small packet analgesics are packets containing less than 25 tablets. For example, small packets of Panadol and Aspirin even where they are sold in supermarkets or general stores.

***Subsection 38-50(6) – a supply of a drug or medicinal preparation is GST-free if:***

- a. the drug or medicinal preparation is the subject of an approval under paragraph 19(1)(a) of the Therapeutic Goods Act 1989, and any conditions to which the approval is subject have been complied with, or***
- b. the drug or medicinal preparation is supplied under an authority under subsection 19(5) of the Act, and the supply is in accordance with any regulations made for the purposes of subsection 19(7) of that Act, or***
- c. the drug or medicinal preparation is exempted from the operation of Part 3 of that Act under regulation 12A of the Therapeutic Goods Regulations***

8. This subsection applies to supplies of drugs and medicinal preparations which are supplied under the Special Access Scheme. The Special Access Scheme allows new drugs and medicinal preparations, which have not yet been approved for supply in Australia, to be supplied to patients who have life-threatening or other serious illnesses.

***Subsection 38-50(7) – a supply of a drug or medicinal preparation is only GST-free if:***

- a. the drug or medicinal preparation is for human use consumption, and***
- b. the supply is to an individual for private or domestic use or consumption***

9. Therefore, supplies of drugs by a wholesaler to a pharmacist will be taxable.