


# ***GIR/Health-industry-Ch1 -***

 This cover sheet is provided for information only. It does not form part of *GIR/Health-industry-Ch1 -*



## Health Industry Partnership – issues register

This issues register, originally published on our main website, provides guidance on issues identified during past consultation with industry participants.

Issues in this register that are a public ruling can now be found in the *Public Rulings* section of this Legal Database.

Issues in this register that have not been labelled as public rulings, constitute written guidance. We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information on these issues and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we must still apply the law correctly. If that means you owe us money, we must ask you to pay it but we will not charge you a penalty. Also, if you acted reasonably and in good faith we will not charge you interest. If correcting the mistake means we owe you money, we will pay it to you. We will also pay you any interest you are entitled to.

If you feel that the guidance in this issues register does not fully cover your circumstances, or you are unsure how it applies to you, you can seek further assistance from us.

For GST, Luxury Car Tax and Wine Equalisation Tax purposes, from 1 July 2015, where the term 'Australia' is used in this document, it is referring to the 'indirect tax zone' as defined in subsection 195-1 of the GST Act.

## How this document should be used

This document is a list of major issues and subsidiary questions, which have been collated as a result of consultations with the Health sector. The document was then refined using input from the Health Consultative Committee. These discussions and consultations have been instrumental in the ATO undertaking a technical clearance process bearing in mind the intention of the policy for each major issue and outlining the ATO's position for each subsidiary question.

The issues raised cover a number of the sections in subdivision 38-B-Health of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). These sections include: 38-7 Medical services, 38-10 Other health services, 38-20 Hospital treatment, 38-45 Medical aids and appliances, 38-47 Other GST-free health goods. Other issues discuss GST general concepts and related questions.

This document does not cover section 38-38 which is about disability supports provided to National Disability Insurance Scheme (NDIS) participants. For information on this section see the fact sheet, [GST and the National Disability Insurance Scheme](#).

The format of the log contains an explanation of the relevant section followed by specific questions and answers. It should be noted that whilst health specific sections are addressed, the general provisions of the GST Act also need to be considered.

The ATO's position outlined in each subsidiary question is specific to that question. Each response should be considered as pertaining to the particular circumstances described in the question and should not be viewed as a generic position held by the ATO. Where organisations find that the question does not fit the unique circumstances as outlined then it is important that further clarification is sought from the ATO. This would best be done by writing to the ATO at:

**Australian Taxation Office**  
**PO Box 3524**  
**Albury NSW 2640**

There are also a number of issues, which will require the publication of separate rulings. As these rulings become available they will be published on the ATO's website [ato.gov.au](http://ato.gov.au)

Unless otherwise stated, all references to sections herein are references to sections of the *A New Tax System (Goods and Services Tax) Act 1999*.

**Note:** The asterisks, which appear in this document, identify that the following word or words are defined terms within the GST Act.

<a href="#">Issue 1</a>	<b>Medical services</b>
<a href="#">Issue 2</a>	<b>Other health services</b>
<a href="#">Issue 3</a>	<b>Hospital treatment</b>
<a href="#">Issue 4</a>	<b>Medical aids and appliances</b>
<a href="#">Issue 5</a>	<b>Other GST-free goods</b>
<a href="#">Issue 6</a>	<b>Private health insurance and ambulance subscriptions</b>
<a href="#">Issue 7</a>	<b>General concepts from <i>A New Tax System (Goods and Services Tax) Act 1999</i></b>

# Issue 1 – Medical services

(a) added, (u) updated, (w) withdrawn

Date	Issue
21/06/00 (a) 26/09/00 (u) 22/06/05 (u)	1.a '*Medical services'
21/06/00 (a) 26/09/00 (u)	1.a.1. What is the GST position of the provision of medico-legal reports or opinions (including witness evidence) for use in litigation or otherwise? Does the GST position vary if the provision of the medico-legal report or opinion is provided directly to a patient for use by a patient, or if provided to a third party for their use in legal proceedings?
21/06/00 (a) 26/09/00 (u)	1.a.2. What is the GST status of reports prepared by medical practitioners for their patients to be used by their patients for gaining vocational qualifications?
26/09/00 (a)	1.a.3. Is a medical examination of a patient for the purpose of determining the fitness of that patient to undertake an activity such as flying or diving taxable? In this case the patient has not decided whether or not to undertake the activity – the outcome of the medical examination will be used by the patient to determine whether to pursue the activity further or not. The patient pays for the examination (that is no Medicare rebate is paid)
26/09/00 (a)	1.a.4. Is GST payable for an examination and report of fitness (where the medical practitioner completes a pro-forma which has been supplied by the regulatory authority for a private pilot's licence (not vocationally related)? The patient pays for the examination
21/06/00 (a)	1.a.5. At what point does a new procedure become 'generally accepted' in the definition of '*medical service' in section 195-1? Is it at the time of publication in a reputed medical journal, when recommended by the relevant Australasian medical college or when adopted by MSAC for incorporation in the Medicare Benefit Schedule?
21/06/00 (a) 22/06/05 (u) 01/08/12 (u)	1.a.6. What is the GST position where the provision of actual treatment to a patient is paid for by a third party?
21/06/00 (a) 26/09/00 (u)	1.a.7. What is the GST status of medical services provided in Australia to non-Australian patients?
21/06/00 (a) 26/09/00 (u)	1.a.8. Is the gap between the schedule fee and the actual fee subject to GST?
21/06/00 (a) 26/09/00 (u)	1.a.9. Who is the recipient of a supply of diagnostic imaging (including x-rays) and pathology services?
21/06/00 (a) 26/09/00 (u)	1.a.10. Will pathology tests and x-rays, for which a Medicare benefit is not payable, be subject to GST?
21/06/00 (a) 26/09/00 (u)	1.a.11. Are massage services GST-free where a medical practitioner has referred the client?
21/06/00 (a) 26/09/00 (u) 29/11/04 (w)	1.a.12. What is the GST status of Infection Control where an 'approved pathology practitioner' performs tests on behalf of an employer hospital in respect of an employee (for example needle stick injuries of an employee)?
21/06/00 (a) 21/02/06 (u) 01/08/12 (u) 25/06/13 (u)	1.a.13. What is the GST status of the provision of services by a medical practitioner (for example visiting medical officer) to a hospital patient?

Date	Issue
21/06/00 (a) 26/09/00 (u)	1.a.14. Where a doctor bulk bills for a medical service and charges the patient an Administration Fee, what is the GST status of the charge for the administration fee?
21/06/00 (a) 26/09/00 (u)	1.a.15. The Aesthetic Society of Plastic and Reconstructive Surgery has a register for breast implants. Clients who have received a breast implant are invited to be placed on to the register for a one-off fee of \$20. What is the GST status of the register fee?
21/06/00 (a) 26/09/00 (u)	1.a.16. What is the GST position in relation to checkups, immunisations, pap smears and breast-cancer screening?
21/06/00 (a) 26/09/00 (u)	1.a.17. What is the GST status where an 85-year-old person is seeking clearance from a doctor to enable them to drive a motor vehicle – there is a Medicare benefit available?
21/06/00 (a) 26/09/00 (u)	1.a.18. Where a doctor supplies a GST-free medical service and separately charges a facility fee, what is the GST status of the charge for the facility fee?
21/06/00 (a) 26/09/00 (u)	1.a.19. What is the GST position of an examination for the purpose of preparing a report, prepared by a medical practitioner for a third party (that is not the patient but entities such as insurance companies, workers compensation providers, prospective employers, Government Departments etc) where the report is paid for by, and completed, for the third party?
21/06/00 (a) 26/09/00 (u)	1.a.20. There is a range of Medicare Benefits Schedule items for the various procedures involved with IVF. What is the GST status of frozen gamete/embryo storage fees?
26/09/00 (a)	1.a.21. What is the GST status of the reversal of a sterilisation procedure – there is a rebate for sterilisation but not reversal
24/05/01 (a)	1.a.22. Is GST payable for an examination and report of fitness where the medical practitioner completes a pro-forma which has been supplied by a social organisation (such as a sporting club) in order for the participant to undertake a particular sporting or recreational activity? There is no regulatory requirement for a medical examination prior to the participant engaging in the proposed activity. The patient pays for the examination.
24/05/01 (a)	1.a.23. Where an interpreter is required for a GST-free medical or other health service, what is the GST status of the interpreting services?
11/07/01 (a) 22/06/05 (u) 01/08/12 (u)	1.a.24. A Medical Practitioner provides a service involving the testing of employees of a meatworks for Q-Fever and if necessary, vaccination of the employees. The employer company requires all employees to have the tests and if appropriate, the vaccination. A Medical Practitioner bills the company on a per patient/service basis. What is the GST status of the service? Would the GST status of the service be different if the service was provided at the sole option of the employee?
11/07/01 (a) 22/06/05 (u)	1.a.25 A surgeon, acting as agent for the patient, engages the services of a medical practitioner as a surgical assistant. After the operation has been performed, at the request of the surgical assistant, the surgeon bills the patient and includes both the surgeon's fee and the surgical assistant's fee. When payment is received, the surgeon passes on the surgical assistant's fee which was included in the invoice to the patient. The surgeon does not charge an administration fee

Date	Issue
	for handling the billing, etc. Does the transaction between the surgeon and the surgical assistant attract GST?
11/07/01 (a) 22/06/05 (u) 01/08/12 (u)	<p>1.a.26 What is the GST status of supplies made by non-employee medical practitioners under the following arrangements with the Australian Defence Force (ADF):</p> <p>Contract Health Practitioner (CHP): a medical practitioner is engaged to provide services and treatment to military personnel in a Defence establishment, normally where a uniformed medical practitioner is not available and a vacancy of up to 12 months exists within a Defence establishment</p> <p>Sessional Contract Practitioner (SCP): a medical practitioner is engaged for a series of agreed sessions to provide services not available in ADF Health Facilities, and</p> <p>Fee for Service (FFS): the ATO understands that no standard arrangement exists, medical practitioners being engaged at a local level for individual consultations at their usual fees.</p>
11/07/01 (a)	<p>1.a.27 Dr O G owns and operates a private obstetrics practice, undertaking procedures in both public and private hospitals. Dr O G will be away for the delivery of one of his pregnant patients who he has been attending to during the course of her pregnancy. Dr O G enters into an arrangement with Dr Standin whereby Dr Standin performs the delivery at the hospital for Dr O G's patient. Dr Standin bills the patient in Dr O G's name and receives 80% of the fee charged to the patient -the remaining 20% goes to Dr O G.</p> <p>Who is responsible for charging and collecting GST?</p> <p>What is (are) the criterion(a) used in determining the liability for collecting and charging GST as between Doctors O G and Standin?</p> <p>What further information (if any) is required in order to determine GST liability?</p> <p>Does the name of the biller have a material impact on the GST status?</p> <p>What should Doctors O G and Standin do to ensure that the GST liability is appropriately clarified to the satisfaction of the ATO?</p>
21/06/00 (a)	1.b. *Medical services' rendered for 'cosmetic reasons'
21/06/00 (a)	1.b.1. What is the GST status where a doctor provides an item number for a cosmetic procedure, however the Health Fund disallows the claim and states that it is cosmetic. Does the Health Funds determination of whether a procedure is cosmetic override the doctor's determination for GST purposes?
21/06/00 (a)	1.b.2. What is the GST status of anaesthetic services rendered to patients undergoing procedures for cosmetic reasons for which a Medicare benefit is not payable?
21/06/00 (a)	1.b.3. What is the GST treatment of medical photography (including x-rays) for cosmetic procedures?
21/06/00 (a)	1.c. Goods supplied 'in the course of supplying' a GST-free *medical service
21/06/00 (a) 21/02/06 (u) 24/06/13 (u)	1.c.1. During surgery a medical practitioner fits a patient with an appliance for the purpose of correcting an illness or disability. Will these goods supplied at that time be GST-free?

Date	Issue
21/06/00 (a)	1.c.2. Where an attendance takes place at a patients' premises, will any goods supplied at that time be GST-free?
21/06/00 (a)	1.c.3. What is the GST status of an appliance that is fitted to a person for the purpose of treatment of an illness or disability?
21/06/00 (a)	1.c.4. What is the GST status of the purchase of copies of x-rays and other medical imaging records by patients of a hospital?

## 1.a '\*Medical services'

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

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.

**Related questions** – The following questions explore what is within the concept of '\*medical service' as referred to in section 38-7. None of the following questions and answers should be read in isolation but rather as part of the whole of the information contained within this document.

### 1.a.1. What is the GST position of the provision of medico-legal reports or opinions (including witness evidence) for use in litigation or otherwise? Does the GST position vary if the provision of the medico-legal report or opinion is provided directly to a patient for use by a patient; or if provided to a third party for their use in legal proceedings?

For source of ATO view, refer to:

- [issue 1.a](#) of this issues register
- part 3 of [GSTR 2006/9](#) – *Goods and services tax: supplies*.

A service for which a Medicare benefit is payable, is GST-free under the first limb.

However a service for which a Medicare benefit is not payable, must be addressed under the second limb of the definition of 'medical service'. It is the ATO view that the provision of a medico-legal report or assistance as an expert medical witness in litigation will not be GST-free under the second limb of the definition of 'medical service'. They are not GST-free as neither involves 'appropriate treatment of the \*recipient of the supply'. This position does not change if the particular report is provided to the patient or directly or indirectly to a third party.

### 1.a.2. What is the GST status of reports prepared by medical practitioners for their patients to be used by their patients for gaining vocational qualifications?

For source of ATO view, refer to:

- [issue 1.a](#) of this issues register
- part 3 of [GSTR 2006/9](#) – *Goods and services tax: supplies*.

A service for which a Medicare benefit is payable, is GST-free under the first limb.

However if no Medicare benefit is payable, a medical examination for the purposes of preparing a report and the actual preparation of the report for the gaining of vocational qualifications will not be 'appropriate treatment' under the second limb. Such supplies are not GST-free under the second limb because they are not undertaken predominantly for the purpose of preserving, restoring or improving the physical or psychological wellbeing of the patient and are completed for furnishing to a third party.



**1.a.3. Is a medical examination of a patient for the purpose of determining the fitness of that patient to undertake an activity such as flying or diving taxable? In this case the patient has not decided whether or not to undertake the activity – the outcome of the medical examination will be used by the patient to determine whether to pursue the activity further or not. The patient pays for the examination (that is no Medicare rebate is paid).**

For source of ATO view, refer to:

- [issue 1.a](#) of this issues register
- paragraph 155 in part 3 of [GSTR 2006/9](#) – *Goods and services tax: supplies*.

If no Medicare benefit is payable, the first limb of the definition of 'medical service' in section 38-7 will not apply. Therefore it will only be GST-free if the second limb of the definition applies, that is, if it would be generally accepted in the medical profession as being necessary for the appropriate treatment of the recipient of the supply.

Therefore where a patient initiates a medical examination to determine whether their physical fitness is at a level safe enough for them to participate in an activity, the examination will be GST-free if generally accepted in the medical profession as being necessary for the appropriate treatment of the recipient of the supply.

In contrast, if a medical examination is undertaken as a requirement of a regulatory authority or state or federal law, the examination as well as any subsequent report will be a taxable supply. In this situation, the medical examination is not considered to constitute appropriate treatment for the recipient of the supply.

**1.a.4. Is GST payable for an examination and report of fitness (where the medical practitioner completes a pro-forma which has been supplied by the regulatory authority for a private pilot's licence (not vocationally related)? The patient pays for the examination.**

For source of ATO view, refer to:

- [issue 1.a](#) of this issues register
- part 3 of [GSTR 2006/9](#) – *Goods and services tax: supplies*.

A medical examination and provision of a pro-forma report in relation to a private pilot's licence, will be a taxable supply where no Medicare benefit is payable.

In this situation, the examination and writing of the report does not involve the 'appropriate treatment of the recipient of the supply'. Accordingly if a medical examination and report completion is undertaken as a requirement of the regulatory authority, the examination as well as the subsequent report will be a taxable supply.

**1.a.5. At what point does a new procedure become 'generally accepted' in the definition of '\*medical service' in section 195-1? Is it at the time of publication in a reputed medical journal, when recommended by the relevant Australasian medical college or when adopted by MSAC for incorporation in the Medicare Benefit Schedule?**

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

### **1.a.6. What is the GST position where the provision of actual treatment to a patient is paid for by a third party?**

For source of ATO view, refer to paragraph 177 onwards in part 3 of [GSTR 2006/9](#) – *Goods and services tax: supplies*.

Ordinarily, it does not matter that the patient (who is the recipient of the supply) does not provide the consideration for the supply (section 9-15(2)). Provided all the necessary elements of section 38-7 (especially the requirements in relation to ‘recipient of the supply’) are met it will be a GST-free supply.

The case of *Federal Commissioner of Taxation v Secretary to the Department of Transport (Vic)* [2010] FCAFC 84; 2101 ATC 20-196 illustrated that, in some cases, the payer may also be the recipient of a supply based upon the one set of activities. That is, depending on the arrangement or framework, the medical practitioner may make a supply to both the patient and the payer (Refer to Proposition 15 of GSTR 2006/9). A payer will be the recipient of a supply where, pursuant to an agreement between the payer and a medical practitioner, there is a binding obligation between the medical practitioner and the payer for the medical practitioner to provide the thing to the patient.

In the absence of a binding obligation, there may still be a supply by the medical practitioner to a payer when taking into account the factors listed in paragraph 221B of GSTR 2006/9.

From 1 July 2012, where the payer is an insurer, an operator of a statutory compensation scheme or compulsory third party scheme (scheme operator), or an Australian government agency, the supply to the payer will be GST-free to the extent that the underlying supply of the health service to the patient is a GST-free health supply under Subdivision 38-B (section 38-60). For administrative ease however, the parties may agree for the supply to the payer, or supplies of a kind that include that supply, not to be treated as GST-free (section 38-60(4)).

Where a payer is not an insurer, a scheme operator or an Australian government agency, the supply to the payer will generally not be a GST-free health supply.

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#### **Example**

*ABC Health Fund has a pre-existing arrangement with a medical practitioner for the supply of goods and services to settle claims made under their insurance policies.*

*The arrangement outlines what both parties need to do when the medical practitioner treats an ABC Health Fund member. Under the arrangement, the payment to the medical practitioner from ABC Health Fund is for the supply made by the medical practitioner to ABC Health Fund of supplying medical treatment to the ABC Health Fund member.*

*The supply by the medical practitioner to ABC Health Fund is GST-free to the extent that the supply of the medical treatment to the ABC Health Fund member is a GST-free supply under section 38-7.*

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### **1.a.7. What is the GST status of medical services provided in Australia to non-Australian patients?**

Non-interpretative – straight application of the law.

A \*medical service supplied in Australia to a non-Australian patient will be GST-free under the second limb, provided it is 'appropriate treatment' and the other elements of section 38-7 are met.

### **1.a.8. Is the gap between the schedule fee and the actual fee subject to GST?**

Non-interpretative – straight application of the law.

The gap will be GST-free if the service is one for which a Medicare benefit is payable. The fact that the amount charged is in excess of the schedule fee will not alter the GST-free status of the service.

### **1.a.9. Who is the recipient of a supply of diagnostic imaging (including x-rays) and pathology services?**

For source of ATO view, refer to the example in paragraph 118 and general principles in part 3 of [GSTR 2006/9](#) – *Goods and services tax: supplies*.

The provision of diagnostic imaging (including x-rays) and pathology examinations and consequent results will be GST-free where the elements of section 38-7 are satisfied. Where a Medicare benefit is payable, the supply will be GST-free. If a Medicare benefit is not payable the supply must be addressed under the second limb of the definition of 'medical service' in section 195-1 of the GST Act. The second limb of the definition of '\*medical service' requires the recipient to be identified. This question focuses on identifying the recipient of the supply in the question.

In relation to private patients and diagnostic imaging or pathology services, it is understood that referral requests are generally made by a medical practitioner and the results are provided to that practitioner for interpretation, or to the patient for interpretation by that practitioner. The x-ray or pathology is a separate supply provided to the patient (as the recipient of the supply) and is not provided on behalf of the referring practitioner. The patient can choose whether or not to attend for the x-ray or pathology service and, especially in relation to pathology, the patient can request that the results be provided to other medical practitioners for that patient's treatment.

However, where a supply of diagnostic imaging and pathology services is contracted out to another entity (for example contracted out by a hospital to a diagnostic imaging or pathology contractor), there will be two supplies. The first supply is from the contractor to the hospital and the second supply is from the hospital to the patient.

The nature of the supply by the contractor to the hospital is not 'appropriate treatment' of the '\*recipient of the supply' under section 38-7 because the recipient of the supply is the hospital. Accordingly, the supply will not be GST-free pursuant to section 38-7.

However, in relation to the supply by the hospital to the patient, the patient is the recipient and, provided that the other elements of section 38-7 are satisfied, the supply will be GST-free.

### **1.a.10. Will pathology tests and x-rays, for which a Medicare benefit is not payable, be subject to GST?**

Non-interpretative – straight application of the law.

The question raises the application of the second limb of the definition of a '\*medical service' in section 38-7. If the pathology test or x-ray is not for an excluded professional

service (for example in relation to tattoo removal) or rendered for cosmetic reasons, it will be GST-free.

The service must be performed by a ‘\*medical practitioner or \*approved pathology practitioner’ and be ‘generally accepted in the medical profession as being necessary for the appropriate treatment of the \*recipient of the supply’.

#### **1.a.11. Are massage services GST-free where a medical practitioner has referred the client?**

For source of ATO view, refer to:

- [issue 1.a](#) of this issues register
- part 3 of [GSTR 2006/9](#) – *Goods and services tax; supplies*.

This question raises the application of the second limb of the definition of a ‘\*medical service’ in section 38-7. The phrase ‘on behalf of’ in the second limb of the definition of ‘\*medical service’ means the performance of a component of the service provided by a practitioner that is not necessarily supervised by that practitioner. An example is where a laboratory technician assists in undertaking pathology testing of specimens.

However, ‘on behalf of’ does not include a service performed on referral by another person. A service performed on referral by another person, is not a component of the supply being provided by the first practitioner. The service being provided by the second person will be a separate supply, the GST-free status of which must be examined by reference to the supply by that second person.

A referral, in itself, will not render the subsequent supply GST-free. A massage service will be a GST-free \*medical service if either: a Medicare benefit is payable; or it is undertaken by a \*medical practitioner (as defined in the GST Act) and the practitioner is skilled in the provision of this supply and such treatment is generally accepted by the profession as being appropriate treatment.

Additionally, under ‘Issue 2’ of this Log, a supply of a massage service is not a listed service for section 38-10 and will not be GST-free under that section unless it is:

- a. supplied by a ‘\*recognised professional’ as defined in section 195-1
- b. is in relation to one of the table listed services such as ‘Physiotherapy’
- c. is ‘generally accepted in that profession as being necessary for the appropriate treatment of the \*recipient of the supply’.

#### **1.a.13. What is the GST status of the provision of services by a medical practitioner (for example visiting medical officer) to a hospital patient?**

For source of ATO view, refer to:

- Part 3 of [GSTR 2006/9](#) – Goods and services tax: supplies
- [GSTD 2012/4](#) – Goods and services tax: what is ‘hospital treatment’ for the purposes of section 38-20 of the *A New Tax System (Goods and Services Tax) Act 1999*?

It is understood there are a number of different arrangements that may be entered into between hospitals, medical practitioners and patients. Given this the following three arrangements are addressed:

1. a medical practitioner is employed by a hospital or enters into a ‘voluntary agreement’ with the hospital and the hospital supplies those services to a patient

2. a medical practitioner to whom (1) does not apply supplies services to a hospital and the hospital supplies those services to a patient
3. a medical practitioner supplies services to a private patient in hospital.

The above arrangements focus upon the application of section 38-20 (hospital treatment) and section 38-7 (medical services).

### ***First arrangement***

The supply of the service by the hospital to the patient will be GST-free under section 38-20 where the necessary elements of that section are satisfied.

### ***Employee***

Where a medical practitioner who is an individual is employed by a hospital, it will not be a taxable supply from the medical practitioner to the hospital (section 9-20(2)(a)). To be a taxable supply, it is necessary for an enterprise to be undertaken and for the purposes of the GST Act an employee does not carry on an enterprise.

### ***Voluntary agreement***

Where a medical practitioner performing work or services for a hospital is not a hospital employee, but is registered for GST and enters into a 'voluntary agreement' with the hospital, it will not be a taxable supply from the medical practitioner to the hospital (section 113-5). For this option to apply, it is necessary that the supply by the medical practitioner would have otherwise been a taxable supply and would have been a creditable acquisition by the hospital if not for the voluntary agreement.

A 'voluntary agreement' is a written agreement between an individual medical practitioner and a hospital. The hospital is required to withhold an amount from payments to the individual medical practitioner similar to withholdings made from wages to employees. To be able to enter into a 'voluntary agreement', it is necessary that the payments not be subject to any other type of withholding (for example payments made to employees are required to have amounts withheld). The 'voluntary agreement' must be in the approved form, must quote the ABN of the individual and must state that section 12-55 of Schedule 1 to the *Taxation Administration Act 1953* (which is the section dealing with 'voluntary agreements') applies to the payments. Both parties to the agreement are required to keep a copy of the agreement while the agreement is in force and for five years after the last payment is made under the agreement. Because of the voluntary nature of this voluntary agreement, either party is able to terminate the agreement by giving notice to the other party in writing.

### ***Second arrangement***

Where a medical practitioner (not being an employee or an individual who has entered into a voluntary agreement with the hospital) supplies services to a hospital and, as a result of that supply, services are provided to a patient, there will be two separate supplies:

- a supply from the hospital to the patient
- a supply from the medical practitioner to the hospital.

Under this arrangement, the supply by the hospital to the patient will be GST-free under section 38-20 provided that all the necessary elements of section 38-20 are satisfied.

In relation to the supply by the medical practitioner to the hospital, the hospital is the recipient of the supply. It is not considered that the supply by the medical practitioner to the hospital is 'hospital treatment' as defined in section 195-1. It is considered that "hospital

treatment' for the purpose of the GST Act is that as defined in subsection 121-5(1) of the *Private Health Insurance Act 2007* and only relates to supplies made to patients. Further, the nature of the supply by the practitioner is not 'appropriate treatment' of the '\*recipient of the supply' under section 38-7 because the recipient of the supply is the hospital. The supply of services made to a hospital by the medical practitioner will represent an entity to entity transaction and, as such, it will be a taxable supply (assuming section 38-60(3) does not apply). However, this will generally have a neutral revenue impact, as the hospital will claim an input tax credit for the GST paid to the medical practitioner. Depending on the arrangement or framework, the medical practitioner may make a supply to both the hospital and the patient.

From 1 July 2012, where the hospital is an Australian government agency, the supply by the medical practitioner to the hospital may be GST-free under section 38-60(3).

Section 38-60(3) provides that if a supply (the underlying supply) by a health care provider to an individual (the patient) is either wholly or partly GST-free under Subdivision 38-B, then a supply of the service of making the underlying supply by the health care provider to the Australian government agency is GST-free to the same extent as the underlying supply.

For administrative ease, the parties may agree for the supply to the payer, or supplies of a kind that include that supply, not to be treated as GST-free (section 38-60(4)).

### ***Third arrangement***

Where a medical practitioner supplies medical services to a patient in a hospital (for example as a private patient), the supply will be a GST-free supply from the medical practitioner to the patient under section 38-20 provided that all the necessary elements of section 38-20 are satisfied.

#### **1.a.14. Where a doctor bulk bills for a medical service and charges the patient an administration fee, what is the GST status of the charge for the administration fee?**

Non-interpretative – straight application of the law.

The GST status of the administration fee depends on ascertaining the true nature of the fee.

If the administration fee is not a charge for additional services but is a charge that is made separately for overheads embodied within the service that was bulk billed for example, it will have the same character as the service that has been supplied. If the service supplied is GST-free under the second limb of the definition of \*medical service, the administration fee for the overheads forming a part of that service will also be GST-free.

If the service supplied would not have been GST-free under the second limb, the administration fee for the overheads forming a part of that service will not be GST-free.

#### **1.a.15. The Aesthetic Society of Plastic and Reconstructive Surgery has a register for breast implants. Clients who have received a breast implant are invited to be placed on to the register for a one-off fee of \$20. What is the GST status of the register fee?**

Non-interpretative – straight application of the law.

It is understood that the practitioner advises the patient of the existence of the register and facilitates the registration of the necessary details. It is considered that the fee will be GST-free under the second limb of the definition of a \*medical service, if it is for the appropriate treatment of the patient.

**1.a.16. What is the GST position in relation to checkups, immunisations, pap smears and breast-cancer screening?**

Non-interpretative – straight application of the law.

Checkups, immunisations, pap smears and breast-cancer screening will be GST-free under section 38-7.

If a Medicare benefit is payable, the service is GST-free under the first limb of the definition of a \*medical service.

If a Medicare benefit is not payable, these services fall within the second limb of the definition and are GST-free where all the elements of section 38-7 are satisfied.

**1.a.17. What is the GST status where an 85-year-old person is seeking clearance from a doctor to enable them to drive a motor vehicle – there is a Medicare benefit available?**

Non-interpretative – straight application of the law.

A service for which a Medicare benefit is payable, is GST-free under section 38-7.

**1.a.18. Where a doctor supplies a GST-free medical service and separately charges a facility fee, what is the GST status of the charge for the facility fee?**

Non-interpretative – straight application of the law.

Where a separate fee is charged in relation to the facilities used to perform a service, the charge for using those facilities will have the same character as the service that has been supplied.

Therefore where a doctor supplies a service for which a Medicare benefit is payable, and separately charges a facility fee for the use of the facility in which that service was supplied, that facility fee will be GST-free if the service supplied also falls within the second limb of the medical service definition.

If facilities are used to perform a taxable service, for example the removal of tattoos or for services rendered for cosmetic reasons for which a Medicare benefit is not payable, the charge for using those facilities will also be taxable and subject to GST.

If the service supplied is only partly taxable, then the charge for using the facilities in which the service was performed will be proportionately taxable as well.

**1.a.19. What is the GST position of an examination for the purpose of preparing a report, prepared by a medical practitioner for a third party (that is not the patient but entities such as insurance companies, workers compensation providers, prospective employers, Government Departments etc) where the report is paid for by, and completed, for the third party?**

For source of ATO view, refer to:

- [issue 1.a](#) of this issues register
- part 3 of [GSTR 2006/9](#) – Goods and services tax: supplies.

A service for which a Medicare benefit is payable, is GST-free under the first limb.

However a service for which a Medicare benefit is not payable, must be addressed under the second limb. It is the ATO view that provision of a report will not be GST-free under the second limb, as it is not for the 'appropriate treatment of the recipient of the supply'.



**1.a.20. There is a range of Medicare Benefits Schedule items for the various procedures involved with IVF. What is the GST status of frozen gamete/embryo storage fees?**

Non-interpretative – straight application of the law.

Where a Medicare benefit is payable for frozen gamete or embryo storage fees, these fees will be GST-free.

Where no Medicare benefit is payable, frozen gamete or embryo storage fees may in certain circumstances be GST-free. These fees will be GST-free under the second limb of the definition of a \*medical service, if the storage is facilitated by a medical practitioner and is part of the appropriate treatment of the recipient of the supply.

However if a separate entity such as a medical scientist provides a supply of storage then that supply will not be a GST-free medical service under the second limb. It will be a taxable supply.

**1.a.21. What is the GST status of the reversal of a sterilisation procedure – there is a rebate for sterilisation but not reversal.**

Non-interpretative – straight application of the law.

The reversal of a sterilisation procedure supplied by a medical practitioner will be GST-free under section 38-7, where it is 'generally accepted in the medical profession as being necessary for the appropriate treatment of the recipient of the supply'. It is anticipated that for some cases, bearing in mind the medically relevant facts, such a reversal for a person would be appropriate treatment.

**1.a.22. Is GST payable for an examination and report of fitness where the medical practitioner completes a pro-forma which has been supplied by a social organisation (such as a sporting club) in order for the participant to undertake a particular sporting or recreational activity? There is no regulatory requirement for a medical examination prior to the participant engaging in the proposed activity. The patient pays for the examination.**

For source of ATO view, refer to:

- [issue 1.a](#) of this issues register
- paragraph 155 in Part 3 of [GSTR 2006/9](#) – *Goods and services tax: supplies*.

This question focuses on whether the examination is a 'medical service' under section 38-7 as defined in section 195-1, and will be GST-free.

If a Medicare benefit is payable, the examination will be GST-free.

If no Medicare benefit is payable, a medical examination to determine a patient's fitness to undertake an activity will be GST-free if it would be generally accepted in the medical profession as being necessary for the appropriate treatment of the recipient of the supply. As the patient is engaging the medical practitioner, it is considered that the patient will be the recipient of the supply.

Therefore, where a patient initiates a medical examination to determine whether their physical fitness is at a level safe enough for them to participate in an activity, the examination will be GST-free if generally accepted in the medical profession as being necessary for the appropriate treatment of that patient.



In contrast, if a medical examination is undertaken as a requirement of the social organisation before the person undertakes the activity, the examination as well as any subsequent report or pro-forma will not be a GST-free supply. In this situation, the medical examination is not considered to constitute appropriate treatment for the recipient of the supply.

**1.a.23. Where an interpreter is required for a GST-free medical or other health service, what is the GST status of the interpreting services?**

Non-interpretative – straight application of the law.

The supply of interpreter services is not a GST-free supply under the Health provisions.

However, where a medical practitioner or recognised professional requires an interpreter for a consultation and it is a supply of service to that medical practitioner or recognised professional, the supply may be GST-free to the patient if the medical practitioner or recognised professional passes that cost on to the patient as part of a GST-free medical or other health service. Subject to the requirements of a taxable supply, the interpreter services to the practitioner may be subject to GST. If so, the practitioner will be entitled to an input tax credit for the GST paid.

In this situation, the interpreting services will form part of the overheads embodied within the GST-free service.

In contrast, if a patient engages an interpreter for a consultation, the supply of the interpreting service to the patient will not be GST-free.

**1.a.24. A Medical Practitioner provides a service involving the testing of employees of a meatworks for Q-Fever and if necessary, vaccination of the employees. The employer company requires all employees to have the tests and if appropriate, the vaccination. A Medical Practitioner bills the company on a per patient/service basis. What is the GST status of the service? Would the GST status of the service be different if the service was provided at the sole option of the employee?**

For source of ATO view, refer to Part 3 of [GSTR 2006/9](#) – *Goods and services tax: supplies*.

A medical practitioner will be making a supply to the employer (and the employer will be the recipient of that supply) where:

- the employer engages the medical practitioner to provide something to them or to someone else (for example their employee)
- the employer, by agreement with the medical practitioner, determines what is required to be provided to them or to the employee and
- either
  - the agreement creates a binding obligation between the employer and the medical practitioner for the thing to be provided to them or to the employee or
  - in the absence of a binding obligation, the factors listed in paragraph 221B of GSTR 2006/9 in combination indicate that the medical practitioner is making a supply to the employer (payer), being the service of testing and vaccinating the employee.

This will be the case regardless of whether the employer requires the employee to be tested and/or vaccinated or whether it is at the option of the employee. The supply of the testing services as well as any subsequent reports will be a taxable supply where no

Medicare benefit is payable. Where the medical practitioner is registered or required to be registered for GST, the supply will be a taxable supply. However, the employer will generally be entitled to an input tax credit.

However, where an individual, concerned with the health risks associated with their work environment, requests a medical examination by a medical practitioner, the supply will be GST-free if a Medicare benefit is payable. If no Medicare benefit is payable, it is accepted that the supply may be 'appropriate treatment' and will be GST-free where the requirements of section 38-7 are satisfied and the employee, rather than the employer, is the recipient of the supply (for a discussion of these requirements, refer to Part 1.a. and 1.b. of the Health Issues Log).

**1.a.25 A surgeon, acting as agent for the patient, engages the services of a medical practitioner as a surgical assistant. After the operation has been performed, at the request of the surgical assistant, the surgeon bills the patient and includes both the surgeon's fee and the surgical assistant's fee. When payment is received, the surgeon passes on the surgical assistant's fee which was included in the invoice to the patient. The surgeon does not charge an administration fee for handling the billing, and so on. Does the transaction between the surgeon and the surgical assistant attract GST?**

For source of ATO view, refer to Part 3 of [GSTR 2006/9](#) – *Goods and services tax: supplies*

This question focuses on identifying:

- Whether there is a supply by the surgeon to the patient and a supply by the surgical assistant to the patient (which is merely billed through the surgeon), or
- Whether there is a supply by the surgical assistant to the surgeon and the surgeon supplies all of the services to the patient.

In determining the GST treatment of the services provided by the surgical assistant and billed by the surgeon to the patient, it is necessary to identify who is the recipient of the services rendered by the surgical assistant.

On the facts provided in the question, the recipient of the services provided by the surgical assistant is the patient. The surgeon is merely a conduit through which the patient pays for the surgical assistant's services. That is, the surgeon merely collects both fees from the patient for administrative convenience. As the payment by the surgeon to the surgical assistant represents consideration for the medical services supplied to the patient, the payment will be GST-free where the requirements of section 38-7 are satisfied.

It is important to emphasise that each case needs to be considered on its merits. If the facts of a particular supply differ from those stated in this question, the supply may not be GST-free. For example, the surgical assistant will be making a supply to the surgeon rather than the patient where:

- a. the surgeon engages the surgical assistant to provide something to them or to someone else (for example, their patient)
- b. the surgeon, by agreement with the surgical assistant, determines what is required to be provided to them or to the patient
- c. the agreement creates a binding obligation between that surgeon and the surgical assistant for the thing to be provided to them or to the patient.

**1.a.26 What is the GST status of supplies made by non-employee medical practitioners under the following arrangements with the Australian Defence Force (ADF):**

For source of ATO view, refer to Part 3 of [GSTR 2006/9](#) – *Goods and services tax: supplies*.

1. Contract Health Practitioner (CHP): a medical practitioner is engaged to provide services and treatment to military personnel in a Defence establishment, normally where a uniformed medical practitioner is not available and a vacancy of up to 12 months exists within a Defence establishment.
2. Sessional Contract Practitioner (SCP): a medical practitioner is engaged for a series of agreed sessions to provide services not available in ADF Health Facilities.
3. Fee for Service (FFS): the ATO understands that no standard arrangement exists, medical practitioners being engaged at a local level for individual consultations at their usual fees.

It is considered that where no Medicare benefit is payable because the ADF pays for the services provided, under the CHP, SCP and FFS arrangements, a medical practitioner makes a supply to the ADF where:

- a. the ADF engages the medical practitioner to provide something to them or to someone else
- b. the ADF, by agreement with the medical practitioner, determines what is required to be provided to them or to someone else
- c. the agreement creates a binding obligation between the ADF and the medical practitioner for the thing to be provided to them or to someone else or, in the absence of a binding obligation, taking the factors listed in paragraph 221B of GSTR 2006/9 into account, the medical practitioner is considered to make a supply to the ADF that involves a supply by the medical practitioner to the military personnel.

Depending on the arrangement or framework, the medical practitioner may make a supply to both the military personnel and the ADF.

From 1 July 2012, as the ADF is an Australian government agency, the supply by the medical practitioner to the ADF may be GST-free under section 38-60(3).

Section 38-60(3), provides that if a supply (the underlying supply) by a health care provider to an individual (the patient) is either wholly or partly GST-free under Subdivision 38-B, then a supply of the service of making the underlying supply by the health care provider to an Australian government agency is GST-free to the same extent as the underlying supply. In relation to the FFS arrangement, where the requirements in paragraphs (a) to (c) above are not met, there is generally one supply by the medical practitioner to the patient for which the ADF provides consideration. This supply is GST-free where the medical profession would consider the service necessary for the appropriate treatment of the patient as recipient of the supply, and the other requirements of section 38-7 are met.

**1.a.27 Dr O G owns and operates a private obstetrics practice, undertaking procedures in both public and private hospitals. Dr O G will be away for the delivery of one of his pregnant patients who he has been attending to during the course of her pregnancy. Dr O G enters into an arrangement with Dr Standin whereby Dr Standin performs the delivery at the hospital for Dr O G's patient. Dr Standin bills the patient in Dr O G's name and receives 80% of the fee charged to the patient -the remaining 20% goes to Dr O G.**

For source of ATO view, refer to Part 3 of [GSTR 2006/9](#) – *Goods and services tax: supplies*.

1. Who is responsible for charging and collecting GST?
2. What is/are the criterion(a) used in determining the liability for collecting and charging GST as between Doctors O G and Standin?
3. What further information (if any) is required in order to determine GST liability?
4. Does the name of the biller have a material impact on the GST status?
5. What should Doctors O G and Standin do to ensure that the GST liability is appropriately clarified to the satisfaction of the ATO?

### **1. Who is responsible for charging and collecting GST?**

Under the GST Act, the supplier of goods and services is liable to remit GST on supplies made.

The facts of each individual case, including any written or oral agreements and the surrounding circumstances, will determine the parties to the transaction, the supply made between the parties, the status of each supply and the liability for GST. The description given by the parties may not of itself be determinative.

The end supply may consist of a series of transactions which in themselves are individual supplies. The application of the GST Act must be considered in relation to each supply, in other words, on a supply by supply basis.

In the current situation, it is considered important to determine who is the supplier of the services to the patient, or whether a separate arrangement exists between Doctors O G and Standin in relation to providing the service to the patient.

In the present case, from the patient's perspective, she has received a medical service, ostensibly from Dr O G. However this does not dictate the GST status of the supply between Dr O G. and Dr Standin, which can only be determined by reference to the arrangements made between the Doctors. On the facts it appears that Dr Standin is not acting as agent for Dr O G. but is an independent sub-contractor, which is evidenced by the fact that Dr Standin receives 80% of the fee. Dr Standin would have to remit one-eleventh of this amount. It is a matter of contract between Dr Standin and Dr O G. whether the amount is grossed up to take into account GST. Dr O G. will be entitled to an input tax credit.

The fact that the patient didn't have any arrangement with Dr Standin indicates that Dr Standin was not engaged by the patient to provide a service to her independent of Dr O G's previous involvement during the course of the pregnancy. It is evident from the above that the name of the biller does not necessarily dictate the GST status of the supplies between the two doctors.

**2. What is/are the criterion(a) used in determining the liability for collecting and charging GST as between Doctors O G and Standin?**

Section 9-40 of the GST Act establishes that the supplier is liable to remit GST on any taxable supplies made.

As indicated in the answer in (a) above, the facts of each individual case, including any written or oral agreements and the surrounding circumstances, will determine the parties to the transaction, the supply made between the parties, the status of each supply and the liability for GST.

**3. What further information (if any) is required in order to determine GST liability?**

Reference should be made to the concepts in (a) and (b) above.

**4. Does the name of the biller have a material impact on the GST status?**

As indicated in (a) above, the name of the biller does not necessarily dictate the GST status of the supplies between the two Doctors.

The name of the biller will have material impact where it is evidence of the entity that is supplying the service to the patient (as opposed to performing the service) and evidence that the entity is entitled to seek recovery from the patient in their own name.

**5. What should Doctors O G and Standin do to ensure that the GST liability is appropriately clarified to the satisfaction of the ATO?**

Private binding rulings may be sought in relation to other situations.

Subject to their own advice, Doctors O G and Standin may wish to consider reducing their agreement to writing. The terms of the agreement could identify what supplies are contemplated, by whom each supply will be made, and to whom. However, it should be noted that any written agreement may be evidence of the factual situation but is not a replacement for the actual facts of the situation.

**1.b. \*Medical services rendered for cosmetic reasons**

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

**Related questions** – The following questions explore what is within the concept of 'cosmetic reasons' to in section 38-7. None of the following questions and answers should be read in isolation but rather as part of the whole of the information contained within this document.

**1.b.1. What is the GST status where a doctor provides an item number for a cosmetic procedure, however the health fund disallows the claim and states that it is cosmetic. Does the health funds determination of whether a procedure is cosmetic override the doctor's determination for GST purposes?**

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

### **1.b.2. What is the GST status of anaesthetic services rendered to patients undergoing procedures for cosmetic reasons for which a Medicare benefit is not payable?**

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

### **1.b.3. What is the GST treatment of medical photography (including x-rays) for cosmetic procedures?**

For source of ATO view, refer to [issues 1.b](#) and [1.b.2](#) of this issues register.

To determine the GST treatment it is necessary to consider the application of the definition of ‘\*medical service’ in section 195-1 as it appears in section 38-7. The question further requires a consideration of section 38-7(2), which excludes certain cosmetic procedures.

If the medical photography is supplied by, or on behalf of, the medical practitioner and is not for an excluded professional service (for example in relation to tattoo removal) or rendered for cosmetic reasons, it will be GST-free. The service must also be generally accepted in the medical profession as being necessary for the appropriate treatment of the recipient of the supply.

Where the service is one for which a Medicare benefit is payable, the service will be GST-free and it is not necessary to consider whether it is rendered for cosmetic reasons.

In relation to pathology and diagnostic imaging, it is understood that these services are performed before a cosmetic procedure and after a cosmetic procedure. Advice from the Department of Health and Aged Care is that Medicare benefits are payable under the Medicare Benefits Scheme as these services may be performed without the cosmetic procedure going ahead (before) and in relation to assessing damage (after). They have indicated that they would consider these services would satisfy the requirements for the payment of a Medicare benefit that it be clinically relevant and listed in the Medicare Benefits Schedule.

### **1.c. Goods supplied 'in the course of supplying' a GST-free \*medical service**

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

**Related questions** – The following questions explore what is within the concept of goods supplied ‘in the course of supplying to him or her, a \*medical service the supply of which is GST-free’ for the purposes of section 38-7. None of the questions and answers should be read in isolation but rather as part of the whole of the information contained within this document.

#### **1.c.1 During surgery a medical practitioner fits a patient with an appliance for the purpose of correcting an illness or disability. Will these goods supplied at that time be GST-free?**

For source of ATO view, refer to:

- [issue 1.c](#) of this issues register



- [GSTD 2012/4](#) – *Goods and services tax: what is 'hospital treatment' for the purposes of section 38-20 of the A New Tax System (Goods and Services Tax) Act 1999*

This question requires the consideration of sections 38-20, 38-45 and 38-7 and focuses upon the supply of the goods during a surgical process.

The goods may be GST-free pursuant to section 38-45 if they are:

- a medical aid or appliance covered by Schedule 3 or subsequent regulation, and
- the medical aid or appliance is specifically designed for people with an illness or disability, and
- the medical aid or appliance is not widely used by people without an illness or disability.

Once an item meets all of the above criteria its supply will be GST-free. The GST-free status will apply all the way down the supply chain and not only when supplied to a person who has an illness or disability. The elements do not require the recipient of the aid or appliance to use it in a particular way. An example of medical aids and appliances that are contained in Schedule 3 are heart monitors and pacemakers (Items 1 and 2 of Schedule 3).

With effect from 26 March 2009, the definition of 'hospital treatment' changed from subsection 67(4) of the *National Health Act 1953* to section 121-5 of the *Private Health Insurance Act 2007*. This means that goods used to manage a disease, injury or condition supplied to a hospital patient will generally be GST-free as part of hospital treatment under subsection 38-20(1).

In addition, subsection 38-20(3) also provides that a supply of goods will be GST-free if it is directly related to the supply of the GST-free hospital treatment and it is supplied by, or on behalf of, the supplier of GST-free hospital treatment. The supply of goods which are not 'directly related' to the supply of GST-free hospital treatment will not be GST-free under subsection 38-20(3).

If neither section 38-45 nor section 38-20 applies to the goods it is necessary to consider the application of subsection 38-7(3). This section requires the supply of goods be made to an individual 'in the course of supplying to him or her, a \*medical service the supply of which is GST-free' and be 'made at the premises at which the medical service is supplied'. It is considered that the fitting of an appliance during the course of a surgical procedure would be provided in the course of supplying to the patient a medical service at the premises, being the hospital, at which the medical service is supplied. It is also necessary that the appliance be supplied at that same point in time as the GST-free medical service. Goods supplied to a patient prior to the \*medical service, for fitting during the \*medical service, will not be supplied 'in the course of supplying to him or her, a \*medical service'.

### **1.c.2. Where an attendance takes place at a patients' premises, will any goods supplied at that time be GST-free?**

Non-interpretative – straight application of the law.

Yes, goods will be GST-free if they are supplied at the premises at which the GST-free \*medical service is supplied, which may in certain instances take place at the patients premises.

Additionally, in order to be GST-free the goods must be supplied at the same point in time at which the GST-free \*medical service is supplied **and** the goods must have been either:

- customised or manipulated for the exclusive treatment of the illness or disability of the particular patient who is the recipient of the GST-free \*medical service, or

- b. necessarily utilised as an integral part of the patient's treatment required immediately during that specific attendance.

### **1.c.3. What is the GST status of an appliance that is fitted to a person for the purpose of treatment of an illness or disability?**

For source of ATO view, refer to [issue 1.c](#) of this issues register.

This question requires the consideration of sections 38-45 and 38-7 and focuses upon the supply of goods.

The goods may be GST-free pursuant to section 38-45 if they are:

- a. a medical aid or appliance covered by Schedule 3 or subsequent regulation, and
- b. the medical aid or appliance is specifically designed for people with an illness or disability, and
- c. the medical aid or appliance is not widely used by people without an illness or disability.

Once an item meets all of the above criteria its supply will be GST-free. The GST-free status will apply all the way down the supply chain and not only when supplied to a person who has an illness or disability. The elements do not require the recipient of the aid or appliance to use it in a particular way. An example of medical aids and appliances that are contained in Schedule 3 are heart monitors and pacemakers (Items 1 and 2 of Schedule 3).

If section 38-45 does not apply to the goods it is necessary to consider the application of section 38-7(3) which will allow the goods to be GST-free if they are supplied at the premises at which the GST-free \*medical service is supplied. Additionally, the goods must be supplied at the same point in time at which the GST-free \*medical service is supplied **and** the goods must have been either:

- a. customised or manipulated for the exclusive treatment of the illness or disability of the particular patient who is the recipient of the GST-free \*medical service, or
- b. necessarily utilised as an integral part of the patient's treatment required immediately during that specific attendance.

### **1.c.4. What is the GST status of the purchase of copies of x-rays and other medical imaging records by patients of a hospital?**

Non-interpretative – straight application of the law.

The provision of diagnostic imaging (including x-rays and medical imaging records) will be GST-free to a hospital patient where the elements of section 38-7 of a 'medical service' are satisfied.

The supply of multiple copies of x-rays or medical imaging records will be GST-free where:

- a. it is necessary for the appropriate treatment of a person
- b. is supplied to the person who is the recipient of the treatment, and
- c. the copies are supplied to that patient at the same time and at the same premises at which the GST-free medical service is supplied.

Any copies supplied after a GST-free medical service has been supplied will be taxable. The copies will not have been supplied 'in the course of' supplying a GST-free medical service.



Where the copies of the x-rays and medical imaging records are to be posted, for example to other health care providers, the supply will be GST-free provided that they are supplied at the same point in time as the GST-free medical service.

## Issue 2 – Other health services

(a) added, (u) updated, (w) withdrawn

Date	Issue
21/06/00 (a) 22/06/05 (u)	2.a. Section 38-10 Other health services
21/06/00 (a) 26/09/00 (u)	2.a.1. Are the services of psychotherapists and psychoanalysts GST-free?
21/06/00 (a)	2.a.2. Is the service of a hypnotherapist GST-free?
21/06/00 (a) 22/06/05 (u)	2.a.3. Item 8 in the Table of section 38-10(1) lists the service of Herbal Medicine (including traditional Chinese herbal medicine). Ayurvedic medicine has gained popularity in Australia over the last decade. Professional training courses are now being conducted in Ayurvedic medicine and there is a national professional association that accredits Ayurvedic medicine practitioners. Ayurvedic medicine is essentially understood by both the layperson and health professionals as being the practice of herbal medicine in India. What is the ATO's interpretation of Item 8 regarding Ayurvedic medicine?
21/06/00 (a) 26/09/00 (u) 22/06/05 (u)	2.a.4. Naturopathy and Herbal Medicine are services listed in the Table in section 38-10(1) items 8 and 9. The practice of naturopathy and herbal medicine includes iridology as a diagnostic technique, which is generally accepted in naturopathy and herbal medicine as being for appropriate treatment. A naturopath and herbalist for the purpose of preserving, restoring or improving the physiological wellbeing of a patient would use iridology. Does the ATO agree that iridology performed by a naturopath or herbalist would be GST-free?
21/06/00 (a)	2.a.5. What is the GST treatment of pathology requested by a naturopath to be undertaken by an *approved pathology practitioner?
21/06/00 (a)	2.a.6. What type of recognised professional provides a service of 'Dietary' listed at Item 7 of the Table?
21/06/00 (a)	2.a.7. Paragraph (b) of the definition of *recognised professional provides that a person is a recognised professional where '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'. What is the ATO's interpretation of '... a professional association that has uniform national registration requirements ...'?
21/06/00 (a)	2.a.8. Some allied health practitioners employ assistants to provide certain services to patients. These employees are not 'recognised professionals' to provide a service of a kind listed in the Table and they may not legally be required to be registered or licensed, and may not be members of a National Association. The services are provided at the direction of the 'recognised professional', and would be generally regarded by the profession as appropriate for the treatment of the recipient. Will the service by the assistant be GST-free under section 38-10?
21/06/00 (a) 22/06/05 (u)	2.a.9. Is massage therapy GST-free?

Date	Issue
21/06/00 (a) 24/06/13 (u)	2.a.10. Where an entity (company, trust or partnership) provides massage therapy services and the individual massage therapists who are subcontracted to that entity are not registered or required to be registered for GST, does the practice have to charge GST on services provided by the massage therapists?
21/06/00 (a)	2.a.11. Section 38-10(1)(b) of the GST Act requires that the supplier of other health services be a recognised professional. In many instances the supplier of the service is a practice company or partnership which is not itself a recognised professional. Will GST apply in this scenario?
21/06/00 (a) 24/06/13 (u)	2.a.12. Does Item 6 'Dental' in section 38-10(1)(c) include orthodontics?
21/06/00 (a)	2.a.13. What is the GST status of health services provided to more than one person at the same time?
21/06/00 (a) 22/06/05 (u) 01/08/12 (u)	2.a.14. What is the GST status of ergonomic and risk assessments for workers/employees requested by employers?
21/06/00 (a) 15/10/00 (u)	2.a.15. Are denture repairs or relines GST-free?
21/06/00 (a)	2.a.16. Where a physiotherapist operates a pilates-based rehabilitation exercise studio for the use of clients with a disability such as chronic neck and back pain will this service be GST-free. All clients have an initial assessment by a physiotherapist who is a *recognised professional, and who designs an appropriate conditioning exercise program. Re-assessment by this physiotherapist is undertaken regularly. The studio has pilates apparatus, mats, Swiss balls, wobble boards, therabands and weights. There are also some instructors present who are not *recognised professionals in physiotherapy.
26/09/00 (a) 24/06/13 (u)	2.a.17. Where a patient is referred to a dentist by an ENT surgeon in order to fabricate and fit ear plugs to be worn in association with grommets, is this service GST-free?
26/09/00 (a) 24/06/13 (u)	2.a.18. Where a patient has abnormal staining of the teeth and the dentist arranges for the making of a customised resin tray to apply bleaching material, will the fitting and fabrication be a GST-free dental service? The tray may be prescribed to be worn at home with supplied medicaments and the treatment is monitored by follow-up appointments.
26/09/00 (a) 24/06/13 (u)	2.a.19. Would the supply of a dental service of bleaching of teeth be GST-free if a patient had teeth in the normal range of colour prior to the process?
26/09/00 (a)	2.a.20. Where travel is undertaken by a health service provider as part of the supply of a GST-free medical or other health service and the practitioner charges the patient a higher fee because of the requirement to travel to another place for that treatment, will the additional amount be GST-free?
21/06/00 (a)	2.b. Goods supplied 'in the course of supplying' a GST-free 'other health service'.
21/06/00 (a)	2.b.1. Where an attendance takes place at a client's premises, will any goods supplied at that time be GST-free?
21/06/00 (a)	2.b.2. A recognised professional prescribes and dispenses vitamins and herbs for a condition. Will these goods supplied at that time be GST-free?

Date	Issue
21/06/00 (a)	2.b.3. A recognised professional fits a patient with an appliance for the purpose of correcting an illness or disability. Will these goods supplied at that time be GST-free?
21/06/00 (a) 26/09/00 (u)	2.b.4. A person is qualified as a recognised professional in both Acupuncture and Naturopathy (or Chinese herbal medicine). The patient is treated with a range of approaches, sometimes involving the use of acupuncture and sometimes not. A herbal formulae is usually customised and dispensed at each treatment. Herbal medicine is part of the scope of practice of acupuncture, but this practitioner has further skills and is recognised in their own right as a herbalist/naturopath as well. Is the herbal formulae always GST-free by virtue of the recognised professional being an acupuncturist?
21/06/00 (a) 28/06/13 (u)	2.b.5. Are customised mouthguards taxable?
26/09/00 (a)	2.b.6. A practitioner has been advised by a herbal company that the raw herbs she uses are really foods just like nuts and are GST-free. Raw herbs are described as herbs that have not been processed in a factory but have usually been dried. They may consist of leaves, bark, twigs, roots, flowers, seeds, fruit. Some commonly used medicinal herbs include ginger, cinnamon, cardamom, turmeric, liquorice. In the case of Chinese herbal medicines it can also extend to some minerals such as calcium based products (eg ground oyster shell) and animal products.  Will raw herbs be considered as food and treated as GST-free, or recognised as herbal medicines and attract the GST?
21/06/00 (a)	2.c. Additional requirement for goods supplied 'in the course of supplying' a GST-free 'other health service' (herbal medicine and naturopathy only)
21/06/00 (a)	2.c.1. What is the GST status for goods supplied by herbalists and naturopaths, which are for consumption off the premises or are only partially consumed on the premises at the time of treatment?
21/06/00 (a)	2.c.2. Where a herbalist or naturopath explains the constituents of a herbal mixture, discuss possible side effects and demonstrate how to take herbs, have the goods been 'used' in the course of supplying a GST-free service?
21/06/00 (a) 22/06/05 (u) 28/06/13 (u)	2.d. Supplies 'provided by an ambulance service in the course of the treatment of the *recipient of the supply'.
21/06/00 (a) 22/06/05 (u)	2.d.1. Is non-emergency transport by an ambulance service GST-free if it is for the transport of people between their homes and places of medical treatment?
21/06/00 (a)	2.d.2. Is transportation by a taxi service GST-free if it is for the transport of people between their homes and places of medical treatment?
21/06/00 (a) 29/11/04 (w)	2.d.3. Is the transfer of patients between hospitals by an ambulance service GST-free?
21/06/00 (a)	2.d.4. Are ambulance subscriptions GST-free?

## 2.a. Section 38-10 Other health services

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

- **Related questions**

The following questions explore what is within the concept of 'other health services' for the purposes of section 38-10. None of the questions and answers should be read in isolation but rather as part of the whole of the information contained in this document.

### 2.a.1. Are the services of psychotherapists and psychoanalysts GST-free?

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

### 2.a.2. Is the service of a hypnotherapist GST-free?

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

**2.a.3. Item 8 in the Table of section 38-10(1) lists the service of Herbal Medicine (including traditional Chinese herbal medicine). Ayurvedic medicine has gained popularity in Australia over the last decade. Professional training courses are now being conducted in Ayurvedic medicine and there is a national professional association that accredits Ayurvedic medicine practitioners. Ayurvedic medicine is essentially understood by both the layperson and health professionals as being the practice of herbal medicine in India. What is the ATO's interpretation of Item 8 regarding Ayurvedic medicine?**

Non-interpretative – straight application of the law.

Assuming the above information is correct, provided the application of Ayurvedic medicine is generally accepted as appropriate treatment by \*recognised professionals of 'Herbal medicine', the supply will be GST-free provided that the other elements of section 38-10(1) are satisfied. As described, it would appear Ayurvedic medicine is a technique of herbal medicine.

**2.a.4. Naturopathy and Herbal Medicine are services listed in the Table in section 38-10(1) items 8 and 9. The practice of naturopathy and herbal medicine includes iridology as a diagnostic technique, which is generally accepted in naturopathy and herbal medicine as being for appropriate treatment. A naturopath and herbalist for the purpose of preserving, restoring or improving the physiological wellbeing of a patient would use iridology. Does the ATO agree that iridology performed by a naturopath or herbalist would be GST-free?**

Non-interpretative – straight application of the law.

Based on the above facts if iridology is a diagnostic technique of 'Naturopathy' and 'Herbal medicine', it will be of a service of a kind within section 38-10(1)(a). The service will be GST-free if:

- a. it is generally accepted by \*recognised professionals in 'Naturopathy' and 'Herbal medicine' that iridology is necessary for the appropriate treatment of the recipient of the supply, and
- b. the \*recognised professional supplies either Naturopathy or Herbal Medicine services and is skilled in its application.

#### **2.a.5. What is the GST treatment of pathology requested by a naturopath to be undertaken by an \*approved pathology practitioner?**

For source of ATO view, refer to Part 3 of [GSTR 2006/9](#) – *Goods and services tax: supplies*.

The provision of pathology examinations and consequent results may be GST-free under section 38-7 if done by an \*approved pathology practitioner and all of the remaining elements of section 38-7 are met. This supply is identified as a separate supply from any supply made by the other health professional who may be a \*recognised professional under section 38-10.

In relation to pathology, it is acknowledged that other health professionals sometimes make requests and the results are provided to the other health professionals. However, it is considered that the supply is not at the direction of or as a requirement of the other health professional. The patient can choose whether or not to attend for the pathology service and the patient can request that the results be provided to another health professional to benefit the patient in relation to other treatments.

It is assumed for this answer that the patient is primarily liable for the payment of the supply and the results will be considered and reported on by an \*approved pathology practitioner. As such, it is considered that the recipient of the supply is the patient.

#### **2.a.6. What type of recognised professional provides a service of 'Dietary' listed at Item 7 of the Table?**

Non-interpretative – straight application of the law.

It is considered that dieticians and nutritionists would in certain circumstances be providing dietary services. From information supplied to the ATO it is understood there is only one professional association that may have uniform national registration for the purposes of paragraph (b) of the definition of \*recognised professional in section 195-1. This association is the Dieticians Association of Australia.

#### **2.a.7. Paragraph (b) of the definition of \*recognised professional provides that a person is a recognised professional where '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'. What is the ATO's interpretation of '... a professional association that has uniform national registration requirements ...'?**

Non-interpretative – straight application of the law.

These words are not defined in the GST Act and will have their ordinary meaning. If a particular association wants confirmation of its status a specific ruling may be sought from the ATO.

A number of professional associations have been identified in relation to the supply of services of the kinds listed in the Table in section 38-10(1). These professional associations often require a person to have a minimum level of educational qualifications

(usually tertiary level qualifications) before that person will satisfy the association's requirements for practitioner status. These professional associations are national associations and the registration requirements for practitioner status are the same for all practitioners regardless of the state or territory in which they practice.

**2.a.8. Some allied health practitioners employ assistants to provide certain services to patients. These employees are not 'recognised professionals' to provide a service of a kind listed in the Table and they may not legally be required to be registered or licensed, and may not be members of a National Association. The services are provided at the direction of the 'recognised professional', and would be generally regarded by the profession as appropriate for the treatment of the recipient. Will the service by the assistant be GST-free under section 38-10?**

For source of ATO view, refer to [issue 2.a](#) of this issues register.

Section 38-10(1)(b) requires that the supplier of the service for the purposes of section 38-10 be a recognised professional. If a component of the supply is not provided by a 'recognised professional' it will be a taxable supply unless that assistant is directly supervised in undertaking that component.

It is considered that a person will be directly supervised where the \*recognised professional:

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

**2.a.9. Is massage therapy GST-free?**

Non-interpretative – straight application of the law.

The question requires a consideration of sections 38-7 and 38-10.

Massage therapy may be GST-free if supplied by a \*medical practitioner pursuant to section 38-7 provided all the elements of that section are satisfied (see [Issue 1.a.9](#) of this document) and the practitioner is skilled in the provision of that service.

As to whether massage therapy by other health professionals will be GST-free initially depends on whether the treatment is within a service of a kind specified in the Table at section 38-10(1). Those services in the Table which may include massage therapy as being the entire supply is 'Physiotherapy' and those which may include massage therapy as a component of the overall supply include 'Acupuncture', 'Chiropractic', 'Nursing', 'Occupational therapy', 'Osteopathy', 'Naturopathy' and 'Physiotherapy'.

In order to be GST-free, all of the elements of section 38-10 must be satisfied. In particular the supply must generally be accepted in the profession associated with the service as being necessary for the appropriate treatment of that particular patient by that recognised professional (bearing in mind their training in providing massage therapy).

In order for massage therapy per se to be added to the Table, a Regulation would need to issue and no such regulation is intended at this point in time.

**2.a.10. Where an entity (company, trust or partnership) provides massage therapy services and the individual massage therapists who are subcontracted to that entity are not registered or required to be registered for GST, does the practice have to charge GST on services provided by the massage therapists?**

For source of ATO view, refer to:

- Part 3 of [GSTR 2006/9](#) – Goods and services tax: supplies
- [Issue 2.a](#) and [Issue 2.a.11](#) of this issues register

This question examines supplies made by an entity where the supply would not be subject to GST if supplied by the individual massage therapist because the individual is not registered, or required to be registered, for GST. Whilst this question is in relation to massage therapists, it is relevant to all supplies by an entity where section 38-10 is to be considered.

Where the elements of section 9-5 are satisfied (it is assumed for the purposes of this question that they are) and the supply is not GST-free or input taxed, the supply will be a taxable supply.

In considering the question it is necessary to identify the relevant supply.

In this question there are two supplies:

1. a supply by the entity to the patient
2. a supply by the individual massage therapist to the entity.

In relation to the first supply:

In many cases, the entity itself will not be able to satisfy the requirements of section 38-10(1)(b) to be a recognised professional.

For the purposes of the application of section 38-10(1)(b), it is considered that the focus is not whether the entity itself is a recognised professional. It is considered that the relevant issue to be determined is whether the performer of the service is a recognised professional in respect of one of the listed services (see [Issue 2.a.11](#)) or, where the performer is not the relevant recognised professional, the performer is directly supervised by the relevant recognised professional (see Issue 2 – Meaning of ‘the supplier is a recognised professional’ and [Issue 2.a.8](#)). It is also necessary that the supply is of one of those listed services and that the supply is generally accepted in the relevant profession as being necessary for the appropriate treatment of the recipient of the supply (**refer to discussion under Issue 2 and as to whether massage therapy is GST-free to answer at [Issue 2.a.9](#)**). Where all the necessary requirements of s38-10 are satisfied, the supply by the entity will be GST-free.

If these requirements are not satisfied, the supply by the entity will not be GST-free.

In relation to the second supply, it will not be GST-free. However if the therapist is not registered or required to be registered the supply will not be a taxable supply.



**2.a.11. Section 38-10(1)(b) of the GST Act requires that the supplier of other health services be a recognised professional. In many instances the supplier of the service is a practice company or partnership which is not itself a recognised professional. Will GST apply in this scenario?**

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

**2.a.12. Does Item 6 ‘Dental’ in section 38-10(1)(c) include orthodontics?**

Non-interpretative – straight application of the law.

Supply of an orthodontic service to a patient will be GST-free as it is considered to be ‘Dental’ which appears at Item 6 in section 38-10(1). The Macquarie Dictionary, third edition, defines ‘orthodontics’ as ‘the branch of dentistry that is concerned with the correction of irregularities of the teeth or jaw’. It will also be necessary for the supplier of the orthodontic service to be a \*recognised professional for the purposes of section 38-10. It is understood that the practise of dentistry is regulated at the state level. If the supplier conforms with the state or territory laws they will be a \*recognised professional as that term is defined in section 195-1.

As a final requirement the supply of the orthodontic service must be generally accepted in the dental profession as being necessary for the appropriate treatment of the patient.

For further information refer to [CR 2013/14](#) – *Goods and services tax: goods and services supplied by dentists*.

The supply of orthodontic appliances in the course of supply a GST-free dental service is considered at [Issue 2.b.3](#).

**2.a.13 What is the GST status of health services provided to more than one person at the same time?**

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

**2.a.14. What is the GST status of ergonomic and risk assessments for workers/employees requested by employers?**

For source of ATO view, refer to Part 3 of [GST 2006/9](#) – *Goods and services tax: supplies*.

The supply will not be GST-free where an employer requests ergonomic and risk assessments of a general workplace as the supply will not constitute ‘*appropriate treatment*’. Further, the recipient of the supply will be the employer. The employer may be entitled to an input tax credit.

Section 38-60 will not apply in these circumstances as there is no appropriate treatment of an individual which would be GST-free under Subdivision 38-B. Refer to [Issue 1.a.6](#) for a further explanation of section 38-60. Where an individual, concerned with the ergonomics or risk associated with their work environment, requests a recognised professional to identify and advise of corrections to the workplace for that individual to prevent illness or disability, it is accepted that this may be appropriate treatment where all the other elements of section 38-10(1) are satisfied.

In limited circumstances this may be paid for by an insurer, operator of a statutory compensation or compulsory third party scheme or an Australian government agency under a multi-party arrangement. The recognised professional may be making a GST-free supply to the insurer, operator or agency in these circumstances under section 38-60 –

see [issue 1.a.6](#). Such assessments would need to be undertaken by a \*recognised professional for the service of 'Occupational therapy' (Item 11 of Table) or 'Physiotherapy' (Item 17 of Table). In order for the assessment to be considered 'necessary for the appropriate treatment of the recipient of the supply', the \*recognised professional would have to have assessed the recipient's state of health and determined the ergonomic and risk assessment in an attempt to preserve, restore or improve the physical or psychological wellbeing of a particular patient.

#### **2.a.15. Are denture repairs or relines GST-free?**

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

#### **2.a.17. Where a patient is referred to a dentist by an ENT surgeon in order to fabricate and fit ear plugs to be worn in association with grommets, is this service GST-free?**

For source of ATO view, refer to:

- [CR 2013/14](#) – *Goods and services tax: goods and services supplied by dentists*
- [Issue 2.a](#) of this issues register.

Yes, the fitting of ear plugs by a 'recognised professional' for 'Dental' services will be GST-free provided the supply would generally be accepted in the dental profession as being necessary for the appropriate treatment of the patient. Acting in accordance with a referral from a specialist surgeon is evidence that the service would be likely to be accepted as 'appropriate treatment' within the profession.

The supply of the ear plugs will be GST-free pursuant to section 38-10(3) as being goods supplied 'in the course of', provided they are supplied at the same point in time as the clinical service and have been customised or manipulated for the exclusive treatment of the patients ear condition.

For detailed information as to the meaning of 'in the course of supplying' see further in [Issue 2.b](#).

#### **2.a.18 Where a patient has abnormal staining of the teeth and the dentist arranges for the making of a customised resin tray to apply bleaching material, will the fitting and fabrication be a GST-free dental service? The tray may be prescribed to be worn at home with supplied medicaments and the treatment is monitored by follow-up appointments.**

For source of ATO view, refer to:

- [CR 2013/14](#) – *Goods and services tax: goods and services supplied by dentists*
- [Issue 2.a](#) of this issues register.

Yes, the fitting of a customised resin tray by a 'recognised professional' for 'Dental' services will be GST-free provided the supply would generally be accepted as being appropriate treatment of the patient. It is considered that such treatment of teeth, where there is abnormal staining would in a large number of cases be generally accepted in the dental profession as being necessary for the appropriate treatment of the recipient of the supply.

The supply of the customised resin tray at the time of the supply of the GST-free dental service will also be GST-free to the patient as being goods supplied 'in the course of' pursuant to section 38-10(3).

For more information as to the meaning of in the course of supplying, see [Issue 2.b](#).

#### **2.a.19 Would the supply of a dental service of bleaching of teeth be GST-free if a patient had teeth in the normal range of colour prior to the process?**

For source of ATO view, refer to:

- [CR 2013/14](#) – *Goods and services tax: goods and services supplied by dentists*
- [Issue 2.a](#) of this issues register.

The bleaching of the teeth of a patient where the whole of their teeth colour is already in the normal range of colour and which is then being undertaken for purely cosmetic reasons should not in the majority of cases be GST-free. It is considered unlikely that such a supply would generally be accepted in the dental profession as being necessary for the appropriate treatment of the recipient of the supply.

#### **2.a.20 Where travel is undertaken by a health service provider as part of the supply of a GST-free medical or other health service and the practitioner charges the patient a higher fee because of the requirement to travel to another place for that treatment, will the additional amount be GST-free?**

Non-interpretative – straight application of the law.

Where the practitioner is required to travel to the premises of a client and it is an integral component of the appropriate treatment that the service is to be performed at those premises, any additional charge for the reason that the practitioner is required to perform those services at those premises will be embodied in the supply of that service being a medical or other health service. Accordingly the additional amount will be GST-free provided all of the other necessary elements of sections 38-7 or 38-10 are met.

An example of where travelling to a patient's premises will be part of the appropriate treatment is where a patient is immobilised due to back injury and a 'recognised professional' in 'physiotherapy' travels to the patients residence to provide the appropriate treatment.

Another example is where an occupational therapist travels to a patient's employment premises to consider and advise upon the physical work environment of the patient as part of the appropriate treatment of the patient.

Where the practitioner undertakes travel to provide the treatment as a matter of convenience, then that component of the supply is not GST-free. Section 9-80 is applicable as it relates to 'The value of taxable supplies that are partly GST-free or input taxed'.

#### **2.b. Goods supplied 'in the course of supplying' a GST-free 'other health service'.**

For source of ATO view, refer to [issue 1.c](#) of this issues register.

Section 38-10(3) provides that the supply of goods will be GST-free if:

- a. It is made to a person in the course of supplying to the person a service the supply of which is GST-free under subsection (1) (other than a service referred to in item 8, 9, 12 or 15 of the table in subsection (1)), and

- b. it is made at the premises at which the service is supplied.

The services excluded from this provision which are referred to in item 8, 9, 12 and 15 are 'Herbal medicine (including traditional Chinese herbal medicine)', 'Naturopathy', 'Optometry' and 'Pharmacy'.

Section 38-10(4) provides that a supply of goods will be GST-free if:

- a. it is made to a person in the course of supplying to the person a service referred to in item 8 or 9 of the table in subsection (1), and
- b. it is supplied, and used or consumed, at the premises at which the service is supplied.

The services included in this provision are 'Herbal medicine (including traditional Chinese herbal medicine)' and 'Naturopathy'.

The phrase 'in the course of supplying to the person a service' in the context of section 38-10(3) and 38-10(4) is interpreted to require that the goods are supplied at the same point in time at which the identified GST-free 'other health service' is supplied. These identified GST-free 'other health services' are for section 38-10(3) (that is items 1-7, 10, 11, 13, 14, and 16-21 of the Table in section 38-10), and for section 38-10(4) – 'Herbal medicine (including traditional Chinese herbal medicine)' and 'Naturopathy'.

In addition the goods will have to have been either:

- a. customised or manipulated for the exclusive treatment of the illness or disability of the particular patient who is the recipient of the GST-free 'other health service', or
- b. necessarily utilised as an integral part of the patient's treatment required immediately during that specific consultation.

As stated for section 38-10(4), additionally the goods must be 'used or consumed' at the premises as described below in [Issue 2.c](#).

*'In the course of supplying'*, as the phrase appears in section 38-10(3) and section 38-10(4), has the same meaning as in section 38-7(3). However, section 38-10(4) has an additional requirement that the goods supplied must also be 'used or consumed, at the premises at which the service has been supplied'.

## Related questions

The following questions explore what is within the concept of goods supplied 'in the course of supplying' an 'other health service', for the purposes of section 38-10. None of the questions and answers should be read in isolation but rather as part of the whole of the information contained in this document.

### 2.b.1. Where an attendance takes place at a client's premises, will any goods supplied at that time be GST-free?

For source of ATO view, refer to [issue 1.c](#) of this issues register

Yes, goods will be GST-free if they are supplied at the premises at which the GST-free 'other health service' is supplied, which may in certain instances take place at the patients premises.

Additionally, in order to be GST-free the goods must be supplied at the same point in time at which the GST-free 'other health service' is supplied **and** the goods must have been either:

- a. customised or manipulated for the exclusive treatment of the illness or disability of the particular patient who is the recipient of the GST-free 'other health service', or

- b. necessarily utilised as an integral part of the patient's treatment required immediately during that specific attendance.

For section 38-10(4), additionally the goods must be 'used or consumed' at the premises as described below in [Issue 2.c.](#)

### **2.b.2. A recognised professional prescribes and dispenses vitamins and herbs for a condition. Will these goods supplied at that time be GST-free?**

For source of ATO view, refer to [issue 1.c](#) of this issues register.

If the vitamins and herbs are customised or manipulated for the exclusive treatment of the illness or disability of the particular patient who is the recipient of the GST-free other health service they may be GST-free. They would also have to be dispensed by a \*recognised professional (as defined) in relation to the supply of services of the following to be GST-free under section 38-10(3):

Health services	
Item	Service
1	Aboriginal or Torres Strait Islander health
2	Acupuncture
3	Audiology, audiometry
4	Chiropody
5	Chiropractic
6	Dental
7	Dietary
10	Nursing
11	Occupational therapy
13	Osteopathy
14	Paramedical
16	Psychology
17	Physiotherapy
18	Podiatry
19	Speech pathology
20	Speech therapy
21	Social work

Finally the supply will have to be made at the same point in time as the GST-free other health service and made at the premises at which that service is supplied.

For the goods supplied by a \*recognised professional of 'Herbal medicine (including traditional Chinese herbal medicine)' and 'Naturopathy' to be GST-free the supply would need to meet the elements outlined for section 38-10(3) and only the portion used or consumed at the premises where the service is provided (in accordance with the interpretation given in [Issue 2.c.](#) below) will be GST-free.

**2.b.3. A recognised professional fits a patient with an appliance for the purpose of correcting an illness or disability. Will these goods supplied at that time be GST-free?**

For source of ATO view, refer to [issues 1.c](#) together with [2.a](#) of this issues register.

This question requires the consideration of sections 38-45 and 38-10 and focuses upon the supply of goods.

The goods may be GST-free pursuant to section 38-45 if they are:

- a. a medical aid or appliance covered by Schedule 3 or subsequent regulation, and
- b. the medical aid or appliance is specifically designed for people with an illness or disability, and
- c. the medical aid or appliance is not widely used by people without an illness or disability.

Once an item meets all of the above criteria its supply will be GST-free. The GST-free status will apply all the way down the supply chain and not only when supplied to a person who has an illness or disability. The elements do not require the recipient of the aid or appliance to use it in a particular way. An example of medical aids and appliances that are contained in Schedule 3 are heart monitors and pacemakers (Items 1 and 2 of Schedule 3).

If section 38-45 does not apply to the goods it is necessary to consider the application of section 38-10(3) which may allow the goods to be GST-free if they are supplied at the premises at which the identified GST-free other health service is supplied by a \*recognised professional. Additionally, the goods must be supplied at the same point in time at which the GST-free other health service is supplied **and** the goods must have been either:

- a. customised or manipulated for the exclusive treatment of the illness or disability of the particular patient who is the recipient of the GST-free 'other health service', or
- b. necessarily utilised as an integral part of the patient's treatment required immediately during that specific consultation.

**2.b.4. A person is qualified as a recognised professional in both Acupuncture and Naturopathy (or Chinese herbal medicine). The patient is treated with a range of approaches, sometimes involving the use of acupuncture and sometimes not. A herbal formulae is usually customised and dispensed at each treatment. Herbal medicine is part of the scope of practice of acupuncture, but this practitioner has further skills and is recognised in their own right as a herbalist/naturopath as well. Is the herbal formulae always GST-free by virtue of the recognised professional being an acupuncturist?**

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

**2.b.5 Are customised mouthguards taxable?**

Non-interpretative – straight application of the law.

Yes, customised mouthguards are a taxable supply. They can not become GST-free as being supplied in the course of a GST-free health service by a recognised professional supplying 'dental' services. Although they have been 'customised' or 'manipulated' they are not related to an 'exclusive treatment of an illness or disability'. Additionally, the ATO's interpretation of 'in the course of supplying' will not render customised mouthguards



GST-free as they would not be 'required immediately' but rather are supplied subsequent for use.

For further information refer to paragraph 42 of [CR 2013/14](#) – *Goods and services tax: goods and services supplied by dentists*.

**2.b.6 A practitioner has been advised by a herbal company that the raw herbs she uses are really foods just like nuts and are GST-free. Raw herbs are described as herbs that have not been processed in a factory but have usually been dried. They may consist of leaves, bark, twigs, roots, flowers, seeds, fruit. Some commonly used medicinal herbs include ginger, cinnamon, cardamom, turmeric, licorice. In the case of Chinese herbal medicines it can also extend to some minerals such as calcium based products (for example ground oyster shell) and animal products.**

**Will raw herbs be considered as food and treated as GST-free, or recognised as herbal medicines and attract the GST?**

Non-interpretative – straight application of the law.

Raw herbs supplied by a medical practitioner or a recognised professional may be GST-free pursuant to sections 38-7(3), 38-10(3) or 38-10(4) as being goods supplied in the course of a GST-free medical service or other health service. For the necessary requirements of those sections, see [Issues 1.c.](#), [2.b.](#) and [2.c.](#)

As to the applicability of the Food provisions in Subdivision 38-A, a significant issue is that raw herbs which are supplied as part of a herbal formula/prescription are not GST-free under the food provisions. The reason for this is that the character of the individual items have changed character once mixed.

It remains then to consider whether the supply of raw herbs separately as a food, will be GST-free under the Food provisions.

Raw herbs will be GST-free as food where the requirements of section 38-2 of the GST Act are satisfied. Where raw herbs do not satisfy the requirements of section 38-2, they will not generally be GST-free.

Section 38-2 states:

'A supply of \*food is **GST-free**.'

'Food' is defined in section 38-4 as being any one, or a combination of, the following:

- a. food for human consumption (whether or not requiring processing or treatment)
- b. ingredients for food for human consumption
- c. \*beverages for human consumption
- d. ingredients for beverages for human consumption
- e. goods to be mixed with or added to food for human consumption (including condiments, spices, seasonings, sweetening agents or flavourings)
- f. fats and oils marketed for culinary purposes

but does not include:

- a. live animals (other than crustaceans or molluscs)
- b. unprocessed cow's milk
- c. any grain, cereal or sugar cane that has not been subject to any process or treatment resulting in an alteration of its form, nature or condition, or
- d. plants under cultivation that can be consumed (without being subject to further process or treatment) as food for human consumption.

Separately supplied raw herbs **may** be GST-free as food, provided the herbs are not supplied in the form of a living plant. They are possibly GST-free as food as either:

- food for human consumption
- ingredients for food for human consumption, or
- goods to be mixed with or added to food for human consumption.

Food is not further defined and will take on its ordinary meaning. The Macquarie dictionary defines 'food' as:

'what is eaten, or taken into the body, for nourishment'.

The courts, in determining whether a particular good is food, will look to what an ordinary person understands food to be. It is considered that a good will generally be food where it has the normal characteristics of food in that it looks like food, tastes like food and fills the stomach like food.

Many of the goods mentioned in the question, such as ground oyster shell and many leaves, bark, twigs, roots, flowers and seeds, do not have the normal characteristics of food and will not be food and would not generally be considered to be ingredients of food.

It should be noted that 'goods to be mixed with or added to food' whilst only including spices, condiments, seasonings also may include commercial additives such as chemicals that are used only for food purposes.

Some of the things listed in the question would satisfy the definition. This includes ginger, cinnamon, cardamom, turmeric and licorice. Generally, these are all either ingredients or they satisfy 'goods to be mixed with or added to food'. However, it will be necessary for the goods to be in a form that will satisfy the requirements. For example, goods in tablet or capsule form or goods which have been added to other goods such that they lose their identity as 'food' will not satisfy the requirements. Also as stated above if provided as part of a herbal formula/prescription the raw herbs will not be GST-free under the Food provisions.

## **2.c. Additional requirement for goods supplied 'in the course of supplying' a GST-free 'other health service' (herbal medicine and naturopathy only)**

The content for this issue is a public ruling for the purposes of the <i>Taxation Administration Act 1953</i> and can be found <a href="#">here</a> .
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### **Related questions**

The following questions explore what is within the concept of whether goods are 'supplied, and used or consumed, at the premises at which the service has been supplied' for the purposes of section 38-10(4). None of the questions and answers should be read in isolation but rather as part of the whole of the information contained in this document.



**2.c.1. What is the GST status for goods supplied by herbalists and naturopaths, which are for consumption off the premises or are only partially consumed on the premises at the time of treatment?**

For source of ATO view, refer to [issue 2.c](#) of this issues register.

In accordance with section 38-10(4), the goods supplied must be completely used or consumed at the premises at which the service is supplied. If a supply of goods is used or consumed at a place other than the premises where the GST-free service is supplied then section 38-10(4) will not be satisfied. If the goods are only partially consumed, the goods have not been 'used or consumed at the premises' and only that portion consumed at the premises will be GST-free in accordance with section 38-10(4).

**2.c.2. Where a herbalist or naturopath explains the constituents of a herbal mixture, discuss possible side effects and demonstrate how to take herbs, have the goods been 'used' in the course of supplying a GST-free service?**

For source of ATO view, refer to [issue 2.c](#) of this issues register.

No, the goods must be wholly 'used or consumed' at the premises at which the supply of the service is made. Explanation, demonstration and discussion will not constitute 'used or consumed'. Only the portion of the herbal mixture supplied 'in the course of supplying' the GST-free service that is completely consumed or ingested during that service, be GST-free.

**2.d. Supplies 'provided by an ambulance service in the course of the treatment of the \*recipient of the supply'.**

Non-interpretative – straight application of the law.

Ambulance services are GST-free pursuant to section 38-10(5). The section provides that 'a supply is GST-free if it is provided by an ambulance service in the course of the treatment of the \*recipient of the supply'. Also refer to [GSTR 2006/9](#) – *Goods and services tax: supplies*, for the ATO view on determining who is the recipient of the supply.

**Related questions**

The following questions explore what is within the concept of supplies 'provided by an ambulance service in the course of the treatment of the \*recipient of the supply'. None of the questions and answers should be read in isolation but rather as part of the whole of the information contained in this document.

**2.d.1. Is non-emergency transport by an ambulance service GST-free if it is for the transport of people between their homes and places of medical treatment?**

Non-interpretative – straight application of the law.

A supply of transport by an ambulance service is only GST-free where it is supplied in the course of the treatment of the recipient of the supply. It is considered that transport by an ambulance service from home to a place for treatment is not dissociable to the course of treatment and is GST-free.

**2.d.2. Is transportation by a taxi service GST-free if it is for the transport of people between their homes and places of medical treatment?**

Non-interpretative – straight application of the law.

No. A supply of transportation by a taxi operator is not a supply by an ambulance service.

#### **2.d.4. Are ambulance subscriptions GST-free?**

Non-interpretative – straight application of the law.

Section 38-55(2) provides 'A supply of insurance against liability to pay for services supplied by ambulance is **GST-free**'. This will include ambulance subscriptions.

## Issue 3 – Hospital treatment

(a) added, (u) updated, (w) withdrawn

Date	Issue
21/06/00 (a) 24/11/01 (u) 22/06/05 (u) 21/02/06 (u) 21/05/12 (u)	3.a. '*Hospital treatment'
21/06/00 (a) 21/02/06 (u) 01/08/12 (u)	3.a.1. Where a public hospital contracts with an approved pathology provider for provision of pathology services to the public hospital, will supply from the approved pathology provider to the public hospital be GST-free?
21/06/00 (a) 22/06/05 (u)	3.a.2. Relatives/Carers of Patients in hospital (not just visitors) are sometimes provided with accommodation and or meals in the hospital for a nominal charge, which covers cleaning and catering costs? Is the charge GST-free?
21/06/00 (a) 21/02/06 (u) 01/08/12 (u)	3.a.3. What is the GST status of services provided to hospital patients?
21/06/00 (a) 21/02/06 (u)	3.a.4. Where a patient is transferred to home but not discharged from hospital and a fee is charged to the patient for the care of that patient. Will this fee be GST-free?
11/07/01 (a) 22/06/05 (u) 01/08/12 (u)	3.a.5. A private hospital has an arrangement to provide hospital services to employees of a company at the company's expense. If the fees were paid by the patient for example, they would be GST-free. Are the services GST-free even though paid by the company?
11/07/01 (a) 22/06/05 (u) 01/08/12 (u)	3.a.6. A health fund has an arrangement where it pays a set amount to Hospital A, for the treatment and any necessary rehabilitation of a member patient. Hospital A carries out the patient's surgery. The patient is discharged from Hospital A and admitted to Hospital B, which provides specialist rehabilitation services to the patient. Hospital B charges Hospital A for the rehabilitation services. Are the services provided by Hospital B GST-free?
21/06/00 (a)	3.b. '*Hospital treatment' that relates to '*medical services' rendered for 'cosmetic reasons'
21/06/00 (a) 22/06/05 (u)	3.b.1. Where a patient has both a cosmetic procedure and a GST-free procedure within the same admission, how will the accommodation fee and theatre fee be treated?
21/06/00 (a) 22/06/05 (u)	3.b.2. Where a cosmetic patient develops an infection or other medical problem, are the additional bed fees taxable or GST-free?
21/06/00 (a) 21/02/06 (u)	3.c. Goods that directly relate to a supply of GST-free '*hospital treatment'
21/06/00 (a) 21/05/12 (u)	3.c.1. What is the GST status of the provision of a television which is included as part of the hospital suite furniture and in the hospital fee?
21/06/00 (a) 21/05/12 (u)	3.c.2. Is the provision of local telephone calls, which are bundled into the bed fee, GST-free?
21/06/00 (a)	3.c.3. Are meals provided by a hospital GST-free?
21/06/00 (a)	3.c.4. Are meals provided by a hospital GST-free when it is contracted out?
21/06/00 (a) 21/02/06 (u) 28/06/13 (u)	3.c.5. Is GST to be charged on sales of (prostheses type) goods supplied to the hospital/attending surgeon, which are billed directly to (surgical) patients on the instruction of the hospital/attending surgeon?
21/06/00 (a) 22/06/05 (u)	3.c.6. Will the provision of dietary supplements to patients be GST-free?

### 3.a. '\*Hospital treatment'

- Issue 3.a. below is an historical issue which was a public ruling prior to 1 July 2010. [GSTD 2012/4](#) (the Determination) contains the current ATO view which applies from 26 March 2009. The current ATO view supersedes the view previously contained in issue 3.a. below which is now in history. For periods between 26 March 2009 and 1 July 2010 where an entity relied on the views expressed in issue 3.a. below and to the extent that those views conflict with the views expressed in the Determination, the entity is protected so that any underpaid net amount ceases to be payable or any amount overpaid by the Commissioner is taken to have been payable. See also the ATO view in Part 3 of [GSTR 2006/9](#) – *Goods and services tax: supplies*.

A supply of \*hospital treatment is GST-free pursuant to section 38-20(1) of the GST Act.

However, subsection 38-20(2) of the GST Act provides that a supply of hospital treatment is not GST-free to the extent that it relates to a supply of a professional service that, because of subsection 38-7(2), is not GST-free.

Section 195-1 of the GST Act defines 'hospital treatment' as having the same meaning as in the *Private Health Insurance Act 2007* (PHI Act). From March 26 2009, 'hospital treatment' takes its meaning from the PHI Act. Prior to this date, it took its meaning from subsection 67(4) of the *National Health Act 1953*.

Section 121-5 of the PHI Act defines 'hospital treatment' as:

- (1) **Hospital treatment** is treatment (including the provisions of goods and services) that:
  - a. is intended to manage a disease, injury or condition, and
  - b. is provided to a person
    - i. by a person who is authorised by a \*hospital to provide the treatment, or
    - ii. under the management or control of such a person; and
  - c. either
    - i. is provided at a hospital, or
    - ii. is provided, or arranged, with the direct involvement of a hospital.
- (2) Without limiting subsection (1), **hospital treatment** includes any other treatment or treatment included in a class of treatments, specified in the Private Health Insurance (Health Insurance Business) Rules for the purposes of this subsection.
- (3) Without limiting subsection (1) or (2), the reference to treatment in those subsections includes a reference to any of, or any combination of, accommodation, nursing, medical, surgical, podiatric surgical, diagnostic, therapeutic, prosthetic, pharmacological, pathology or other services or goods intended to manage a disease, injury or condition.
- (4) Despite subsections (1) and (2), treatment is not \*hospital treatment if it is specified in, or is included in a class of treatments specified in, the Private Health Insurance (Health Insurance Business) Rules for the purposes of this subsection.
- (5) A **hospital** is a facility for which a declaration under subsection (6) is in force.
- (6) The Minister may, in writing
  - a. declare that a facility is a \*hospital; or
  - b. revoke such a declaration.

...

- (8) A declaration under subsection (6) that a facility is a \*hospital must include either a statement that the hospital is a public hospital or a statement that the hospital is a private hospital.

Section 121-10 of the PHI Act defines 'general treatment' as:

- (1) **General treatment** is treatment (including the provision of goods and services) that
- a. is intended to manage or prevent a disease, injury or condition; and
  - b. is not \*hospital treatment.

As the definition of hospital treatment requires that the provision of treatment including goods and services be provided to a person for the management of a disease, injury or condition (a patient), hospital treatment will not include supplies to a hospital (including services of medical practitioners under visiting medical officer arrangements), supplies by a hospital or medical practitioner to an entity other than the patient. Where a health service is supplied to another business entity, such as a hospital, the liability of the hospital is not a liability that would be covered by a health insurance policy.

While the definition refers to 'provided' and 'provision', rather than supplied, it should be noted that this definition is contained in an Act other than the GST Act (that is, the *Private Health Insurance Act 2007*). The focus for GST purposes is what is supplied to patients and not what is supplied to other business entities but provided to patients.

In determining whether a supply is GST-free hospital treatment, the following issues need to be considered:

- The requirement to identify the recipient of the supply. Hospital treatment is only GST-free when supplied to a patient at a hospital or provided or arranged with the direct involvement of a hospital. Where a supply is made to an entity other than a patient, the supply will not be a supply of GST-free hospital treatment. Often, payments are made between businesses for the supply of professional services rather than for GST-free hospital treatment.
- Co-payments arise where a patient and another entity both contribute to the cost of a supply that has been made to that patient. However, the arrangements that have been entered into between the parties to a transaction may result in a variety of outcomes for GST purposes. It is necessary to determine to whom the supply is made and what the co-payment is for. A co-payment will be consideration for a GST-free supply if it is paid for a supply of hospital treatment to the patient. A co-payment will be consideration for a taxable supply, for example, where it is paid for a supply of professional services by a contracted health practitioner to a hospital in respect to services provided to a patient.
- In examining the 'recipient of the supply' issue and the co-payment issue, there may be more than one supply in the arrangement. It is necessary to identify the supplies with which any consideration has the relevant nexus.
- Interpretation of words and phrases in the definition of '\*hospital treatment'.

### Who is the recipient of the supply?

As with most of the GST health provisions (excluding sections 38-45 and 38-47), the supply of a health service is only GST-free when supplied to the individual requiring that treatment or specific health service. Therefore, it is necessary to determine the recipient of the supply of the services by the health service practitioner. Where a supply has been made to another business entity, the supply will not be GST-free under the health provisions (excluding sections 38-45 and 38-47).

In some sections, the requirement to identify the recipient of the supply is due to the specific wording in the section (for example 'appropriate treatment of the recipient of the supply') and in other sections it is due to the nature of the services themselves.

'Hospital treatment' is only GST-free to the patient – partly due to the nature of the services and partly due to the words of the section. Subsection 121-5(1) of the PHI Act specifies that it can only be provided to a person who requires treatment at a hospital or with the direct involvement of a hospital.

Services that are supplied by one business entity to a second business entity in order for that second business entity to supply services to a patient will not satisfy the requirements of the definition of 'hospital treatment'. Supplies that will not satisfy the definition of 'hospital treatment' include:

- professional services that are supplied to a hospital by a relevant health service practitioner (only the supply by the hospital is capable of satisfying the definition of 'hospital treatment'), and
- services that a hospital supplies to another business entity that the other entity on-supplies to a patient (only the supply by the other business entity is capable of satisfying the definition of 'hospital treatment').

In these circumstances, there will be two separate supplies:

- a supply from the first business entity (for example a relevant health service practitioner) to the second business entity (for example a hospital) being the supply of professional services, and
- a supply from the second business entity to the patient being the supply which is capable of satisfying the definition of 'hospital treatment'.

Under this arrangement, the supply from that hospital to the patient will be GST-free under section 38-20 provided that all the necessary elements of section 38-20 are satisfied.

In relation to the supply by the relevant health service practitioner to the hospital, the hospital is the recipient of the supply. The supply by the relevant health service practitioner to the hospital is not 'hospital treatment'. The supply of services made to a hospital by the relevant health service practitioner will represent a business to business transaction and, as such, it will generally be a taxable supply. However, this will have a neutral revenue impact, as the hospital will claim an input tax credit for the GST paid to the relevant health service practitioner.

The propositions set out in Part 3 of GSTR 2006/9 provide guidance on multi-party arrangements. To determine the recipient of a supply, it is necessary to examine the contractual relationship between the parties and whether there is a binding obligation to supply goods, services or some other thing by one business entity to another business entity or to someone else such as a patient.

The nature of the supply to the patient is examined separately to any supplies between business entities. Specifically, in the context of hospital treatment, refer to example 9 in GSTR 2006/9.

### **Co-payments by patients**

Where a patient is required to make a co-payment to a health service practitioner (in addition to a payment that is being made by the payer to the health service practitioner), it will be necessary to determine whether that co-payment by the patient is for a supply by the payer to that patient or for a separate supply by the health service practitioner to that patient.

If the co-payment is for a separate supply by the health service practitioner to that patient, it will be separate to the supply between the payer and health service practitioner and the GST status will be determined independently of that other supply. For example, a hospital

may contract with another business entity (the contractor) to make a supply to a patient. The contractor may be entitled to charge the patient a co-payment. The first supply between the hospital and the contractor will generally be a taxable supply (regardless of whether it is a grant or fee for service) and the second supply by the contractor to the patient will be a GST-free supply where it satisfies the requirements of the definition of *'hospital treatment'*.

If the co-payment is for a supply by the hospital to that patient, the consideration that the patient pays will be for the supply that has been made by the hospital to the patient but will also discharge part of the debt between the hospital and contractor. In this situation, it will be treated in the same manner as though the payment went from the patient to the hospital (and was consideration for that supply) and from the hospital to the contractor as part of the total amount paid by the hospital as consideration for the contractor's supply. This ensures that all parties are correctly accounting for their respective supplies.

For example, a patient may engage a hospital to supply treatment. The hospital may engage a contractor to perform that treatment. Where the hospital requests the patient to pay the consideration directly to the contractor rather than to the hospital, the amount paid by the patient to the contractor is consideration for the supply by the hospital to the patient and is also consideration for the supply by the contractor to the hospital. The single payment discharges the liabilities for both supplies.

In some circumstances, the payment by the patient is less than the liability for the supply by the contractor to the hospital. In these cases, the hospital will also pay an amount to the contractor and the consideration for the contractor's supply will be the total of the amount that the hospital pays and the amount that the patient pays (the co-payment).

### **The nexus between consideration and a supply**

The nexus between consideration and a supply has been previously addressed by the Commissioner (for example in GSTR 2001/4). GSTR 2001/4 states the following at paragraphs 81 and 91 to 93 and 96:

'81. For a supply to be a taxable supply, it must be a supply for consideration. It will not be sufficient for there to be a supply and a payment. GST is not payable on supplies unless they are made *for* consideration, and the other tests in section 9-5 are satisfied. There must be a sufficient nexus between the supply and the payment. ...

91. The references in the GST Act to 'supply for consideration' ... underscore the close coupling between the supply and the consideration that is necessary before a payment will be consideration for a supply that will make the supply subject to GST.

92. ... the nature of the nexus required between supply and consideration is specified in the definition of consideration. A payment will be consideration for a supply if the payment is 'in connection with', 'in response to' or 'for the inducement' of a supply.

93. ... the test is whether there is a sufficient nexus between the supply and the payment made.

96. In determining whether a sufficient nexus exists between supply and consideration, regard needs to be had to the true character of the transaction. An arrangement between parties will be characterised not merely by the description which parties give to the arrangement, but by looking at all of the transactions entered into and the circumstances in which the transactions are made.'

GSTR 2006/9, in particular paragraphs 104 to 108 and 180 relating to the nexus between supply and consideration, provide further guidance on how to identify and characterise supplies in the context of the transactions in which they are made.

Accordingly, in looking at a transaction that involves three entities, ascertaining the true character of the transaction is essential. Where one entity, in carrying on an enterprise, contracts another entity to do something and that other entity receives payment for doing that thing, there will be sufficient nexus between the consideration and the supply made to

that entity as it will be 'in connection with', 'in response to' or 'for the inducement' of that supply.

Similarly, where a patient provides payment for goods or services that he or she receives, there will be sufficient nexus between the consideration and the supply made to that patient. The issue in such cases, which is addressed under the heading of 'Co-payments by patients', is in determining which of the other two entities is actually making the supply to him or her.

## **Interpretation of the definition of 'hospital treatment' in section 121-5 of the PHI Act for the purposes of section 38-20 of the GST Act**

### **Meaning of 'treatment'**

Thereference to treatment in subsection 121(3) of the PHI Act includes a reference to any of, or a combination of, accommodation, nursing, medical, surgical, podiatric surgical, diagnostic, therapeutic, prosthetic, pharmacological, pathology or other services or goods intended to manage a disease, injury or condition.

'Accommodation' is not defined in the Act. Accordingly, as it does not have a special or technical meaning, it will take on its ordinary meaning. The Macquarie Dictionary (3rd Edition) defines 'accommodation' to mean:

"1. the act of accommodating. 6. Lodging, or food and lodging".

The Macquarie Dictionary (3rd Edition) defines 'accommodate' to mean:

"2. to provide with room and sometimes suitable food and entertainment".

Accommodation, in a 'hospital treatment' context, is the provision of a room or lodging in connection with a hospital together with food as appropriate.

The definition of 'hospital treatment' also includes any other treatment or treatments specified in the *Private Health Insurance (Health Insurance Business) Rules*.

In addition to 'general treatment' being excluded from hospital treatment, the *Private Health Insurance (Health Insurance Business) Rules* may also specify classes of treatment that are excluded from being hospital treatment.

The *Private Health Insurance (Health Insurance Business) Rules* are amended from time to time and direct reference should be made to them.

### **Meaning of 'provided to a person by a person who is authorised by a hospital to provide treatment'.**

The definition of hospital treatment requires that the treatment be provided to a person and the person providing the treatment must be permitted by the hospital to do so. As such, only goods and services that are provided to a person requiring treatment for the management of a disease, injury or condition, by a duly authorised person, will satisfy the definition. That is, only supplies made by a hospital to a patient will fall within the scope of the definition of hospital treatment. Supplies to a hospital, supplies by a hospital or medical practitioner to an entity other than the person requiring the treatment will not satisfy the definition of hospital treatment.

Any other services between health practitioners and patients need to be determined in accordance with sections 38-7, 38-10, 38-45, 38-47 and 38-50 of the GST Act, as applicable.

### **Meaning of ' under the management or control of such a person'.**

This phrase still requires that the supply be a supply by the hospital but the person who is duly authorised by the hospital need not themselves perform the service, however the supply of goods or services must be performed under the management and control of the duly authorised person.

### **Meaning of 'provided at a hospital'**



Pursuant to subsections 121-5(5) and (8) of the PHI Act, the services must be performed at a facility that is declared by the Minister to be a public or private hospital.

**Meaning of 'provided, or arranged, with the direct involvement of a hospital'.**

The provision of elements of an episode of hospital care outside the physical boundary of a hospital is included in the definition of hospital treatment as long as a hospital is involved in the delivery of the services. However, due to the requirement of paragraph 121-5(1)(b) of the PHI Act and as addressed earlier, the supply must actually be made by the hospital.

**Related questions**

The following questions explore what is within the concept of 'hospital treatment' for the purposes of section 38-20. None of the questions and answers should be read in isolation but rather as part of the whole of the information contained in this document.

**3.a.1. Where a public hospital contracts with an approved pathology provider for provision of pathology services to the public hospital, will the supply from the approved pathology provider to the public hospital be GST-free?**

For source of ATO view, refer to:

- [GSTD 2012/4](#) (formerly issue 3.a in this issues register)
- Part 3 of [GSTR 2006/9](#) – *Goods and services tax: supplies*.

Generally, where a public hospital contracts with an independent third party to supply goods or services to it, the supply will be a taxable supply unless another GST-free provision applies (for example section 38-45 or section 38-60).

From 1 July 2012, where the public hospital is an Australian government agency, the supply to the public hospital will be GST-free to the extent that the underlying supply of the health service to the patient is a GST-free health supply under Subdivision 38-B (section 38-60). For administrative ease however, the parties may agree for the supply to the public hospital, or supplies of a kind that include that supply, not to be treated as GST-free (section 38-60(4)).

**3.a.2. Relatives/carers of patients in hospital (not just visitors) are sometimes provided with accommodation and or meals in the hospital for a nominal charge, which covers cleaning and catering costs? Is the charge GST-free?**

Non-interpretative – straight application of the law.

The provision of meals and accommodation to persons not receiving hospital treatment is not GST-free under section 38-20. However, a supply of this nature may be GST-free where the supplier is an endorsed charitable institution (from 1 July 2005), an endorsed trustee of a charitable fund (from 1 July 2005) or a gift-deductible entity. In this case, the supply will be GST-free under section 38-250 where the supply is:

- a. for accommodation, the consideration must be for less than 75% of either the market value or cost of the accommodation, or
- b. for other supplies, the consideration must be for less than 50% of the market value or less than 75% of the cost of that supply.

**3.a.3. What is the GST status of services provided to hospital patients?**

Non-interpretative – other reference (see [GSTD 2012/4](#)).

The GST status of hospital services is determined by to whom the services are supplied and not by to whom they are provided. Hospital treatment is only GST-free when supplied to a patient.

The supply of hospital services to patients will be GST-free where it is the supply of hospital treatment as defined in section 121-5 of the *Private Health Insurance Act 2007*.

However, hospital services will not be GST-free where they relate to certain professional services such as cosmetic surgery for which a Medicare benefit is not payable or tattoo removal unless another GST-free provision applies (for example section 38-45).

Where a hospital contracts an independent third party to supply services to it, the supply will be a taxable supply unless another GST-free provision applies (for example section 38-45 or 38-60). It is considered that the definition of 'hospital treatment' in section 195-1 as related to the definition of that phrase in section 121-5 of the *Private Health Insurance Act 2007* does not cover the supply of services to a hospital.

### **3.a.4. Where a patient is transferred to home but not discharged from hospital and a fee is charged to the patient for the care of that patient. Will this fee be GST-free?**

Non-interpretative – other reference (see [GSTD 2012/4](#) formerly issue 3.a in this issues register)

Hospital treatment for the purposes of section 38-20 includes the supply of treatment (as specified in section 121-5 of the *Private Health Insurance Act 2007* and the Private Health Insurance (Health Insurance Business) Rules) to patients that is either provided at a hospital or provided outside the physical boundary of a hospital with the direct involvement of a hospital.

However, supplies that are made to the hospital, such as where the hospital contracts a health service practitioner to give that care, will not be GST-free hospital treatment even though those services are provided to patients.

If section 38-20 does not apply, it may be necessary to consider the application of the other specific provisions in subdivision 38-B to determine whether the fee would be GST-free (for example, section 38-10 (other health services), section 38-30 (community care) and so forth).

### **3.a.5 A private hospital has an arrangement to provide hospital services to employees of a company at the company's expense. If the fees were paid by the patient for example, they would be GST-free. Are the services GST-free even though paid by the company?**

For source of ATO view, refer to:

- [GSTD 2012/4](#) (formerly issue 3.a in this issues register)
- Part 3 of [GSTR 2006/9](#)– *Goods and services tax: supplies*.

What supplies are made and to whom, is determined by ascertaining the true character of the transaction. This involves looking at the arrangement between the parties and all the surrounding circumstances, the description given by the parties may not of itself be determinative.

It is considered that a payer company will be the recipient of a supply by the private hospital where there is a contractual arrangement between the parties and there is a binding obligation to supply the hospital services to employees of the company.

Alternatively, in the absence of a binding obligation, taking the factors listed in paragraph 221B of GSTR 2006/9 into account, the arrangement between the hospital and the company (payer) may also point to a supply being made by the hospital to the company. In

either case, the supply by the hospital to the company will be a taxable supply (assuming section 38-60 does not apply).

Where the hospital supplies actual treatment to a company employee and the arrangement is that the company is only paying for that service rather than contracting for the service, the treatment supplied will be GST-free where the requirements of sections 38-7, 38-10 or 38-20 are met (for a discussion of these requirements, refer to [Part 1.a.](#), [1.b.](#) and [2.a.](#) of the Health Issues Log and [GSTD 2012/4](#)). In this case the recipient of the supply (that is the treatment) is the employee.

**3.a.6 A health fund has an arrangement where it pays a set amount to Hospital A, for the treatment and any necessary rehabilitation of a member patient. Hospital A carries out the patient's surgery. The patient is discharged from Hospital A and admitted to Hospital B, which provides specialist rehabilitation services to the patient. Hospital B charges Hospital A for the rehabilitation services. Are the services provided by Hospital B GST-free?**

For source of ATO view, refer to:

- [GSTD 2012/4](#) (formerly issue 3.a in this issues register)
- Part 3 of [GSTR 2006/9](#) – *Goods and services tax: supplies*.

This question focuses on what supplies are made, the chain of supply, by whom and to whom. In every situation, the supplies made and the entity to which they are made, is determined by ascertaining the true character of the transaction. This involves looking at the arrangement between the parties and all the surrounding circumstances, the description given by the parties may not of itself be determinative. The situation referred to in the question, could give rise to transactions of various character.

Where the recipient of the supply is not the health fund, the actual treatment provided by Hospital A to individual members of the health fund who are admitted as patients of Hospital A, will be GST-free where the requirements of section 38-7, 38-10 or 38-20 are satisfied (for a discussion of these requirements, refer to [Part 1.a.](#), [1.b.](#) and [2.a.](#) of the Health Issues Log and [GSTD 2012/4](#)).

Similarly, where Hospital A is not the recipient of the supply by Hospital B and a nominated person admits himself or herself to Hospital B for rehabilitation services at the recommendation and expense of Hospital A, that treatment will be GST-free where the requirements of section 38-7, 38-10 or 38-20 are satisfied.

However, where the arrangements are such that Hospital A enters into a binding obligation with the health fund to be available and/or to provide or to arrange for all treatment needed by members of the health fund, the supply will be taxable where consideration exists and the requirements of section 9-5 are satisfied. Therefore any subcontracted services provided by Hospital A on behalf of the health fund will be taxable where the requirements of section 9-5 are met.

Further, pursuant to Hospital A's contractual liability to the health fund, where Hospital A obtains an undertaking from Hospital B, that particular services will be available at Hospital B to nominated persons, the undertaking supplied by Hospital B will be taxable where consideration exists and the requirements of section 9-5 are satisfied.

This question provides only limited detail as to the arrangements between the parties and assumptions have been made in relation to these arrangements. The assumptions made may not cover all arrangements.

### **3.b. ‘\*Hospital treatment’ that relates to ‘\*medical services’ rendered for ‘cosmetic reasons’**

Non-interpretative – straight application of the law.

Subsection 38-20(2) provides that a supply of \*hospital treatment is not GST-free to the extent that it relates to a supply of a \*professional service that, because of subsection 38-7(2), is not GST-free. Subsection 38-7(2) relates to certain supplies of \*medical services which are not GST-free. This includes services in relation to tattoo removal and services rendered for cosmetic reasons for which a Medicare benefit is not payable.

#### **Related questions**

The following questions explore what is within the concept of whether ‘\*hospital treatment’ relates to a ‘\*medical service’ which has been ‘rendered for cosmetic reasons’ for the purposes of subsection 38-20(2). None of the questions and answers should be read in isolation but rather as part of the whole of the information contained in this document.

#### **3.b.1. Where a patient has both a cosmetic procedure and a GST-free procedure within the same admission, how will the accommodation fee and theatre fee be treated?**

For source of ATO view, refer to [GSTR 2001/8](#) – *Goods and services tax: apportioning the consideration for a supply that includes taxable and non-taxable parts*.

Subsection 38-20(2) provides that a supply of hospital treatment is not GST-free to the extent that it relates to a supply of a \*professional service that is not GST-free because of subsection 38-7(2). Subsection 38-7(2) provides that a medical service is not GST-free if it is rendered for cosmetic reasons and it is not a professional service for which a Medicare benefit is payable under Part II of the *Health Insurance Act 1973*.

If a Medicare benefit is payable in relation to the cosmetic procedure then the fee for that procedure, the accommodation fee and theatre fee will all be GST-free.

If there is no Medicare benefit payable and the procedure is rendered for cosmetic reasons, then the fee for that procedure, the accommodation fee and theatre fee will all be subject to GST.

Where an admission is in relation to both a GST-free procedure and a taxable procedure, the word ‘*extent*’ as it appears in subsection 38-20(2) requires an apportionment between the two procedures. Accordingly, the accommodation and theatre fees will need to be apportioned. Section 9-80 provides that the method of apportionment is based on the value of the taxable supply.

The basis for the apportionment will need to be on a reasonable basis. A reasonable basis will be one which does not favour either the GST-free supply or the taxable supply over the other part of the supply.

The method of apportionment used by the medical practitioner rendering the cosmetic procedure may not be relevant to the method of apportionment to be used by the supplier of the hospital accommodation or the theatre.

The medical practitioner rendering the cosmetic procedure may apportion the fees charged based on the normal charges for each of the procedures rendered. However, for the supplier of the hospital treatment, the method of apportionment by the medical practitioner may not be relevant and it may be more appropriate to apportion fees based on other factors. It may be appropriate to apportion the theatre fee based on the time for each procedure and the accommodation fee based on the time that would normally be associated with accommodation for each of those procedures.

For example, a GST-free procedure may cost \$1,000, take one hour and require 10 days hospitalisation and a taxable procedure may cost \$3,000, take two hours and require three days hospitalisation. If the procedures were supplied at the same time the medical practitioner may charge \$4,000, the two procedures may take three hours in total and the hospitalisation may be for 10 days.

For the medical practitioner, it may be appropriate to apportion the overall fees 25% to the GST-free procedure and 75% to the taxable procedure based on the normal charges for each procedure. For the theatre fees, it may be appropriate to apportion the overall fees one third to the GST-free procedure and two thirds to the taxable procedure based on the time for each procedure. For the accommodation fees, it may be appropriate to apportion the overall fees 85% to the GST-free procedure (being half of the first three days and all of the balance of seven days) and 15% to the taxable procedure (being half of the first three days) based on the normal hospitalisation for each procedure.

However, the facts of each case must be taken into account to determine the appropriate method of apportionment. The above example is for illustrative purposes only and will not be relevant in all cases. Also, other methods of apportionment may be available and appropriate.

GSTR 2001/8 provides information in relation to apportionment and apportionment methods for supplies that includes taxable and non-taxable parts and the application by way of examples.

### **3.b.2. Where a cosmetic patient develops an infection or other medical problem, are the additional bed fees taxable or GST-free?**

For source of ATO view, refer to [GSTR 2001/8](#) – *Goods and services tax: apportioning the consideration for a supply that includes taxable and non-taxable parts*.

This question focuses on whether fees charged for hospital treatment in connection with a service rendered for cosmetic reasons will change where a complication arises. This is relevant where a complication arises either during that supply of hospital treatment or where there is a subsequent readmission.

Subsection 38-20(2) provides that a supply of hospital treatment is not GST-free to the extent that it is related to a supply that is not GST-free because of subsection 38-7(2). Subsection 38-7(2) provides that a supply in relation to certain services will not be GST-free. This includes services in relation to tattoo removal and services rendered for cosmetic reasons for which a Medicare benefit is not payable. For the purposes of this question, only services rendered for cosmetic reasons are addressed.

The elements of subsection 38-20(2) are:

- a. It is a supply of hospital treatment
- b. is not GST-free to the extent (an apportionment may be required)
- c. that it is related (which requires a nexus), and
- d. to services rendered for cosmetic reasons for which a Medicare benefit is not payable.

In examining whether the additional bed fees are taxable or GST-free, it is necessary to determine whether the additional bed fee 'relates' to the services rendered for cosmetic reasons for which a Medicare benefit is not payable. Consequently, it is necessary to determine the scope of the term 'relates' as it appears in subsection 38-20(2).

The word 'relates' is a term of wide import and its meaning depends on the context in the particular Act in which the term appears. It should also be noted that the words 'directly related' appear in subsection 38-20(3) and, as such, the word 'relates' is broader than supplies that 'directly relate'.

The section provides that hospital treatment is not GST-free 'to the extent' that it 'relates' to services rendered for cosmetic reasons for which a Medicare benefit is not payable. It is considered that this means that hospital treatment can be related to different supplies and only that part of the hospital treatment that relates to services rendered for cosmetic reasons for which a Medicare benefit is not payable will not be GST-free.

It is considered that supplies of hospital treatment that are directly related to the performance of a cosmetic procedure (for example theatre fees and nursing care in the theatre) and hospital treatment that is solely for the recovery from a cosmetic procedure will be encompassed in a supply that 'relates' to the supply of the cosmetic procedure that is not GST-free.

Additional hospital treatment that relates solely to a medical complication will be one step removed from the supply that relates to the supply of the cosmetic procedure that is not GST-free. It is considered that hospital treatment being supplied in this instance is more closely related to the medical complication than it is to the cosmetic procedure. Consequently, hospital treatment for the medical complication will be considered separately to the hospital treatment for the cosmetic procedure.

A supply in relation to the medical complication will be GST-free where the requirements of section 38-7 are satisfied.

### ***Complication arises during the same period of hospitalisation***

Where a medical complication arises during the same period of hospitalisation for the non GST-free supply and the complication requires hospitalisation, a portion of the hospital treatment will be related to the non GST-free supply and a portion will be related to the medical complication. On the assumption the medical complication is not in itself excluded by subsection 38-7(2), the portion of the hospital treatment that relates to the medical complication will be GST-free.

### ***Complication arises after the period of hospitalisation***

Where the medical complication arises after the period of hospitalisation for the supply that is not GST-free and the person needs to be readmitted, the hospital treatment that relates to the medical complication will be GST-free. This is on the assumption that the medical complication is not in itself excluded by subsection 38-7(2).

If the medical complication is one that is excluded by subsection 38-7(2), any additional hospital treatment will not be GST-free pursuant to subsection 38-20(2).

### ***Apportionment where an admission is in relation to both a GST-free and a non GST-free procedure***

Where apportionment is required it will need to be on a reasonable basis. A reasonable basis will be one which does not favour either the GST-free supply or the taxable supply over the other part of the supply.

The facts of each case must be taken into account to determine the appropriate method of apportionment. However, the appropriate method of apportionment of the hospital treatment should be determined by the hospital treatment that is necessary for each service.

[GSTR 2001/8](#) provides information in relation to apportionment and apportionment methods for supplies that includes taxable and non-taxable parts and the application by way of examples.



### 3.c. Goods that directly relate to a supply of GST-free “hospital treatment”

For source of ATO view, refer to:

- [GSTD 2012/4](#) (formerly issue 3.a in this issues register)
- [GSTR 2001/1](#) *Goods and services tax: supplies that are GST-free for tertiary education courses.*

Subsection 38-20(3) provides a supply of goods will be GST-free if it is directly related to the supply of the GST-free hospital treatment and it is supplied by, or on behalf of, the supplier of GST-free hospital treatment.

The supply of goods which are not ‘directly related’ to the supply of GST-free hospital treatment will not be GST-free under subsection 38-20(3). If this section does not apply then other GST-free provisions may need to be considered.

With the change of the definition of ‘hospital treatment’ from subsection 67(4) of the *National Health Act 1953* to section 121-5 of the *Private Health Insurance Act 2007*, with effect from 26 March 2009, means that goods used to manage a disease, injury or condition will be covered under subsection 38-20(1) of the GST Act.

#### **Meaning of ‘directly related’**

‘Directly related’ was considered in [GSTR 2001/1](#) in relation to the supply of an education course. That Ruling explained at paragraphs 71 to 73:

‘71. ‘Directly related’ is not defined in the Act and therefore, takes on its ordinary meaning. The Macquarie Dictionary (3rd Edition) defines ‘directly’ to mean ‘in a direct line, way or manner; immediately; absolutely’. The term ‘related’ means ‘associated, connected or allied by nature’.

72. The phrase ‘directly related’ was considered in the context of being ‘directly related to employment’ for income tax purposes in *FC of T v. Dixon* (1952)86 CLR 540, at 553-554:

‘A direct relation may be regarded as one where the employment is the proximate cause of the payment, an indirect relation as one where the employment is a cause less proximate, or, indeed, only one contributory cause’.

73. Therefore, administrative services must be in a direct line or immediately associated or connected with the supply of the education course.”

A similar test is appropriate for the purposes of subsection 38-20(3). The goods must be ‘*in a direct line or immediately associated or connected with*’ the supply of the GST-free hospital treatment. That is, the goods must be integral to, and provided solely for the purpose of, the GST-free hospital treatment and, whilst they may be used subsequent to the GST-free hospital treatment, can not be solely for use subsequent to the GST-free hospital treatment.

At times, a number of identical goods are supplied to a patient of a hospital, only some of which will be supplied for the purpose of providing the GST-free hospital treatment. The balance will not be directly related to the GST-free hospital treatment. Goods that are for consumption after the hospital treatment lose the **direct** connection with hospital treatment and will be indirectly related to, or one step removed from, the actual supply of hospital treatment.

For example, a hospital may supply a bandage to a patient as part of treating that patient. The supply of that bandage will be GST-free under subsection 38-20(3). However, if the hospital supplied ten bandages, the other nine bandages would be for use subsequent to the hospital treatment and would not be GST-free under subsection 38-20(3).

Goods which do not satisfy the requirements of subsection 38-20(3) will be GST-free where the requirements of another GST-free health provision are satisfied (for example, section 38-45 or section 38-50). For example, supplies of crutches and wheelchairs for use after receiving hospital treatment will be GST-free under subsection 38-45. Supplies to

patients of prescription medicines for use after receiving hospital treatment will be GST-free under subsection 38-50.

### ***Meaning of 'on behalf of'***

The phrase 'on behalf of' in subsection 38-20(3) has been interpreted to mean the provision of goods to a patient by the supplier of the 'hospital treatment' where that supplier has arranged for the goods to be provided, on its behalf, by a third party.

'On behalf of' does not extend the GST-free status to those goods that are supplied to a hospital treatment supplier by that third party.

Where goods are supplied to a patient 'on behalf of' a hospital by a third party, it is still the hospital that is supplying the goods to the patient. The third party is **providing or delivering** the goods to the patient but is not **supplying** the relevant goods to the patient.

The focus of the GST-free status of the goods that have been supplied 'on behalf of the hospital' by that third party is on the supply to the patient and not on the third party who supplied the goods 'on behalf of' the hospital.

### **Related questions**

The following questions explore what is within the concept of goods that directly relate to a supply of GST-free 'hospital treatment' for the purposes of section 38-20. None of the questions and answers should be read in isolation but rather as part of the whole of the information contained in this document.

#### **3.c.1. What is the GST status of the provision of a television which is included as part of the hospital suite furniture and in the hospital fee?**

- Issue 3.c.1. below is an historical issue which was a public ruling prior to 1 July 2010. [GSTD 2012/4](#) (the Determination) contains the current ATO view which applies from 26 March 2009. The current ATO view supersedes the view previously contained in issue 3.c.1. below which is now in history. For periods between 26 March 2009 and 1 July 2010 where an entity relied on the views expressed in issue 3.c.1. below and to the extent that those views conflict with the views expressed in the Determination, the entity is protected so that any underpaid net amount ceases to be payable or any amount overpaid by the Commissioner is taken to have been payable.

This question raises the application of subsection 38-20(3) in respect of the supply of goods directly related to the supply of possible treatment.

Upon occasion a provider of hospital services provides a television as part of its hospital fee for the provision of accommodation. In such circumstances, it is considered this provision is the provision of goods that are directly related to the supply of the hospital treatment being the accommodation and is accordingly GST-free.

#### **3.c.2. Is the provision of local telephone calls, which are bundled into the bed fee, GST-free?**

- Issue 3.c.2. below is an historical issue which was a public ruling prior to 1 July 2010. [GSTD 2012/4](#) (the Determination) contains the current ATO view which applies from 26 March 2009. The current ATO view supersedes the view previously contained in issue 3.c.2. below which is now in history. For periods between 26 March 2009 and 1 July 2010 where an entity relied on the views expressed in issue 3.c.2. below and to the extent that those views conflict with the views expressed in the Determination, the entity is



protected so that any underpaid net amount ceases to be payable or any amount overpaid by the Commissioner is taken to have been payable.

This question raises consideration of subsection 38-20(1). The question focuses upon the provision of local telephone calls which would be a separate supply compared to the provision of the actual telephone to make the calls. The provision of the telephone itself would be part of the provision of accommodation and would be GST-free. The telephone calls themselves are not goods and therefore are not considered to be a supply of goods that is directly related to the supply of hospital treatment.

Further, the calls do not form part of the accommodation or any other service intended to manage a disease, injury or condition.

Where a number of goods or services are provided for a single fee then section 9-80 requires an apportionment of the value of that part of the actual supply that is a taxable supply and that part of the actual supply which is either GST-free or input taxed. If the fee for the local telephone calls is bundled into the bed fee then an apportionment will be required.

### **3.c.3. Are meals provided by a hospital GST-free?**

Non-interpretative – straight application of the law.

Meals provided in the course of providing GST-free \*hospital treatment are GST-free.

### **3.c.4. Are meals provided by a hospital GST-free when it is contracted out?**

For source of ATO view, refer to:

- [GSTD 2012/4](#) (formerly issue 3.a in this issues register)
- Part 3 of [GSTR 2006/9](#) – *Goods and services tax: supplies*.

If the \*hospital Treatment is GST-free and the hospital contracts out the meal service, the meals are being provided on behalf of the hospital and will be GST-free to a patient. However, the supply from the contractor to the hospital will not be GST-free.

### **3.c.5. Is GST to be charged on sales of prostheses type goods supplied to the hospital/attending surgeon, which are billed directly to surgical patients on the instruction of the hospital/attending surgeon?**

Non-interpretative – straight application of the law.

The supply of prostheses to hospitals and medical practitioners is not \*hospital treatment. A supply is hospital treatment only when supplied to patients.

### **3.c.6. Will the provision of dietary supplements to patients be GST-free?**

Non-interpretative – straight application of the law.

Where the provision of a dietary supplement is part of a meal provided by the hospital in the course of providing GST-free 'hospital treatment' or is directly related to the nursing care of a patient (receiving GST-free 'hospital treatment') it will be GST-free.

If the provision of the dietary supplement is not GST-free under the GST provisions dealing with Health, the dietary supplement may be GST-free under the Food provisions contained in subdivision 38-A. For example, beverages, and ingredients for beverages, of a kind marketed principally as food for infants or invalids are GST-free (see section 38-2, section 38-4 and item 13 of Schedule 2).

## Issue 4 – Medical aids and appliances

(a) added, (u) updated, (w) withdrawn

Date	Issue
21/06/00 (a)	4.a. Medical aids and appliances
22/06/05 (w)	4.a.1. What goods are to be added to Schedule 3 prior to 1 July 2000?
21/06/00 (a)	4.a.2. Where a medical aid or appliance is repaired, will the repair be GST-free?
21/06/00 (a)	4.a.3. Are generic batteries for hearing aids GST-free?
21/06/00 (a) 25/06/13 (u)	4.a.4. Will all needles and syringes be GST-free?
21/06/00 (a)	4.a.5. Are supplies of medical aids and appliances only GST-free when supplied to the person with an illness or disability?
21/06/00 (a)	4.a.6. Is the hire of goods GST-free where those same goods would be GST-free under section 38-45 if purchased?
21/06/00 (a) 21/02/06 (u) 28/06/13 (u)	4.a.7. Where a person hires or purchases goods through a hospital which are not listed in Schedule 3, will the goods be GST-free?
21/06/00 (a)	4.a.8. Is a personal alarm unit a "'medical alert" device' for the purposes of Item 33 of Schedule 3?
21/06/00 (a)	4.a.9. Is the charge for the ongoing monitoring of a "'medical alert" device' GST-free?
21/06/00 (a) 26/09/00 (u)	4.a.10. Are aged persons included in ' people with an illness or disability' for the purposes of section 38-45?
21/06/00 (a)	4.a.11. What is the meaning of 'artificial teeth' for the purposes of section 38-45 and Schedule 3 – Item 30?
21/06/00 (a)	4.a.12. Is the sale of first aid kits GST-free?
21/06/00 (a)	4.a.13. Is the installation of medical aids and appliances GST-free under section 38-45?
21/06/00 (a)	4.a.14. Are non-prescription sunglasses, frames for prescription lenses and accessories GST-free?
21/06/00 (a)	4.a.15. When does a lens become a 'lens for prescription spectacles' for the purposes of subsection 38-45(1) and Item 155 of Schedule 3 of the GST Act?
21/06/00 (a)	4.a.16. Are lens treatments including coatings/tints (hard coat, multicoat, tints, UV filter, mirror coat) subject to GST?
21/06/00 (a)	4.a.17. Is cutting and edging of a lens supplied by an optical laboratory to an optometrist subject to GST?
21/06/00 (a)	4.a.18. Is the fitting of a lens supplied by an optical laboratory to an optometrist subject to GST?
24/05/01 (a)	4.a.19. Are walking sticks GST-free?
15/10/01 (a)	4.a.20 Will the initial supply of a foot orthosis to a patient and subsequent postage and modifications or repair to the foot orthosis by a podiatrist or contracted lab be GST-free?
21/06/00 (a) 24/05/01 (w)	What are the arrangements for subsequent reviews of Schedule 3?

## **4. Section 38-45 Medical aids and appliances**

Non-interpretative – straight application of the law.

### **Explanation**

Section 38-45 provides that where the elements of that section are satisfied, a medical aid or appliance listed in Schedule 3 will be GST-free. The elements of section 38-45(1) are that the medical aid or appliance is:

- a. covered by Schedule 3 or subsequent regulation, and
- b. specifically designed for people with an illness or disability, and
- c. not widely used by people without an illness or disability.

Once an item meets all of the above elements then its supply will be GST-free all the way down the supply chain and not only when supplied to a person who has an illness or disability.

Further, section 38-45(2) provides that a spare part that is specifically designed as a spare part for a GST-free medical aid or appliance will be GST-free.

Medical aids or appliances can be added to Schedule 3 by regulation.

### **Related questions**

The following questions explore what is within the concept of 'medical aid and appliance' for the purposes of section 38-45. None of the questions and answers should be read in isolation but rather as part of the whole of the information contained in this document.

#### **4.a.2. Where a medical aid or appliance is repaired, will the repair be GST-free?**

Non-interpretative – straight application of the law.

There is no provision for the labour component of repairs to be GST-free. By section 38-45(2) a spare part for, which is specifically designed as a spare part for, a GST-free supply under section 38-45(1) will be GST-free.

#### **4.a.3. Are generic batteries for hearing aids GST-free?**

Non-interpretative – straight application of the law.

No. Generic batteries are not GST-free. Item 46 of Schedule 3 provides that batteries specifically designed specifically for use with hearing aids are GST-free. Generic batteries would fail the conjunctive test in section 38-45(1)(b). Such batteries are not 'specifically designed for people with an illness or disability' and would be 'widely used by people without an illness or disability'. For batteries used in hearing aids to be GST-free, they must be specifically designed for that use.

#### **4.a.4. Will all needles and syringes be GST-free?**

Non-interpretative – straight application of the law.

Item 37 of Schedule 3 refers to needles and syringes under the category heading, "Diabetes". It is not only needles and syringes for use by diabetics which fall within item 37. However, it is considered that the individual items 'needles' and 'syringes' must be interpreted by reference to the fact that they are listed together. On this basis, it is considered that a needle that is not designed for use with a syringe, or a syringe that is not

designed for use with a needle, will not be covered by item 37 in Schedule 3. Thus, an item such as a needle for inserting sutures is not covered by Schedule 3.

The supply of needles and syringes that are covered by item 37 will be GST-free if specifically designed for people with an illness or disability and are not widely used by people without an illness or disability. For example, needles for insulin dependent diabetics will be GST-free.

#### **4.a.5. Are supplies of medical aids and appliances only GST-free when supplied to the person with an illness or disability?**

Non-interpretative – straight application of the law.

Medical aids and appliances which satisfy all of the elements of section 38-45 are GST-free at all stages of the supply chain.

#### **4.a.6. Is the hire of goods GST-free where those same goods would be GST-free under section 38-45 if purchased?**

Non-interpretative – straight application of the law.

Section 38-45(1) states that the supply is GST-free. The section does not require that the medical aid or appliance be purchased to be GST-free. Where the purchase of a medical aid or appliance is GST-free, it is accepted that the hire of the same medical aid or appliance will be GST-free.

#### **4.a.7. Where a person hires or purchases goods through a hospital which are not listed in Schedule 3, will the goods be GST-free?**

Non-interpretative – straight application of the law.

The hire or purchase of goods not listed in Schedule 3 will not be GST-free under section 38-45. Goods which are not listed in Schedule 3 may be GST-free under subsection 38-20(1) where they are used to manage a disease, injury or condition of a hospital patient as part of the supply of hospital treatment to that patient or under subsection 38-20(3) where the goods supplied are directly related to GST-free hospital treatment.

#### **4.a.8. Is a personal alarm unit a 'medical alert device' for the purposes of Item 33 of Schedule 3?**

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

#### **4.a.9. Is the charge for the ongoing monitoring of a 'medical alert device' GST-free?**

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

#### **4.a.10. Are aged persons included in 'people with an illness or disability' for the purposes of section 38-45?**

Non-interpretative – straight application of the law.

It is considered that medical aids or appliances listed in Schedule 3 that may be acquired by aged persons for use in the event that an illness or disability befell them (for example 'medical alert device') will satisfy the requirement that the medical aid or appliance be 'specifically designed for people with an illness or disability'.

#### **4.a.11. What is the meaning of 'artificial teeth' for the purposes of section 38-45 and Schedule 3 – Item 30?**

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

#### **4.a.12. Is the sale of first aid kits GST-free?**

Non-interpretative – straight application of the law.

First aid kits are not listed in Schedule 3 as a section 38-45 GST-free item. Accordingly, the sale of a first aid kit is not GST-free under section 38-45.

#### **4.a.13. Is the installation of medical aids and appliances GST-free under section 38-45?**

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

#### **4.a.14. Are non-prescription sunglasses, frames for prescription lenses and accessories GST-free?**

Non-interpretative – straight application of the law.

Non-prescription sunglasses, frames for prescription lenses and accessories are not listed in Schedule 3 and are not GST-free. Lenses for prescription spectacles are listed at Item 155 of Schedule 3 and are GST-free.

#### **4.a.15. When does a lens become a 'lens for prescription spectacles' for the purposes of subsection 38-45(1) and Item 155 of Schedule 3 of the GST Act?**

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

#### **4.a.16. Are lens treatments including coatings/tints (hard coat, multicoat, tints, UV filter, mirror coat) subject to GST?**

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

#### **4.a.17. Is cutting and edging of a lens supplied by an optical laboratory to an optometrist subject to GST?**

Non-interpretative – straight application of the law.

No. Where an optical laboratory supplies lenses for prescription spectacles and, as part of the supply of the finished lenses, cutting and edging is required, the cutting and edging is part of the supply of the finished lenses and will be GST-free.

#### **4.a.18. Is the fitting of a lens supplied by an optical laboratory to an optometrist subject to GST?**

Non-interpretative – other references see:

- [GSTR 2006/9](#) – *Goods and services tax :supplies*
- [GSTR 2001/8](#) – *Goods and services tax: Apportioning the consideration for a supply that includes taxable and non-taxable parts*

Generally, no. On our understanding, the fitting of a lens to a frame is normally part of the Quality Assurance process relating to the supply of the lens. As the fitting of a lens to a frame is not normally separately charged for, there is no consideration for the supply, and as such, the fitting service will not be subject to GST.

However, where there is a separate supply of a service of fitting lenses to spectacle frames, it will be subject to GST.

#### **4.a.19. Are walking sticks GST-free?**

Non-interpretative – straight application of the law.

A medical aid or appliance is GST-free where it is:

- a. covered by Schedule 3 or subsequent regulation, and
- b. specifically designed for people with an illness or disability, and
- c. not widely used by people without an illness or disability.

Once an item meets all of the above elements then its supply will be GST-free all the way down the supply chain and not only when supplied to a person who has an illness or disability.

Item 97 of Schedule 3 refers to 'walking sticks – specialised'. The word 'specialised' was used to exclude non-functional and purely ornamental walking sticks and to only include those walking sticks that were intended for use by ill or disabled people. This reflects the inherent nature of the items included in Schedule 3.

Accordingly, walking sticks (excluding non-functional and purely ornamental walking sticks), being hand held devices, the principal function of which is to assist a person to walk by taking some of the weight of that person where that person is unable to walk unaided, and which have been specifically designed for people with an illness or disability and are not widely used by people without an illness or disability are GST-free.

This interpretation of item 97 was made on 24 May 2001 and replaces all alternative interpretations made prior to this date.

#### **4.a.20 Will the initial supply of a foot orthosis to a patient and subsequent postage and modifications or repair to the foot orthosis by a podiatrist or contracted lab be GST-free?**

The first part of this issue under the heading 'initial supply' is a straight application of the law.

In relation to the second issue on postage, for source of ATO view, refer to [GSTD 2002/3](#)- *Goods and services tax: how do I account for GST when I supply taxable goods, non-taxable goods and delivery services together?*

The question refers to a number of separate supplies and it is necessary to identify each supply, the supplier and the recipient so as to determine the GST status of each supply.

#### **Initial supply**

The initial supply of an orthosis for the foot is GST-free under section 38-45, where it is designed and used as an external application to modify position or motion. In addition it must be specifically designed for people with an illness or disability, and not widely used by people without an illness or disability. A foot orthosis is GST-free at all points in the supply chain where these requirements are met, regardless of whether the patient takes possession of the orthosis during a consultation or subsequently by post.

### **Postage**

In most cases, delivery of a foot orthosis is a taxable supply that is separate to the actual supply of the foot orthosis itself.

However, where the cost of delivery of a foot orthosis is part of a single, indivisible supply of the GST-free foot orthosis, the supply of the delivered foot orthosis is GST-free. It would be necessary that the cost of delivery did not alter between clients and that it was not merely an optional extra that was included in a single amount.

Also, where a podiatrist pays a postage fee as agent for the patient, and is reimbursed the exact amount of postage incurred, the podiatrist has not made a taxable supply. Any GST charged by the postal carrier on the supply of postage, is paid by the patient in this situation. The podiatrist would not be entitled to input tax credits in relation to the postage.

### **Repairs and modifications**

Where as part of a GST-free service pursuant to section 38-7 or 38-10 (for example podiatry or chiropody), the recognised professional modifies a foot orthosis due to the changing shape or condition of the patient or the patient's foot, it is accepted that this modification will also be GST-free to the patient.

However, any supply by a contracted lab to a podiatrist will not be GST-free under section 38-7 or 38-10. Also, where a foot orthosis is repaired to restore it, this repair will not be GST-free pursuant to section 38-7 or 38-10.

See also [Issue 2.a.15](#) which explains the issue of the modifications and repairs to medical aids and appliances as part of a GST-free medical or other health service.

## Issue 5 – Other GST-free health goods

(a) added, (u) updated, (w) withdrawn

Date	Issue
21/06/00 (a)	5. Section 38-47 Other GST-free health goods
21/06/00 (a) 22/06/05 (u) 01/08/12 (u)	5.a.1. Other GST-free health goods include those of a kind that the Health Minister, by determination in writing, declares to be GST-free. Where is this determination and how can goods be added to this determination?
21/06/00 (a)	5.a.2. Folate supplements do they include any product with folate included in the formulation for example multivitamins.

### **5.a.1. Other GST-free health goods include those of a kind that the Health Minister, by determination in writing, declares to be GST-free. Where is this determination and how can goods be added to this determination?**

Non-interpretative – straight application of the law.

The determination for the purposes of section 38-47, *GST-free Supply (Health Goods) Determination 2011*, provides that the following categories of goods will be GST-free where the goods are required to be included in the Australian Register of Therapeutic Goods, or are goods in a class of goods required to be included in the Australian Register of Therapeutic Goods:

1. Condoms.
2. Barrier dams, femidoms and harness devices
3. Personal and surgical lubricants:
  - a. that are water-soluble, and
  - b. are suitable for use with condoms.
4. Preparations for use by humans:
  - a. that contain folic acid as a single active ingredient, and
  - b. have a recommended daily dose of 400 to 500 micrograms.
5. Sunscreen preparations for dermal application:
  - a. that are marketed principally for use as sunscreen; and
  - b. that have a sun protection factor rating of 15 or more.
6. Nicotine for use as an aid in withdrawal from tobacco smoking where the nicotine is administered in preparations for transdermal or oromucosal use (from 31 December 2011).

Additional goods can only be added by way of a further written determination by the Health Minister.

### **5.a.2. Folate supplements do they include any product with folate included in the formulation for example multivitamins.**

Non-interpretative – straight application of the law.

In view of the above, the product must have folic acid as a single active ingredient and a total daily dosage of 400-500 micrograms.



## Issue 6 – Private health insurance and ambulance subscriptions

(a) added, (u) updated, (w) withdrawn

Date	Issue
21/06/00 (a) 21/06/00 (a)	6.a. Section 38-55 Private health insurance and ambulance subscriptions 6.a.1. Are ambulance subscriptions GST-free?
21/06/00 (a) 25/06/13 (u)	6.a.2. Is private health insurance GST-free?
24/05/01 (a)	6.a.3. Private health insurance is GST-free. Does this include Overseas Student Health Cover policies?

### 6.a.1. Are ambulance subscriptions GST-free?

Non-interpretative – straight application of the law.

Ambulance subscriptions are GST-free under section 38-55(2).

### 6.a.2. Is private health insurance GST-free?

Non-interpretative – straight application of the law.

Section 38-55(1) provides that 'A supply of \*private health insurance is GST-free'. 'Private health insurance' is defined in section 195-1 as:

*'... insurance provided under a contract of insurance that was entered into by a private health insurer (within the meaning of the Private Health Insurance Act 2007) in the course of carrying on health insurance business (within the meaning of Division 121 of that Act).'*

### 6.a.3. Private health insurance is GST-free. Does this include Overseas Student Health Cover policies?

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

## Issue 7 – General concepts from *A New Tax System (Goods and Services Tax) Act 1999*

(a) added, (u) updated, (w) withdrawn

Date	Issue
21/06/00 (a) 21/06/00 (a) 26/09/00 (u) 01/08/12 (u)	7.a. General concepts from A New Tax System (Goods and Services Tax) Act 1999 7.a.1. Consultancy to a rehabilitation provider provided on a contractual basis
21/06/00 (a) 29/11/04 (w)	7.a.2. AB has multiple sclerosis and needs to use a wheelchair for mobility more and more. His work area needs redesigning and special car park provided. The company employs me as a consultant to look at his needs. My invoice and report is to the company
21/06/00 (a)	7.a.3. Are autopsies GST-free?
21/06/00 (a)	7.a.4. What is the GST status of fees charged for being on call?
21/06/00 (a)	7.a.5. What is the GST status of police drug testing, water & food testing, pre employment drug screening and veterinary tests?
21/06/00 (a)	7.a.6. Some Herbalists and naturopaths work as contractors to stores. It is understood that if a practitioner operates as an incorporated entity, the services to the store attracts GST. If the practitioner is not registered for GST will the store will need to withhold tax from the gross payment for practitioner services
21/06/00 (a) 29/07/05 (u) 01/08/12 (u)	7.a.7 Are payments under the Practice Incentives Program, General Practitioner Immunisation Incentives Program, Australian Childhood Immunisation Register Information (Notification) Program and Rural Retention Program consideration for a taxable supply?
21/06/00 (a) 01/08/12 (u)	7.a.8. What is the appropriate process for determining the GST status of financial assistance to doctors administered by the Department of Health and Community services?
21/06/00 (a)	7.a.9. What is the situation with Internet purchases of goods from overseas by individuals or bulk purchases of goods by organisations for the treatment or amelioration of a condition, which would be GST-free if supplied by a medical practitioner
21/06/00 (a)	7.a.10. I'm a health professional who does a considerable amount of voluntary work on a professional basis. Part of this is altruistic and the part is marketing oriented. Can I claim input tax credits for expenditure I incur on those voluntary activities that are considered GST-free if I was to charge for them?
21/06/00 (a)	7.a.11. Can a self-employed health practitioner claim an input tax credit on CPD fees?
21/06/00 (a)	7.a.12. Can an employer claim the GST included in CPD fees paid on behalf of an employee as an input tax credit?
21/06/00 (a) 22/06/05 (u)	7.a.13. Health professional students and trainees often stay in basic accommodation provided by the hospital (nurses' quarters) as part of their training. Hospitals charge a basic fee, and this also covers meals at staff (not public) canteens. As it is often a requirement of their training that they do stay on campus, is this short-term accommodation subject to GST?
21/06/00 (a)	7.a.14. In-house professional, clinical skills update / development programs run by a public hospital for internal staff and also for external private practitioners. Differential fees are charged. Are such course fees subject to GST?
21/06/00 (a)	7.a.15. Where an insurance provider makes payments directly to health service providers in relation to supplies to insured patients, is there any need for the insurance provider to withhold where an ABN is not provided by that health service provider?

21/06/00 (a)	7.a.16. Does GST apply to the facility fee charged by a hospital when a salaried staff specialist exercises a right of private practice and earns fees from private patients?
21/06/00 (a) 25/06/13 (u)	7.a.17. Where two or more people have an expense sharing arrangement whereby common expenses are paid from a shared bank account, is there an entity (eg: an unincorporated association of persons or a partnership) that has to register for GST?
21/06/00 (a)	7.a.18 Where doctors share the costs of operating a practice (an association which is not a separate entity) and each doctor operates independently of the other doctors, what are the requirements for each doctor to claim input tax credits for their share of the costs?
24/05/01 (a)	<p>7.a.19. The following two situations represent common working arrangements between doctors and surgeries. In the first situation, Dr A and Dr B agree that Dr A will receive (or keep) 50% of Dr B's billings. In the second situation, Dr A and Dr B agree that Dr B will receive (or keep) the greater amount of \$45.00 an hour or 50% of Dr B's billings. The other facts are the same for both situations:</p> <p>Dr A owns and operates a private medical practice and surgery.</p> <p>Dr A and Dr B enter an arrangement whereby Dr B practises at Dr A's surgery (but not on the basis of an employment relationship).</p> <p>Dr B has some existing patients who now attend Dr A's surgery (to be treated by Dr B) and Dr B also treats a proportion of new patients as they attend the surgery. If they do not express a preference, new patients are allocated by the receptionist/practice manager employed by Dr A based on the respective availability of Doctors A and B.</p> <p>The patients Dr B sees are billed in Dr B's name (and provider number).</p> <p>The medical records of all of Dr A's and Dr B's patients are kept and maintained by Dr A's staff and held at the surgery.</p> <p>Dr B is responsible for payment of Dr B's medical indemnity insurance and will be sued by his/her patients in the event of an adverse medical outcome. Dr B also provides some but not all the equipment used in Dr B's practice.</p> <p>Dr A provides to Dr B premises for Dr B to practise in (including payment by Dr A of all outgoings (insurance, rates, electricity, water supply etc), a reception and billing service, some (but not all) equipment used in Dr B's practice; as well as the opportunity for Dr B to increase his/her income by being introduced to new patients who attend Dr A's surgery.</p>
24/05/01 (a) 28/06/13 (u)	7.a.20. What is the GST status of services in the following scenarios? In each case the Clinic is a separate entity and is registered for GST, the massage therapist earns less than \$75000 and is not registered for GST and the services that are being supplied to the clients are not GST-free health supplies.
24/05/01 (a) 22/06/05 (u) 28/06/13 (u)	7.a.21. In what circumstances would conduct monies payable to medical practitioners for production of documentation NOT incur GST under Division 81?
21/06/00 (a) 22/06/05 (w)	7.b. Regulation made pursuant to section 21 of the A New Tax System (Goods and Services Tax Transition) Act 1999 in regard to acupuncture, naturopathy and herbal medicine
21/06/00 (a) 22/06/05 (w)	7.b.1. What are the requirements included in the regulation pursuant to section 21 of the Transition Act?
21/06/00 (a) 28/06/13 (u)	7.c. The Therapeutic Goods Associations (TGA) is a part of the Australian Government Department of Health and Aging and is responsible for administering the Therapeutic Goods Act 1989. Medicines and devices are evaluated and eventually listed or registered on the Australian Register of Therapeutic Goods (ARTG). Individual firms seeking registrations are charged fees for the various services provided by the TGA. Over recent years the percentage of the TGA's outlays to be recovered has been increased progressively (currently 100%)

21/06/00 (a) 22/06/05 (u)	7.c.1. Is GST payable on fees and charges levied by the TGA for its services to industry?
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### **7.a.1. Consultancy to a rehabilitation provider provided on a contractual basis**

Non-interpretative – other references (refer to [GSTR 2006/9](#) – *Goods and services tax: supplies*).

Where a service is provided to a third party the supply to that third party will be a taxable supply (unless that practitioner is an employee of that third party or section 38-60 applies). The supply of a service by that third party to a patient will be GST-free if the practitioner performing the service on behalf of that third party is:

- a \*medical practitioner or an \*approved pathology practitioner and a Medicare benefit is payable, or
- a \*medical practitioner/approved pathology practitioner/\*recognised professional and it is generally accepted in that profession as being necessary for the appropriate treatment of the patient.

If the third party is an insurer, an operator of a statutory compensation or compulsory third party scheme or an Australian Government agency, the supply by the medical practitioner, approved pathology practitioner or recognised professional is GST-free under section 38-60 to the extent that the underlying supply to the patient is GST-free under Subdivision 38-B. See [issue 1.a.6](#).

If the service is being supplied to a patient and the third party is only paying for the service (and is not the recipient of a supply), it will be GST-free.

### **7.a.3. Are autopsies GST-free?**

Non-interpretative – straight application of the law.

An autopsy is requested by a third party and does not involve ‘*appropriate treatment*’, as such it will be a taxable supply.

### **7.a.4. What is the GST status of fees charged for being on call?**

Non-interpretative – other references (see [GSTR 2006/9](#) – *Goods and services tax: supplies*).

The fees are subject to GST. The supply is not appropriate treatment and the recipient is a third party.

### **7.a.5. What is the GST status of police drug testing, water and food testing, pre employment drug screening and veterinary tests?**

For source of ATO view, refer to [issue 1.a](#) of this issues register.

Drug testing, for either police or employers, are provided as a requirement of the Police Department or employers respectively for the purposes of the Police Department or employers respectively and does not involve ‘*appropriate treatment*’. As such, the recipient will be the Police Department or employers respectively and they will be taxable supplies.

General water and food testing are not a ‘*treatment of the recipient*’ and are not GST-free under subdivision 38-B.

The performance of services on animals will not be ‘*appropriate treatment of the recipient of the supply*’. ‘*Recipient*’ is defined in section 195-1 as ‘... the entity to which the supply was made’ and the definition of ‘*entity*’ in section 184-1(1) does not include animals.

**7.a.6. Some Herbalists and naturopaths work as contractors to stores. It is understood that if a practitioner operates as an incorporated entity, the services to the store attract GST. If the practitioner is not registered for GST will the store will need to withhold tax from the gross payment for practitioner services.**

Non-interpretative – straight application of the law.

In accordance with section 12-190 of Schedule 1 of the *Taxation Administration Act 1953*, the store may be required to withhold an amount from the payments it makes where the supplier has not quoted an ABN.

If the practitioner has supplied an ABN but is not required to be registered then there would be no GST liability for the practitioner and the store will not need to withhold.

If the practitioner has supplied an ABN and is required to be registered, then there would be a GST liability for the practitioner and the store will not need to withhold.

For further information refer to [No ABN withholding – questions and answers](#)

**7.a.7. Are payments under the Practice Incentives Program, General Practitioner Immunisation Incentives Program, Australian Childhood Immunisation Register Information (Notification) Program and Rural Retention Program consideration for a taxable supply?**

For source of ATO view, refer to [GSTR 2012/2](#) – *Goods and services tax: financial assistance payments*.

No, pursuant to GSTR 2012/2, payments under the Practice Incentives Program, General Practitioner Immunisation Incentives Program, Australian Childhood Immunisation Register Information (Notification) Program and Rural Retention Program are not consideration for supplies, and therefore cannot be consideration for taxable supplies.

Payments under these programs are made by the Health Insurance Commission (known as 'Medicare Australia' as from 1 October 2005).

Applicants for these payments do not enter into binding obligations with the payer to do anything for which the payment is consideration.

Applicants for these payments lodge an application for payment of an entitlement or automatically receive a payment based on the initial application and information held by the payer. While the information contained in the application for payment is a supply, the information contained in the application is not the purpose for which the payment is paid. For GST purposes the payment is therefore not consideration for the information contained on the application.

There is nothing 'given up' by the grantee in exchange for the grant. The application is machinery to take advantage of an entitlement.

**7.a.8. What is the appropriate process for determining the GST status of financial assistance to doctors administered by the Department of Health and Community services?**

For source of ATO view, refer to:

- [GSTR 2012/2](#) – *Goods and services tax: financial assistance payments*
- Part 3 of [GSTR 2006/9](#) – *Goods and services tax: supplies*.

GSTR 2012/2 addresses financial assistance payments and provides information for determining whether the financial assistance is a taxable supply. This Ruling examines the elements of section 9-5 which deals with taxable supplies.

Whilst the Ruling examines all of the elements of a 'taxable supply' and looks at various types of grants, many of the issues in relation to providing funds to doctors relate to:

- a. whether the funds provided are consideration for a supply by the doctor to the grantor, or
- b. whether the funds provided are consideration for a supply by the doctor to a patient.

Generally, and without limiting the effect of GSTR 2012/2, where consideration is provided by a third party for a GST-free supply from a doctor to a specific patient, the funds provided will not be consideration for a supply by the doctor to the third party payer. Section 9-15(2) states that it does not matter who provides the consideration. For example, Medicare may provide the consideration for the supply of medical services by a doctor to a specific patient and this will not be a supply by the doctor to Medicare.

However, it should be noted that performance of a service by a doctor on a patient will not always represent a supply from the doctor to the patient. In some circumstances, the doctor will be making a supply to another entity (for example a hospital) and that other entity will make the supply to the patient but the doctor performs the service on the patient. In this situation, the supply is by the doctor to the other entity and is a taxable supply where the other elements of section 9-5 are satisfied. In some instances, depending on the arrangement or framework, the medical practitioner may make a supply to both the other entity and the patient. Refer to [Issues 1.a.6.](#) and [1.a.13](#) for further explanation.

From 1 July 2012, where the other entity is an insurer, an operator of a statutory compensation scheme or compulsory third party scheme (scheme operator), or an Australian government agency, the supply to the other entity will be GST-free to the extent that the underlying supply of the health service to the patient is a GST-free health supply under Subdivision 38-B (section 38-60). For administrative ease however, the parties may agree for the supply to the other entity, or supplies of a kind that include that supply, not to be treated as GST-free (section 38-60(4)).

If the funds provided are for the purpose of providing services to patients in general (including entry into an obligation to provide services) or for assisting in the operation of the practice or for the provision of information to the third party, then it is considered that this is not consideration for a supply to a patient. Generally, and without limiting the effect of GSTR 2012/2, it would be expected that the funds provided will be consideration for a supply by the doctor to the grantor and will be a taxable supply where the other elements of section 9-5 are satisfied.

Where the status of the funds provided are not addressed above, reference should be made to GSTR 2012/2. If the GST status is not apparent from reading the Ruling, it is suggested that the doctor request a private ruling.

#### **7.a.9. What is the situation with internet purchases of goods from overseas by individuals or bulk purchases of goods by organisations for the treatment or amelioration of a condition, which would be GST-free if supplied by a medical practitioner?**

Non-interpretative – straight application of the law.

If the goods supplied satisfy the requirements of section 38-45, the goods will be GST-free at all points in the supply chain.

If the goods are supplies of drugs or medicinal preparations, section 38-50 requires that the goods be supplied to an individual for their own consumption. It is considered that the

only drugs or medicinal preparations that may be supplied to an individual for their own consumption that will be GST-free, where not supplied by a medical practitioner, dental practitioner or pharmacist, are drugs that are supplied in small quantities which would be Schedule 2 drugs if purchased in a larger quantity. As the supply is for bulk goods, it is considered unlikely that this condition will be satisfied.

If the goods are those to which section 38-7(3), section 38-10(3) or section 38-10(4) apply, the supply will not be GST-free as the goods have not been supplied 'in the course of supplying' a GST-free medical or other health service and have not been supplied at the premises at which the service was supplied.

**7.a.10. I'm a health professional who does a considerable amount of voluntary work on a professional basis. Part of this is altruistic and the part is marketing oriented. Can I claim input tax credits for expenditure I incur on those voluntary activities that are considered GST-free if I was to charge for them?**

Non-interpretative – straight application of the law.

If these activities are performed in carrying on your enterprise, then an input tax credit may be available if the other conditions in section 11-20 are satisfied. Section 11-20 provides that you are entitled to an input tax credit for any \*creditable acquisition that you make.

Pursuant to section 11-5, you make a \*creditable acquisition when:

- a. you acquire anything solely or partly for a \*creditable purpose, and
- b. the supply of the thing to you is a \*taxable supply, and
- c. you provide, or are liable to provide, \*consideration for the supply, and
- d. you are \*registered, or \*required to be registered.

\*Creditable purpose is in turn defined in section 11-15(1) which provides you acquire a thing for a creditable purpose to the extent that you acquire it in carrying on your enterprise. You do not acquire for a creditable purpose to the extent that the thing acquired is used for producing input tax supplies (section 11-15(2)(a)) or it is used for a private or domestic nature (section 11-15(2)(b)).

The amount of the input tax credit is reduced if it is only partly creditable (section 11-25). It will be partly creditable where it is only partly for a creditable purpose or you provide, or are liable to provide, only part of the consideration for the supply (section 11-30).

**7.a.11. Can a self-employed health practitioner claim an input tax credit on CPD fees?**

Non-interpretative – straight application of the law.

If these activities are performed in carrying on your enterprise, then an input tax credit may be available if the other conditions in section 11-20 are satisfied. Section 11-20 provides that you are entitled to an input tax credit for any \*creditable acquisition that you make.

Pursuant to section 11-5, you make a \*creditable acquisition when:

- a. you acquire anything solely or partly for a \*creditable purpose, and
- b. the supply of the thing to you is a \*taxable supply, and
- c. you provide, or are liable to provide, \*consideration for the supply, and
- d. you are \*registered, or \*required to be registered.

\*Creditable purpose is in turn defined in section 11-15(1) which provide you acquire a thing for a creditable purpose to the extent that you acquire it in carrying on your enterprise. You

do not acquire for a creditable purpose to the extent that the thing acquired is used for producing input tax supplies (section 11-15(2)(a)) or it is used for a private or domestic nature (section 11-15(2)(b)).

The amount of the input tax credit is reduced if it is only partly creditable (section 11-25). It will be partly creditable where it is only partly for a creditable purpose or you provide, or are liable to provide, only part of the consideration for the supply (section 11-30).

#### **7.a.12. Can an employer claim the GST included in CPD fees paid on behalf of an employee as an input tax credit?**

Non-interpretative – straight application of the law.

If these activities are performed in carrying on your enterprise, then an input tax credit may be available if the other conditions in section 11-20 are satisfied. Section 11-20 provides that you are entitled to an input tax credit for any \*creditable acquisition that you make.

Pursuant to section 11-5, you make a \*creditable acquisition when:

- a. you acquire anything solely or partly for a \*creditable purpose, and
- b. the supply of the thing to you is a \*taxable supply, and
- c. you provide, or are liable to provide, \*consideration for the supply, and
- d. you are \*registered, or \*required to be registered.

\*Creditable purpose is in turn defined in section 11-15(1) which provide you acquire a thing for a creditable purpose to the extent that you acquire it in carrying on your enterprise. You do not acquire for a creditable purpose to the extent that the thing acquired is used for producing input tax supplies (section 11-15(2)(a)) or it is used for a private or domestic nature (section 11-15(2)(b)).

The amount of the input tax credit is reduced if it is only partly creditable (section 11-25). It will be partly creditable where it is only partly for a creditable purpose or you provide, or are liable to provide, only part of the consideration for the supply (section 11-30).

If the employee originally paid and is subsequently reimbursed by the employer, then the employer may be entitled to an input tax credit for the reimbursement. Creditable acquisitions relating to reimbursements are covered in Division 111 and require that the reimbursement be 'directly related to activities' as an employee. The reimbursement will be treated as consideration. However, it will not be a creditable acquisition if the person receiving the reimbursement is entitled to an input tax credit or it was not a taxable supply to that person. The amount of the input tax credit is dealt with in section 11-10.

#### **7.a.13. Health professional students and trainees often stay in basic accommodation provided by the hospital (nurses' quarters) as part of their training. Hospitals charge a basic fee, and this also covers meals at staff (not public) canteens. As it is often a requirement of their training that they do stay on campus, is this short-term accommodation subject to GST?**

Non-interpretative – straight application of the law.

The supply of accommodation and meals as part of the training of professional students and trainees is not GST-free under the provisions dealing with GST-free Health supplies. Also, these supplies are not GST-free under the provisions dealing with GST-free Education supplies. However, a supply of this nature may be GST-free under section 38-250 where the supplier is an endorsed charitable institution (from 1 July 2005), an endorsed trustee of a charitable fund (from 1 July 2005) or a gift-deductible entity and the supply is for consideration that is:



- a. for accommodation, less than 75% of either the market value or cost of the accommodation, or
- b. for other supplies, less than 50% of the market value or less than 75% of the cost of that supply.

Where the supply of accommodation does not satisfy the requirements of section 38-250, the accommodation will be treated in the same manner as for other accommodation:

- residential rent (section 40-35)
- supplies of residential premises by way of long-term lease (section 40-70), and
- commercial residential premises (Division 87).

**7.a.14. In-house professional, clinical skills update / development programs run by a public hospital for internal staff and also for external private practitioners. Differential fees are charged. Are such course fees subject to GST?**

Non-interpretative – straight application of the law.

The supply of a professional or trade course is GST-free where it is a course leading to a qualification that is an essential prerequisite:

- for entry into a particular profession or trade in Australia, or
- to commence the practice of (but not to maintain the practice of) a profession or trade in Australia.

A distinction is to be made between courses undertaken to obtain qualifications and those undertaken to maintain them. Courses to maintain qualifications – such as undertaking continuing professional development to retain membership of a professional body – are not GST-free.

For further information refer to [GSTR 2003/1](#) – *Goods and services tax: supplies that are GST-free as professional or trade courses*.

**7.a.15. Where an insurance provider makes payments directly to health service providers in relation to supplies to insured patients, is there any need for the insurance provider to withhold where an ABN is not provided by that health service provider?**

Non-interpretative – straight application of the law.

Under the new pay as you go (PAYG) system, if a 'business' (an entity making supplies in the course or furtherance of an enterprise carried on in Australia) makes a supply to a second business and does not quote an Australian business number (ABN), the second business is required to withhold tax from the payment to the first business (section 12-190 in Schedule 1, Part 2-5 of the *Taxation Administration Act 1953*).

There are some exceptions from withholding for not supplying an ABN. These include:

- a. where the recipient is an individual and the payment is wholly of a private or domestic nature for that individual
- b. where the payment does not exceed \$75, or
- c. where the whole of the payment is exempt income of the supplier (for example, the supplier is a charity).

Where an insurer makes a payment to the health service provider, the insurance company is generally making the payment on behalf of the patient to the health service provider for

medical expenses incurred by the patient. There is no supply between the insurance company and the health provider in relation to the payment; the relevant supply occurs between the health service provider and the patient.

Generally, the supply to the patient would be private or domestic for the patient and there is no requirement for a withholding if no ABN is provided by the health provider.

It is only where the payment by the insurance provider is for a supply that is made to that insurance provider (and not payment for a supply to a patient) that there will be a requirement to receive an ABN and to withhold an amount if the ABN is not supplied.

**7.a.16. Does GST apply to the facility fee charged by a hospital when a salaried staff specialist exercises a right of private practice and earns fees from private patients?**

Non-interpretative – straight application of the law.

On occasion, a medical practitioner will be able to exercise a right of private practice in a hospital. The medical practitioner sees private patients and the hospital may collect the fees from the provision of the medical service. The hospital may retain a certain portion of the total fees which relate to the provision of the facility to the medical practitioner.

In this situation, the total fees for the provision of the medical services are included in the turnover of the medical practitioner. Generally, these fees will be GST-free under section 38-7.

Also, the facility fee retained by the hospital may be consideration for a taxable supply by the hospital to the medical practitioner. In this case, the amount which is retained will include a GST component which will be one-eleventh of the total amount retained.

**7.a.17. Where two or more people have an expense sharing arrangement whereby common expenses are paid from a shared bank account, is there an entity (eg: an unincorporated association of persons or a partnership) that has to register for GST?**

For source of ATO view, refer to:

- Part 3 of [GSTR 2006/9](#) – *Goods and services tax: supplies*
- [MT 2006/1](#) – *The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian business number.*

In most cases, each person in an expense sharing arrangement as outlined above, will need to be separately registered for GST.

The circumstances where an unincorporated association of persons will be considered to be carrying on an enterprise are discussed in Miscellaneous Taxation Ruling MT 2006/1.

Paragraph 50 of MT 2006/1 details some of the characteristics of an unincorporated association. An example of a model train club satisfying these characteristics is detailed in paragraphs 55-56.

By contrast, paragraphs 57-58 of MT 2006/1 provide an example of an expense sharing arrangement that does not amount to an unincorporated association of persons. It is understood that in most cases a contractual arrangement exists between the persons in the expense sharing arrangement. There is not a separate entity that has a continuing identity separate to that of the individual members. Therefore an unincorporated association will not exist. Each of the persons in the expense sharing arrangement will need to be separately registered for GST purposes where the necessary registration requirements are satisfied.

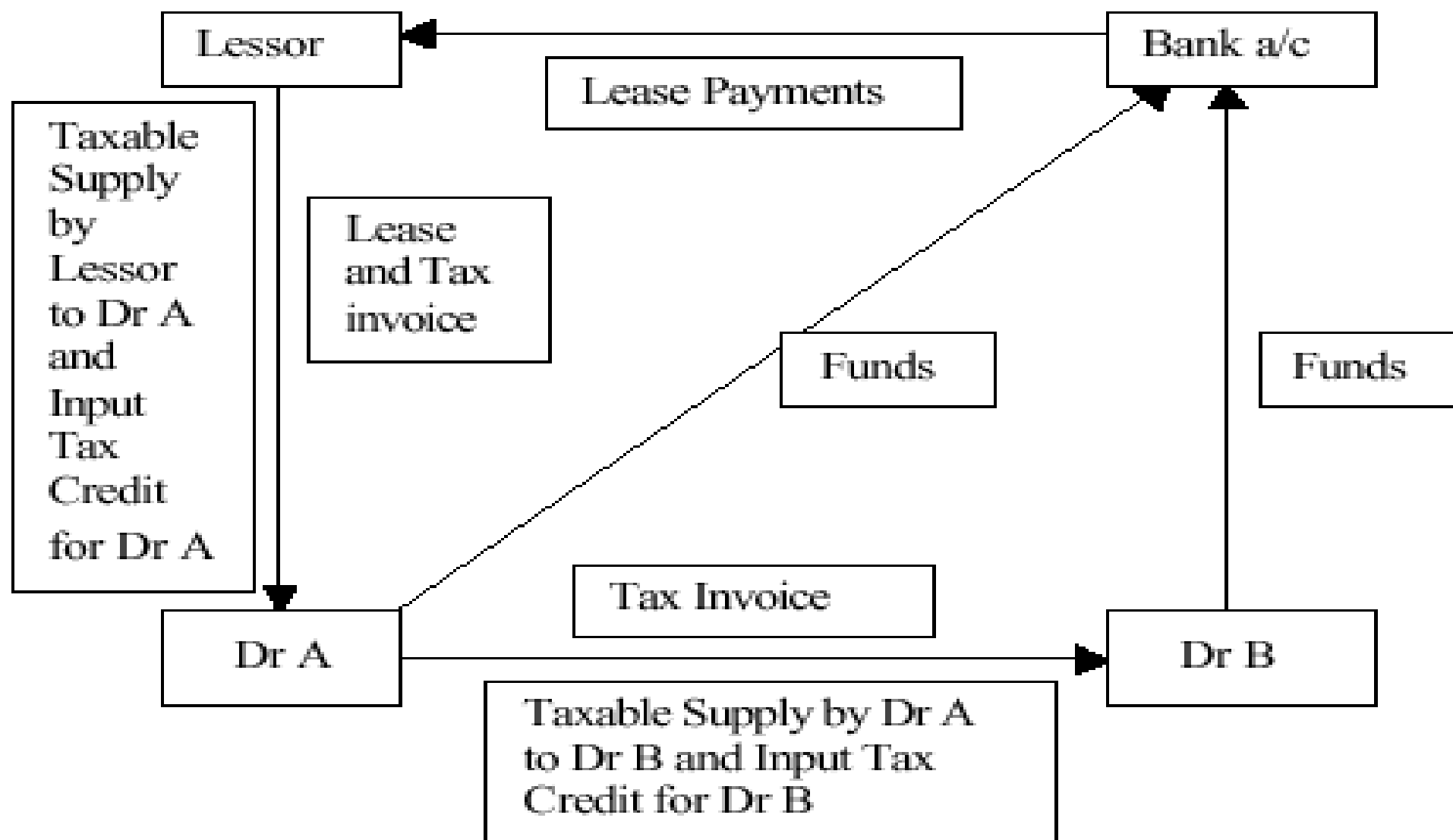
This means that where expenses are paid from a shared bank account but the parties to the account do not meet the requirements of a partnership, the input tax credits are generally claimed in proportion to the liability of those expenses. Where only one party to the account has a liability to pay the expense, that person is entitled to the input tax credits.

For example:

- two doctors (A and B) have an expense sharing contract/agreement
- both are individually registered for GST
- the business premise is leased by A from the building owner
- all tax invoices in relation to the lease are made out to A, and
- expenses are paid through a shared bank account.

In this situation, A makes the creditable acquisition of the premises from the lessor and is entitled to claim all the input tax credits on the lease payments. A simultaneously makes a taxable supply of the premises to B.

Normal attribution rules apply in relation to the taxable supply (from A to B) and the creditable acquisition (by B from A). If B is entitled to the input tax credits in relation to the acquisition of part of the premises from A, subject to the normal rules that B must hold a tax invoice (from A).



7.a.18 Where doctors share the costs of operating a practice (an association which is not a separate entity) and each doctor operates independently of the other doctors, what are the requirements for each doctor to claim input tax credits for their share of the costs?

Non-interpretative – straight application of the law.

The answer will depend upon the actual facts of the case. The entity making a creditable acquisition will be entitled to an input tax credit. Whether the entity makes taxable supplies to another entity or entities will be a question of fact.

In certain circumstances, doctors (or other people) will enter into arrangements whereby common expenses are paid from a shared bank account. The common expenses often include lease/rental payments, rates, telephone and electricity expenses.

In order to establish entitlement to input tax credits, it must be established whether there is a creditable acquisition and if so, by whom. In most instances, the manner in which invoices are presented, that is who has the liability in respect of the relevant expenses, will provide the required information.

The following scenarios, which are not necessarily the only ones that could arise, provide an example of how these type of situations may be arranged.

### **Scenario 1**

- two doctors have an expense sharing contract/agreement
- both are individually registered for GST
- they have a joint bank account into which is deposited the fees received by the doctors and from which joint expenses are paid
- they jointly lease a property for their surgery, have electricity and telephone connected
- tax invoices for all expenses are made out to both doctors jointly, and
- the surplus of fees received for the doctor less the proportionate share of expenses is paid to each doctor on a periodic basis.

In this situation, the basic GST rules apply (Div 11, in particular sections 11-20 to 11-30) and each doctor can claim their relevant percentage of the input tax credit on the creditable acquisitions. The contract and tax invoices made out to both parties are considered to be sufficient to support the claims.

### **Scenario 2**

- two doctors (A and B) have an expense sharing contract/agreement
- both are individually registered for GST
- the business premise is leased by A
- all tax invoices in relation to the lease are made out to A
- expenses are paid through A's bank account, and
- A claims an agreed percentage from B as a 'reimbursement'.

In this situation, A is making the creditable acquisition of the premises from the lessor and is entitled to claim all the input tax credits on the lease payments. A simultaneously makes a taxable supply of an agreed percentage of the premises to B.

Normal attribution rules apply in relation to the taxable supply (from A to B) and the creditable acquisition (by B from A). If B is entitled to the input tax credits in relation to the

acquisition of part of the premises from A, subject to the normal rules that B must hold a tax invoice (from A).

### **Scenario 3**

- two doctors (A and B) have an expense sharing contract/agreement
- both are individually registered for GST
- the business premise is leased by A
- all tax invoices in relation to the lease are made out to A
- lease expenses are paid from a joint account between A and B, and
- A claims an agreed percentage from B as a 'reimbursement'.

In this situation, A is making the creditable acquisition of the premises from the lessor and is entitled to claim all the input tax credits on the lease payments. A simultaneously makes a taxable supply of an agreed percentage of the premises to B.

Normal attribution rules apply in relation to the taxable supply (from A to B) and the creditable acquisition (by B from A). If B is entitled to the input tax credits in relation to the acquisition of part of the premises from A, subject to the normal rules that B must hold a tax invoice (from A).

**7.a.19. The following two situations represent common working arrangements between doctors and surgeries. In the first situation, Dr A and Dr B agree that Dr A will receive (or keep) 50% of Dr B's billings. In the second situation, Dr A and Dr B agree that Dr B will receive (or keep) the greater amount of \$45.00 an hour or 50% of Dr B's billings. The other facts are the same for both situations:**

1. Dr A owns and operates a private medical practice and surgery.
2. Dr A and Dr B enter an arrangement whereby Dr B practises at Dr A's surgery (but not on the basis of an employment relationship).
3. Dr B has some existing patients who now attend Dr A's surgery (to be treated by Dr B) and Dr B also treats a proportion of new patients as they attend the surgery. If they do not express a preference, new patients are allocated by the receptionist/practice manager employed by Dr A based on the respective availability of Doctors A and B.
4. The patients Dr B sees are billed in Dr B's name (and provider number).
5. The medical records of all of Dr A's and Dr B's patients are kept and maintained by Dr A's staff and held at the surgery.
6. Dr B is responsible for payment of Dr B's medical indemnity insurance and will be sued by his/her patients in the event of an adverse medical outcome. Dr B also provides some but not all the equipment used in Dr B's practice.
7. Dr A provides to Dr B premises for Dr B to practise in (including payment by Dr A of all outgoings (insurance, rates, electricity, water supply etc), a reception and billing service, some (but not all) equipment used in Dr B's practice; as well as the opportunity for Dr B to increase his/her income by being introduced to new patients who attend Dr A's surgery.

Non-interpretative – straight application of the law.

**(a) Who is responsible for charging and collecting GST?**

This question focuses on a medical association.

It is understood that Dr A owns a medical practice and makes facilities available for Dr B to practice in. Dr A operates as an independent contractor, owns the premises and employs administrative staff. Dr B also operates as an independent contractor, renting premises and administrative services from Dr A.

In this situation, Dr A is liable to remit GST on the supply of rental premises, administrative services and facilities to Dr B, where the requirements of section 9-5 are satisfied.

The supply of a 'medical service' by Dr A or Dr B to a patient, will be GST-free where the requirements of section 38-7 are satisfied (for a discussion of these requirements, refer to Part 1.a. and 1.b. of the Health Issues Log).

**(b) What is (are) the criterion(a) used in determining the liability for collecting and charging GST as between Doctors A and B?**

Section 9-40 of the GST Act establishes that the supplier is liable to remit GST on any taxable supplies made.

The criteria that determine whether a supply is taxable, are established in section 9-5 (unless the supply is GST-free or input taxed).

What supplies are made and to whom, is determined by ascertaining the true character of the transactions between the parties and is dependent on the facts of each particular case.

In the present scenario, the supplies are determined by ascertaining the true character of the transactions between both Doctors A and B, and between the patient.

Examining the transaction, in part, involves considering what legal relationship/entity exists between Doctors A and B, which entity is engaged by each patient and which entity, Doctor A or Doctor B, is entitled to seek recovery from the patient in their own name.

Where Doctor A is supplying the service to the patient with Doctor B performing the service and Doctor A is entitled, in their own name, to seek recovery from the patient for the performance of the service, Doctor B will be supplying professional services to Doctor A.

However, where Doctor B is supplying and performing the service to the patient and is entitled, in their own name, to seek recovery from the patient for the performance of the service, Doctor A will be supplying facilities and administrative services to Doctor B.

**(c) What further information (if any) is required in order to determine GST liability?**

It would be necessary to have evidence of the nature of the relationship between Doctor A and Doctor B (including any written contracts, agreements or letters), which entity is supplying the service to the patient (as opposed to performing the service) and which entity is entitled to seek recovery from the patient in their own name.

**(d) What should Doctors A and B do to ensure that the GST liability is appropriately clarified to the satisfaction of the ATO?**

This question focuses on a medical association. Private binding rulings may be sought in relation to other situations.

Subject to their own advice, Doctors A and B may wish to consider reducing their agreement to writing. The terms of the agreement could identify what supplies are contemplated, by whom each supply will be made, and to whom. However, it should be

noted that any written agreement may be evidence of the factual situation but is not a replacement for the actual facts of the situation.

**7.a.20. What is the GST status of services in the following scenarios? In each case the Clinic is a separate entity and is registered for GST, the massage therapist earns less than \$75,000 and is not registered for GST and the services that are being supplied to the clients are not GST-free health supplies.**

Non-interpretative – straight application of the law.

### ***Scenario A***

**The health clinic contracts with the massage therapist to operate in the clinic. The massage therapist is operating as an independent practitioner treating his or her own clients (that is the clients are not clients of the clinic). The clinic makes bookings for the massage therapist and collects the fees for the massage therapist. The massage therapist then pays the clinic a percentage of their gross turnover as a rent/administration fee.**

The massage therapist is supplying services to the clients which are not GST-free but, as the massage therapist is not registered and not required to be registered, the supply will not be subject to GST. Accordingly, the full amount of the fee from the client to the massage therapist will not be subject to GST.

The clinic is supplying administrative services to the massage therapist. The supply of these services will be subject to GST and the clinic as the supplier is liable for that GST. The amount of GST is one-eleventh of the amount retained by the clinic.

### ***Scenario B***

The health clinic contracts with the massage therapist to operate in the clinic. The massage therapist is operating as an independent practitioner treating his or her own clients (that is the clients are not clients of the clinic). The clinic makes bookings for the massage therapist and collects the fees for the massage therapist. The clinic retains a percentage of the fee as a rent/administration fee and pays the balance to the massage therapist.

The massage therapist is supplying services to the clients which are not GST-free but, as the massage therapist is not registered and not required to be registered, the supply will not be subject to GST. Accordingly, the full amount of the fee from the client to the massage therapist will not be subject to GST.

The clinic is supplying administrative services to the massage therapist. The supply of these services will be subject to GST and the clinic as the supplier is liable for that GST. The amount of GST is one-eleventh of the amount retained by the clinic.

### ***Scenario C***

The health clinic contracts the massage therapist as an independent practitioner to supply massage services to clients of the clinic (that is the clients are not clients of the massage therapist). The clinic makes bookings for massage services, collects the fees for the massage services and the income forms a part of the gross income of the clinic. The clinic then pays the massage therapist an agreed percentage of the fees collected for the massage services.

In this situation, there are two supplies. Firstly, the clinic is supplying services to the clients. The supply of these services are not GST-free and, as the clinic is



registered, the supply will be subject to GST. Accordingly, the full amount of the fee paid by the client to the clinic will be subject to GST and the amount of GST is one-eleventh of that fee.

Secondly, the massage therapist is supplying services to the clinic. However, as the massage therapist is not registered and not required to be registered, the supply will not be subject to GST. Accordingly, the fee paid by the clinic to the massage therapist will not be subject to GST.

### **Scenario D**

The health clinic employs the massage therapist to supply massage services to clients of the clinic (that is the clients are not clients of the massage therapist). The clinic makes bookings for massage services, collects the fees for the massage services and the income forms a part of the gross income of the clinic. The clinic then pays the massage therapist wages for the time worked.

In this situation, the clinic is supplying services to the clients. The supply of these services are not GST-free and, as the clinic is registered, the supply will be subject to GST. Accordingly, the full amount of the fee paid by the client to the clinic will be subject to GST and the amount of GST is one-eleventh of that fee.

The massage therapist is supplying services to the clinic. However, the massage therapist is an employee of the clinic. The supply of services as an employee do not come within the meaning of 'enterprise' and are not subject to GST when supplied by the employee to the employer. Accordingly, the wages paid by the clinic to the massage therapist will not be subject to GST.

### **7.a.21. In what circumstances would conduct monies payable to medical practitioners for production of documentation NOT incur GST under Division 81?**

Non-interpretative – straight application of the law.

Conduct monies payable to medical practitioners for production of documentation are not covered under Division 81. They are not a tax imposed under an Australian law. Also, the medical practitioner is not an Australian government agency which is defined by reference to section 195-1 of the GST Act and section 995-1 of the *Income Tax Assessment Act 1997* as:

- a. the Commonwealth, a State or a Territory, or
- b. an authority of the Commonwealth or of a State or a Territory.

Division 81 can only ever relate to taxes and monies payable to Australian government agencies. As such, Division 81 will not apply to conduct monies payable to medical practitioners. Further, conduct monies payable to medical practitioners are not GST-free under any other provision of the GST Act including section 38-7.

For more information on Division 81, see '[Payments to government agencies under Division 81](#)'.

**7.c. The Therapeutic Goods Associations (TGA) is a part of the Australian Government Department of Health and Aging and is responsible for administering the *Therapeutic Goods Act 1989*. Medicines and devices are evaluated and eventually listed or registered on the Australian Register of Therapeutic Goods (ARTG). Individual firms seeking registrations are charged fees for the various services provided by the TGA. Over recent years the percentage of the TGA's outlays to be recovered has been increased progressively (currently 100%).**

**7.c.1. Is GST payable on fees and charges levied by the TGA for its services to industry?**

Non-interpretative – straight application of the law.

The service supplied does not come within any of the sections in subdivision 38-B. The evaluation of medicines or devices is not a supply of a drug or medicinal preparation to an individual for private or domestic use, appropriate treatment of a recipient, nor the supply of a medical aid or appliance. However, GST may not apply to taxes, fees and charges levied by the TGA where Division 81 applies. For more information on Division 81, see ['Payments to government agencies under Division 81'](#).

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