


# ***GSTD 2012/4EC - Compendium***

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The edited version of the Compendium of Comments is an ATO communication that is not intended to be relied upon as it provides no protection from primary tax, penalties, interest or sanctions for non-compliance with the law. In accordance with PS LA 2008/3 it only affords level 3 protection.

Page status: **not legally binding**

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## **Ruling Compendium – GSTD 2012/4**

This is a compendium of responses to the issues raised by external parties to draft GSTD 2011/D4 – 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 compendium of comments has been edited to maintain the anonymity of entities that commented on the draft ruling.

### **Summary of issues raised and responses**

<b>Issue No.</b>	<b>Issue raised</b>	<b>ATO Response/Action taken</b>
1.	The GSTD should refer to the full wording of relevant sections and where parts of the definition are used they should be incorporated by quotation.	Change made to paragraph 26 to reflect the direct quotation of the definition of hospital treatment as set out in section 121-5 of the <i>Private Health Insurance Act 2007</i> .
2.	There is no discussion about the application of paragraph 121-5(1)(a) of the <i>Private Health Insurance Act 2007</i> (PHI Act) concerning the requirement that the treatment is 'intended to manage a disease, injury or condition'.	Change made. New paragraph 7 has been inserted which discusses this requirement.
3.	The extent of the exclusion provided by subsection 38-20(2) of the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (GST Act) should be explained.	Change made. While the discussion on the application of subsection 38-20(2) of the GST Act has not been expanded as the Determination focuses upon the meaning of hospital treatment, footnote 14 has been altered to reference Goods and Services Tax Industry Issues, Health Industry Partnership, 'Medical Services rendered for cosmetic reasons'.
4.	The reference to 'lodging' (which connotes commercial residential accommodation) in connection with hospital treatment seems strange as the accommodation that is provided to the patient is a bed plus limited storage facilities in a shared room.	Change made. Paragraph 8 has been changed to remove the dictionary meaning that refers to 'lodging'. The word 'lodging' has also been removed from paragraph 9 of the Determination.

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5.	The issue of accommodation provided as part of the treatment of new mothers in hotel facilities needs to be explained, either in the body of the discussion or as a further example.	No change made. While the comment refers to a factual scenario, it is considered that the Determination provides sufficient principles that can be applied to a number of different factual situations to determine the GST outcome.
6.	It is considered that the supply of access to television and telephone is at least partly a supply of goods (and therefore not excluded from being GST-free to that extent). The supply of use of the equipment is very similar to a lease of goods that the Australian Taxation Office has long held is a supply of goods and could be supported by section 38-187 of the GST Act.	No change made. In this context, the Commissioner does not consider there is a supply of goods. This scenario can be distinguished from a scenario where an entity leases goods. This position is also consistent with the statement in paragraph 5.16 of the Explanatory Memorandum to the A New Tax System (Goods and Services) Tax Bill 1998.
7.	The discussion on 'provided to a person' and the requirements of paragraph 121-5(1)(b) of the PHI Act of the definition of 'hospital treatment' are included in the non-binding Appendix. There seems to be no reason why certain interpretative parts of the discussion will be binding on the Commissioner while other parts will not. All interpretative parts should be binding.	No change made. The Commissioner's views on the interpretation of these requirements are covered in the Ruling section of the Determination (see paragraphs 11 to 12 of the Determination). The content in the Explanation section of the Determination supports those views (see paragraphs 30 to 33 of the Determination).
8.	There is no authority for the view taken by the Commissioner that in this instance 'provided' means 'supplied'. That is not the view that has been taken in other circumstances, notably subsection 38-190(3) of the GST Act. It is considered that a more detailed explanation is required.	Change made. The draft Determination referred to the New South Wales Court of Appeal decision in <i>Cross v Certain Lloyds Underwriters</i> [2011] NSWCA 136 at footnote 16 to paragraph 30. In this decision, the Court considered the proper approach to construing legislation which uses a definition from another Act. Section 198C of the <i>Legal Profession Act 1987</i> (NSW) defined the term 'personal injury damages' as having the same meaning as in the <i>Civil Liability Act 2002</i> (NSW). The Court concluded that the relevant authorities on interpreting definition sections in this context recognise that it is permissible to take into account the context in which the defined term

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Issue No.	Issue raised	ATO Response/Action taken
		<p>is used in the second statute (containing the actual definition) in order to give content to the incorporated definition in the first statute. It is considered that this case supports the view expressed in the Determination that the term 'provided to a person' in the context of the PHI Act is a reference to the treatment being supplied to a patient. It is noted that the High Court has granted special leave to hear an appeal against the <i>Cross v. Certain Lloyds Underwriters</i> decision. While this decision is consistent with the approach taken in the Determination, it is not considered necessary for the Determination to reference the decision. The reference has been removed from the Determination.</p>
9	<p>The examples in the Determination should address all of the relevant issues that arise including multi-party transactions. For instance, in example 3, there is presumably a taxable supply of services from the physiotherapist to the hospital and a creditable acquisition of those services by the hospital. Reference in example 3 to those elements would clarify the GST position of both of the parties in these circumstances.</p>	<p>No change made. The examples in the Determination address the Commissioner's views on what is hospital treatment. Further, it is noted that Tax and Superannuation Laws Amendment (2012 Measures No.1) Bill 2012 was introduced on 1 March 2012. Measures within this Bill may impact upon the treatment of supplies made to hospitals.</p>