

GSTD 2021/2EC - Compendium



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Public advice and guidance compendium – GSTD 2021/2

❶ Relying on this Compendium

This Compendium of comments provides responses to comments received on draft Goods and Services Tax Determination GSTD 2021/D1 *Goods and services tax: adjustable beds, pressure management mattresses and pressure management overlays*. It is not a publication that has been approved to allow you to rely on it for any purpose and is not intended to provide you with advice or guidance, nor does it set out the ATO's general administrative practice. Therefore, this Compendium does not provide protection from primary tax, penalties or interest for any taxpayer that purports to rely on any views expressed in it.

Summary of issues raised and responses

Issue number	Issue raised	ATO response
1	Clarification of the compliance approach The Determination should provide further guidance on the application of the compliance approach, particularly in regard to whether products that fail the compliance approach can still be treated as GST-free.	Paragraph 30 added to the final Determination The compliance approach is intended to communicate to taxpayers the circumstances where we will not apply compliance resources to verify a supplier's compliance with the 'not widely used' test. Paragraph 30 has been added to the final Determination to clarify that where the compliance approach does not apply to the supplier's facts and circumstances, they will need to consider the position in the Determination in determining if the product is not widely used by people without an illness or disability for the purposes of paragraph 38-45(1)(b) of the <i>A New Tax System (Goods & Services Tax) Act 1999</i> (GST Act). ¹
2	Clarification of the 'not widely used' test The final Determination should clarify what taxpayers need to evidence to support their conclusion on the 'not widely used' test (that is, in cases where the compliance approach is not met) and clarify further when the 'not widely used' test is not met.	No action taken The evidence will depend on the particular circumstances of the taxpayer. Consideration will be given to how the evidence is relevant to the factors provided at paragraph 10 of the final Determination.

¹ All legislative references in this Compendium are to the GST Act, unless otherwise indicated.

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3	<p>Examples of types of beds that would meet the ‘not widely used’ test</p> <p>It would be useful if the Commissioner provided examples of the types of beds that would meet the ‘not widely used’ test (for example, a bed with side rails).</p>	<p>No action taken</p> <p>As the legislative test is a ‘not widely used’ test, which by its nature contemplates the <i>use</i> of the relevant product and if it is widely used by people without an illness or disability, examples of the types of beds will not assist in meeting this test.</p> <p>We do note that the type of bed (or design features) will be relevant in determining if the product is an adjustable bed (section 38-45(1)(a)) and if the product supplied is specifically designed for people with an illness or disability (section 38-45(1)(b)). See Example 1 and paragraphs 4 and 7 of the final Determination.</p>
4	<p>Support for use of marketing material to indicate use of product</p> <p>Agree that the marketing material is helpful in assessing whether the product is for lifestyle versus for people with an illness or disability.</p>	<p>No action taken</p> <p>As noted in paragraph 10 of the final Determination, the marketing material is a relevant factor in considering whether a product is widely used by people without an illness or disability.</p>
5	<p>Definition of ‘adjustable bed’ and supplies of ‘mattresses’</p> <p>Further clarification is needed on the definition of an adjustable bed, specifically in relation to the supply of a stand-alone mattress which is specifically designed to be compatible for both adjustable purposes and standard (non-adjustable) use.</p> <p>The draft Determination’s current wording could be interpreted that the sale of a stand-alone mattress, that has been specially designed to be compatible with an adjustable base, could qualify as a sale of an adjustable bed. Further, if this was the case a significant number of retailers would result in stand-alone mattresses in Australia being eligible to be treated as GST-free.</p> <p>Paragraph 32 of the draft Determination should exclude the sale of any adjustable compatible mattresses unless sold in the same transaction as an adjustable base.</p>	<p>Paragraph 12 updated in the final Determination</p> <p>Paragraph 4 of the Determination states that an adjustable bed is covered if its upper and lower sections can be adjusted or manipulated to assist a person who has limited mobility to get in and out unaided, or to allow a person to rest with their upper or lower body elevated.</p> <p>Paragraph 12 of the final Determination states that mattresses are a ‘spare part’ for an adjustable bed if it is specifically designed to replace a faulty, worn or broken mattress of an adjustable bed.</p> <p>Changes have been made to paragraph 12 of the final Determination to make clear that where a mattress is supplied on its own, it will only be a spare part if it is supplied as, and specifically designed as, a replacement mattress for a faulty, worn or broken mattress for an adjustable bed that would be GST-free under subsection 38-45(1). The design features and characteristics of the mattress and how it is marketed will be relevant considerations.</p> <p>Paragraph 32 of the final Determination does not include the supply of spare parts in the application of the compliance approach.</p>

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6	<p>Further research before issuing the draft Determination</p> <p>The ATO needs to conduct further research to determine the status of the market and relevant products before finalising the Determination, due to the acknowledged uncertainty in the market of what products meet the criteria to be GST-free. Further clarification is sought on factors that indicate a product is a lifestyle product over a product specially designed for a person with an illness or disability. For example, adjustable beds with USB charging ports.</p>	<p>No action taken</p> <p>The final Determination has been published to make it clear for suppliers where a product meets the criteria to be GST-free. Paragraph 10 of the final Determination is not an exhaustive list, therefore additional factors can be evidenced by the supplier.</p>
7	<p>First factor of the 'not widely used' test</p> <p>Where the product is sold should not be correlated with how the product is used.</p> <p>Medical supplies are sold in grocery stores even though the majority of sales within those stores will be non-medical supplies. This does not alter the nature of the products sold within, just as the fact bed products sold in a bedding store do not change constitution because of what is sold elsewhere in the store. Holding items to such a test is inconsistent with how other 'general stores' that sell GST-free products are treated.</p>	<p>No action taken</p> <p>The compliance approach is intended to be used only when taxpayers are finding it difficult to assess if a product is not widely used based on the factors listed in paragraph 10 of the final Determination.</p> <p>The compliance approach does not correlate use with where products are sold, rather it sets out the circumstances where we will not devote compliance resources as it is considered low risk.</p>
8	<p>Query regarding the percentage of 25% in paragraphs 32 and 33 of the draft Determination</p> <p>The figure of 25% in paragraphs 32 and 33 of the draft Determination does not reflect the ordinary meaning of 'not widely used' and should be amended to 50% on the basis that minority use should not be considered 'wide use'.</p>	<p>No action taken</p> <p>Paragraph 9 of the final Determination considers 'not widely used' to mean not used by many people who do not have an illness or disability.</p> <p>The compliance approach is intended to be used only when taxpayers are finding practical difficulties in assessing if a product is not widely used based on the factors listed in paragraph 10 of the final Determination.</p> <p>The figure of 25% is indicative to support the view of not widely used; however, where the compliance approach applies it does not follow that we consider the widely used test to be 25% use. Rather in these cases, we will not apply compliance resources to verify a supplier's compliance with the 'not widely used' test in paragraph 38-45(1)(b).</p>

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9	Application of the compliance approach How does the compliance approach apply when the taxpayer is both the retailer and the wholesaler, importer and manufacturer?	Paragraph 33 updated in the final Determination An addition has been made to paragraph 33 of the final Determination that provides we will accept the 'not widely used' test is met if you are a manufacturer of adjustable beds who does not supply retailers and less than 25% of your sales by volume are standard beds. This will address factory-direct sales situations.
10	Impact of draft Determination on recipients The position in the Determination will potentially have a significant effect on consumers who have care packages with care providers, as it may mean that the cost is greater than the available funds; hence, preventing them from being able to afford the most suitable products for their illness or disability.	No action taken Subsection 38-45(1) does not provide a specific exemption for care package consumers. We also note for completeness: <ul style="list-style-type: none"> the final Determination does not cover hospital-type beds (table item 61 of Schedule 3) adjustable beds, pressure management mattresses and pressure management overlays are not considered to be covered by section 38-38 as they are not of a kind that the Disability Services Minister has determined in writing adjustable beds, pressure management mattresses and pressure management overlays also do not fall within a good of a kind listed by section 38-47.
11	Practical issues concerning the compliance approach The compliance approach raises a number of practical issues: <ul style="list-style-type: none"> given supply chain arrangements, the compliance approach may disadvantage rural and regional consumers with an illness or disability who may only be able to source the products through a standard retailer standard retailers may be disadvantaged due to the inherent difficulties of satisfying the compliance approach; the approach may favour products being supplied to speciality retailers or directly to consumers 	No action taken A supplier does not have to apply the compliance approach and they can assess if a product is not widely used based on the factors listed in the final Determination, noting also that the list is not exhaustive. Any standard retailer, regardless of geographical location, can satisfy the compliance approach if they are a bed retailer and they acquired the product from a supplier who has given them a written statement confirming they supply less than 25% of that product by volume to standard bed retailers.

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	<ul style="list-style-type: none"> the exemption provided in section 38-45 in the context of adjustable beds, pressure management mattresses or pressure management overlays would likely have little (or no) application, unless of course supply chain arrangements change; this does not seem like the right outcome for consumers who can only acquire these products from standard bed retailers ambiguity in the draft Determination may create unfair competition in the market where some bed producers may easily find ways of selling their products GST-free while some may not, albeit their products are specifically made for those with an illness or disability, and the compliance approach will limit the outlets where the products are sold and therefore limit the accessibility of products to consumers with an illness or disability. 	
12	<p>Possible alternatives to the compliance approach</p> <p>It is suggested that the compliance approach:</p> <ul style="list-style-type: none"> should be based on the nature of the supply could focus on the identity of the recipient where a consumer provides documentation to evidence the use of an item for an illness or disability, and should be based on identifying what constitutes an 'illness' or 'disability' on a case-by-case basis to determine if a consumer is entitled to a GST-free purchase. 	<p>No action taken</p> <p>The legislative test is not if the person who purchases the product has an illness or disability. It is a 'not widely used' test which by its nature contemplates people with an illness or disability purchasing products that do not meet the test, because the relevant product is widely used by people without an illness or disability.</p> <p>Whether a product is purchased in connection with NDIS or TAC claims will be relevant where evidence of those purchases tends to show the product was not purchased widely by people without an illness of a disability.</p> <p>Adjustable beds are not considered to be covered by section 38-38 (disability support provided to NDIS participants) as they are not of a kind that the Disability Services Minister has determined in writing. See the Explanatory Statement to A New Tax System (Goods and Services Tax) (GST-free Supply – National Disability Insurance Scheme Supports) Determination 2021.</p>

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	<p>For example, it should take into account if the item is purchased in connection to a National Disability Insurance Scheme (NDIS) support or Transport Accident Commission (TAC) claim. This approach would preserve the GST-free treatment of the items in scenarios outlined in paragraph 10 of the Determination where products can only be sourced from standard bed retailers. This would allow the ATO to gather information on whether an item is in fact being widely used by those without an illness of disability.</p>	<p>Also, Adjustable beds do not fall within a good of a kind listed in determinations made by the Health Minister under section 38-47 (other GST-free health goods).</p>