

# ***GSTD 2021/D1 - Goods and services tax: adjustable beds, pressure management mattresses and pressure management overlays***

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 There is a Compendium for this document: [GSTD 2021/2EC](#) .



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## Draft Goods and Services Tax Determination

# Goods and services tax: adjustable beds, pressure management mattresses and pressure management overlays

### **❗ Relying on this draft Determination**

This publication is a draft for public comment. It represents the Commissioner's preliminary view on how a relevant provision could apply.

If this draft Determination applies to you and you rely on it reasonably and in good faith, you will not have to pay any interest or penalties in respect of the matters covered, if this draft Determination turns out to be incorrect and you underpay your tax as a result. However, you may still have to pay the correct amount of tax.

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### **What this draft Determination is about**

1. This draft Determination<sup>1</sup> discusses when the supply of an adjustable bed, pressure management mattress, pressure management overlay or spare part is GST-free under subsections 38-45(1) and 38-45(2) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).<sup>2</sup> We are issuing this draft Determination because the market for these

<sup>1</sup> All further references to 'this Determination' refer to the Determination as it will read when finalised. Note that this Determination will not take effect until finalised.

<sup>2</sup> All legislative references in this Determination are to the GST Act unless otherwise indicated.

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products has developed and in some cases there is now uncertainty whether they meet the criteria to be GST-free.

2. An adjustable bed, pressure management mattress or pressure management overlay is GST-free only if it is:

- specifically designed for people with an illness or disability
- not widely used by people without an illness or disability<sup>3</sup>, and
- covered by table items 59, 60 or 66 of Schedule 3.

3. Determining whether a bed, mattress or overlay is GST-free involves applying an essential character test to examine its basic nature, taking its composition, function and other factors into account.<sup>4</sup>

4. Adjustable beds are covered by either table item 59 (manually operated) or table item 60 (electronically operated) of Schedule 3. A bed is covered by one of these table items 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.

5. A pressure management mattress or pressure management overlay will be covered by table item 66 of Schedule 3 if it is designed to provide comfort and prevent bed sores by evenly distributing the pressure on a patient's body.

6. Paragraph 38-45(1)(b) requires that 'the thing' supplied is specifically designed for people with an illness or disability and is not widely used by people without an illness or disability. Therefore, subsection 38-45(1) requires that we examine the specific thing or the specific product, rather than the class of products.

## **Specifically designed**

7. The following factors are a non-exhaustive list of matters you should take into account when considering whether a particular product is specifically designed for people with an illness or disability:

- An objective view of the design features and characteristics of the product indicate whether its essential character is that it is specifically designed for people with an illness or disability.
- The designer's or manufacturer's intention of how the particular product is to be used. Indicators of the designer's or manufacturer's intention include an objective consideration of how the product is marketed and the type of outlets at which the product can be purchased.

## **Not widely used**

8. It is a question of degree whether a product is widely used by people without an illness or disability. In addressing this question, the Commissioner considers that, if it is determined that the product is widely purchased by or on behalf of people without an illness or disability, it is reasonable to conclude that the test is satisfied without the need to

<sup>3</sup> Paragraph 38-45(1)(b).

<sup>4</sup> The 'essential character' test is considered in the sales tax case of *Commissioner of Taxation of the Commonwealth of Australia v Thomson Australian Holdings Pty Ltd* [1989] FCA 382 at [4]. The Tribunal in *Snugfit Australia Pty Ltd and Commissioner of Taxation* [2013] AATA 802 at [10] considered that the principle set out in that case is equally applicable in the context of section 38-45 and thus '... the task ... is to determine the essential character of the goods, what essentially the goods are, not some characteristic that the goods might have'.

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examine how this class of people in fact use the product. The phrase ‘not widely used’ is not defined in the GST Act. It therefore takes its ordinary meaning, having regard to the context in which it appears.<sup>5</sup>

9. In the context of paragraph 38-45(1)(b), the Commissioner considers ‘not widely used’ to mean not used by many people who do not have an illness or disability.

10. The following factors will be relevant, but are not an exhaustive list, when considering whether a product is widely used by people without an illness or disability:

- The product is primarily sold in retail or other outlets that predominantly sell standard beds (that is, beds that do not have features specifically designed for people with an illness or disability) to the general public.
- The marketing material for the product emphasises how it enhances the lifestyle of people without an illness or disability.

### **Spare parts**

11. Subsection 38-45(2) provides that a spare part is GST-free where it is specifically designed for a product that would be GST-free under subsection 38-45(1). A spare part is a part which has been specifically designed to replace a faulty, worn or broken part of a medical aid or appliance.

12. A bedframe and a mattress are spare parts for an adjustable bed if each is specifically designed to replace a faulty, worn or broken bedframe or mattress of the adjustable bed. The supply of the spare part is GST-free if the supply of the adjustable bed would be GST-free under subsection 38-45(1).

13. A pressure management mattress and pressure management overlay are not spare parts of an adjustable bed. The GST treatment should be considered in respect of the supply of the pressure management mattress or pressure management overlay as a standalone item.

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### **Example 1 – adjustable bed specifically designed for people with an illness or disability**

14. *XYZ Beds Pty Ltd manufactures a range of beds, including the electronically-operated adjustable bed model XYZ123.*

15. *XYZ123’s design features include an adjustable lumbar support for the lower back, head and leg elevation to promote circulation, and highly-flexible struts and contact pads designed to provide maximum support to the head, shoulder, waist, pelvic and leg zones.*

16. *XYZ123’s design features point towards a finding that the product is specifically designed for people with an illness or disability.*

### **Example 2 – adjustable bed is not widely used by people without an illness or disability**

17. *Following on from Example 1, XYZ123 is only available for purchase by the public from retailers that sell products for use by people with an illness or disability.*

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<sup>5</sup> *Project Blue Sky Inc v Australian Broadcasting Authority* [1998] HCA 28 at [69].

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18. *The marketing brochures have pictures of a person with a disability and describe how the bed assists with getting in and out of bed. None of the marketing material describes the bed as being a lifestyle choice.*

19. *The design features and characteristics of XYZ123, the manner in which it is marketed and the outlets from which it can be purchased point towards a finding that the product is not widely used by people without an illness or disability.*

20. *Therefore, the supply of model XYZ123 is GST-free.*

### **Example 3 – adjustable bed not specifically designed for people with an illness or disability and is widely used by people without an illness or disability**

21. *Bed Manufacturing Pty Ltd (BMP) manufactures the manually-operated adjustable bed model BMP456.*

22. *BMP456's marketing brochure extols the health benefits of being able to adjust the position of a user's body to find the perfect position to read a book, watch TV or use an electronic device to browse the internet, and the bed's ability to help alleviate muscle and joint pain and a variety of conditions including sleep apnoea.*

23. *BMP markets BMP456 to furniture retail shops and online sites that sell standard beds to the wider community.*

24. *Although BMP456 has features that benefit people with an illness or disability, the manner in which it is marketed and the channels in which it is sold point towards a finding that the product is not specifically designed for people with an illness or disability and is widely used by people without an illness or disability.*

25. *Therefore, the supply of BMP456 is not GST-free.*

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### **Date of effect**

26. When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 75 to 76 of Taxation Ruling TR 2006/10) *Public Rulings*).

### **Transitional arrangements**

27. In cases where the supplies of adjustable beds, pressure management mattresses or pressure management overlays are currently being treated as GST-free, the Commissioner will not seek to disturb this approach for tax periods commencing prior to the final Determination being issued, or commencing within three months after the final Determination being issued. This does not apply where there is evidence of avoidance, fraud or evasion.

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## **Appendix 1 – Compliance approach**

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**1** *This Appendix sets out a proposed practical administration approach to assist taxpayers in complying with relevant tax laws. When this determination is finalised, provided you follow the advice in this appendix in good faith and consistently with the Ruling section, the Commissioner will administer the law in accordance with this approach.*

28. The Commissioner is aware of the practical difficulties a supplier may encounter in determining the extent to which the thing supplied is used by people without an illness or disability.

29. The Commissioner will adopt a practical compliance approach for the supply of products that fall within table items 59, 60 and 66 of Schedule 3. As part of this approach, the Commissioner will not apply compliance resources to verify a supplier's compliance with the widely-used test in paragraph 38-45(1)(b) if you fall within the compliance approach set out in paragraphs 31 to 34 of this Determination.<sup>6</sup>

30. The Commissioner will adopt the following compliance approach from the start of the tax period commencing three months after this Determination issues as a final Determination.

### **Compliance approach**

31. This compliance approach applies to an entity that is registered for GST and:

- supplies adjustable beds, pressure management mattresses or pressure management overlays to a bed retailer, or
- is a bed retailer.

32. The Commissioner will accept that an adjustable bed, pressure management mattress or pressure management overlay is not widely used by people without an illness or disability if you:

- supply adjustable beds to bed retailers and less than 25% of sales by volume of the particular product are supplied to standard bed retailers, or
- are a bed retailer and you acquired the product from a supplier who has given you a written statement confirming they supply less than 25% of that product by volume to standard bed retailers.

33. For these purposes:

- a 'bed retailer' is an entity that sells beds to consumers
- a 'standard bed retailer' is an entity whose sales of standard beds exceed 25% of total bed sales by volume, and
- a 'standard bed' is a bed that is not an adjustable bed.

34. The Commissioner will not apply compliance resources to verify compliance with your GST reporting obligation for your supply of an adjustable bed, pressure management mattress or pressure management overlay if:

- you satisfy paragraph 32 of this Determination

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<sup>6</sup> This compliance approach does not apply more widely to other table items listed in Schedule 3.

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- the percentage in paragraph 32 of this Determination is calculated using sales data for the first six months of the most recently-ended financial year to determine whether the product is not widely used in the following financial year
- the particular product is new to the market, the projected sales for the first six months in which the product is for sale are used to determine whether the product is not widely used
- you keep records of how you satisfy paragraph 32 of this Determination, and
- there is no evidence of avoidance, fraud or evasion.

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## Appendix 2 – Your comments

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35. You are invited to comment on this draft Determination including any practical issues with the proposed date of effect or the compliance approach. We are particularly interested in comments on how the compliance approach could provide coverage across more complex supply chain variations. Please forward your comments to the contact officer by the due date.

36. A compendium of comments is prepared when finalising this Determination, and an edited version (names and identifying information removed) is published to the Legal database on [ato.gov.au](http://ato.gov.au)

Please advise if you do not want your comments included in the edited version of the compendium.

**Due date:** 21 May 2021  
**Contact officer:** Melissa Harrison  
**Email address:** [melissa.harrison@ato.gov.au](mailto:melissa.harrison@ato.gov.au)  
**Telephone:** (08) 8218 9296

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## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 2006/10

*Legislative references:*

- ANTS(GST)A 1999 38-45(1)
- ANTS(GST)A 1999 38-45(1)(b)
- ANTS(GST)A 1999 38-45(2)
- ANTS(GST)A 1999 Sch 3
- TAA 1953

*Cases relied on:*

- Commissioner of Taxation of the Commonwealth of Australia v Thomson Australian Holdings Pty Ltd [1989] FCA 382; 89 ATC 4696; 87 ALR 682; 20 ATR 983; 25 FCR 481
- Project Blue Sky Inc v Australian Broadcasting Authority [1998] HCA 28; 194 CLR 355; 72 ALJR 841; 153 ALR 490
- Snugfit Australia Pty Ltd and Commissioner of Taxation [2013] AATA 802; 95 ATR 473; 2013 ATC 10-339

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ATO references

NO: 1-NCNY30Y

ISSN: 2205-6254

BSL: SMB

ATOlaw topic: Goods and services tax ~- Health ~- Medical aids and appliances

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