

Refund of excesses -

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Insurance Industry Partnership

Refund of excesses

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Refund of excesses

Issue

1. How does GST apply to the refund of excess payments under an insurance policy from an insurer to an insured?

ATO view

2. An excess under an insurance policy is generally the first part of a loss, which the insured agrees to bear. Often, the insured will therefore have to pay the first part of a loss themselves, such as for a replacement item or repairs or damages payments. For example, in a car repair situation the insurer may pay the excess exclusive amount to the repairer and require the insured to pay the amount of the excess to the repairer. In other cases, the insured will be required to pay that amount to the insurer rather than to another entity. For example, the insurer may pay the entire cost of repairs to the repairer and recover the excess from the insured.

3. When paid by the insured to an entity other than the insurer, such as a repairer, the payment may be consideration for a supply and may be subject to GST if the requirements of section 9-5 of *A New Tax System (Goods and Services Tax) Act 1999*, (the GST Act) are met. On the other hand, when paid by the insured to the insurer the payment is not consideration for a supply under section 78-55 of the GST Act.

Excess that did not give rise to a section 78-18 adjustment

4. If an excess does not give rise to a section 78-18 adjustment and is refunded, the insurer does not have an adjustment in relation to the refund of the excess. Nor does the insured.
5. If an insurer has an increasing adjustment under subsection 78-18(1) (because it made acquisitions or importations directly for the purpose of settling the claim and made payments or supplies in settlement of the claim) and the excess is refunded, the insurer will have a decreasing adjustment under section 78-42 only in relation to that part of the excess that gave rise to the section 78-18 increasing adjustment. The insured does not have an adjustment under section 78-42.

Example

6. An insured made a claim on its insurer. The insured paid an excess of \$110 to the insurer. The insurer settled the claim by making both creditable acquisitions directly for the purpose of settling the claim (see issue 31) and by making payments in settlement of the claim. The excess relates to the creditable acquisitions directly for the purpose of settling the claim to the extent of 60%. The insurer has an increasing adjustment under section 78-18 of 1/11 of 60% of \$110, which equals \$6. The insurer subsequently refunds all of the \$110 excess to the insured. Section 78-42 applies so that the insurer will have a decreasing adjustment of \$6 under Division 19 of the GST Act. The insurer does not have an adjustment in relation to the part of the excess that does not relate to the creditable acquisitions directly for the purpose of settling the claim.
7. If the insurer refunds, say, half of the excess (\$55), the insurer will have a decreasing adjustment under section 78-42 on 60% of the refund. The insurer's decreasing adjustment will be 60% of 1/11 of \$55, which is \$3.

Excess paid to entity other than insurer

8. Where the excess has been paid to an entity other than the insurer, such as a repairer, and subsequently refunded by the insurer to the insured, the refund by the insurer will be an adjustment event for the insured under Division 19 of the GST Act (if the insured was entitled to input tax credits on the payment of the excess to the repairer). The refund by the insurer under this scenario effectively reduces the consideration the insured paid to the repairer. Therefore, the insured, if registered, will have an increasing adjustment of 1/11th of the amount refunded.