



# ***Subrogation and third party payments -***

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## Insurance Industry Partnership

### Subrogation and third party payments

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### Subrogation and third party payments

#### **Issue**

1. The effect of section 78-40 is to provide an increasing adjustment in the hands of the insurer in relation to that payment, effectively giving rise to a GST liability for the insurer.
2. Section 78-65 provides that a claims payment to a third party will not be consideration for a taxable supply. That is, the insurer making the payment will not have an input tax credit on the payment, nor will the third party have a GST liability on the payment.
3. Where both parties are insurers, it appears that on the one hand the receipt of the payment creates a GST liability whereas on the other no GST liability arises.
4. Is it correct to assume that section 78-65 will prevail and ensure that no GST is payable by the insurer receiving the subrogation payment?

#### **ATO view**

5. Section 78-40 provides for the application of Division 19 in relation to decreasing adjustments under Division 78 when an insurer receives a payment in settling a claim it has made in exercise of its rights of subrogation. In other words, the insurer has an increasing adjustment under Division 19. The insurer does not have a GST liability under Division 9.
6. Section 78-65 operates to provide that the payment to the third party (a payment to an entity 'made in settlement of a claim under an insurance policy under which the entity is not insured') is not consideration for a supply. That is, Division 9 does not apply to the payment so the insurer receiving the payment does not have a GST liability on the payment. As section 78-40 does not provide for a GST liability under Division 9, but an increasing adjustment under Division 19, sections 78-40 and 78-65 are not mutually exclusive. They operate on different subject matter.

7. Where both parties are insurers, the receipt of the payment by the third party insurer can lead to an increasing adjustment (depending on whether or not the third party insurer has a decreasing adjustment under Division 78), but does not lead to a GST liability. The insurer making the payment is not entitled to an input tax credit for the payment.