

Division 78 and subdivision 153-B agreements -

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Insurance Industry Partnership

Division 78 and subdivision 153-B agreements

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Division 78 and subdivision 153-B agreements

Issue

1. Is the insurer entitled to claim a Division 78 decreasing adjustment (DAM) if it has entered into a subdivision 153-B agreement with agents supplying insurance on its behalf?
2. Are payments by the insurer to the agent subject to GST?
3. Are the agents entitled to input tax credits on acquisitions made for the purpose of settling the claim?
4. Are the agents entitled to DAM on payments made to insured or third parties to settle the claim?

ATO view

5. Under subdivision 153-B, an insurer may, in writing, enter into an arrangement with an agent under which the agent will on behalf of the insurer make supplies to third parties or acquisitions from third parties, or make both.
6. Both supplies and acquisitions must be specified; and, under paragraph 153-50(c) 'for the purpose of the GST law:
 - i. the agent will be treated as making the supplies to the third parties, or acquisitions from the third parties, or both
 - ii. the principal will be treated as making corresponding supplies to the agent, or corresponding acquisitions from the agent, or both;....'
7. Therefore, where the agent authorises the repairs and have a contractual agreement with the repairers and are liable for the cost of the repairs, then the agent will be entitled to an input tax credit in respect of the creditable acquisitions.

8. Under subparagraph 153-50(c)(ii) of the Act, the insurer will be treated as making corresponding acquisitions from the agent. That is, the amount that is reimbursed to the agent from the insurer will be consideration for a creditable acquisition by the insurer. The insurer will be entitled to an input tax credit in this scenario. The reimbursement will be consideration for a taxable supply by the agent.

9. In the scenario where the agent does not authorise the repairs and does not have a contractual agreement with the repairer, but merely facilitates payment after receiving an invoice from the insured or repairer and have accepted the claim, the agent in this scenario has not made a creditable acquisitions, instead they are making a settlement. Therefore, the settlement will be considered under Division 78 of the Act.

9A. See also: GSTR 2000/36 for a discussion of when an acquisition rather than a settlement is made.

10. If the supply of insurance was made through the agent and that supply was subject to the subdivision 153-B agreement, the agent is treated, for the purposes of the GST law only, as making the insurance settlement. This is because the agent is treated, for the purposes of the GST law only, as making a supply of insurance. Subparagraph 153-50(c)(i) provides 'the agent will be treated as making the supplies...'. Division 78 will therefore apply to the 'deemed' supply of insurance by the agent. The agent may be entitled to a decreasing adjustment.

11. Under this scenario the insurer is also treated as making a supply of insurance to the agent, for the purposes of the GST law only. If the insurer reimburses the agent for the payment the agent has made in settlement of the claim, the insurer will therefore also be making a settlement and may be entitled to a DAM. However, as the agent would have been entitled to a full input tax credit in respect of the 'deemed' premiums paid by the agent to the insurer, the insurer will not be entitled to a DAM under Division 78 of the Act.