GSTD 2012/4 - Goods and services tax: what is 'hospital treatment' for the purposes of section 38-20 of the A New Tax System (Goods and Services Tax) Act 1999?

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There is a Compendium for this document: **GSTD 2012/4EC** .

This document has changed over time. This is a consolidated version of the ruling which was published on *4 April 2012*

Goods and Services Tax Determination

Goods and services tax: what is 'hospital treatment' for the purposes of section 38-20 of the *A New Tax System (Goods and Services Tax) Act 1999*?

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Ruling

1. Hospital treatment, for the purposes of section 38-20 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) has the same meaning as in the *Private Health Insurance Act 2007* (PHI Act).

2. Hospital treatment is treatment (including the provision of goods and services) that:

   (a) is intended to manage a disease, injury or condition; and

   (b) is provided to a person:

      (i) by a person who is authorised by a hospital to provide the treatment; or

      (ii) under the management or control of such a person; and

   (c) either:

      (i) is provided at a hospital; or

      (ii) is provided, or arranged, with the direct involvement of a hospital.[1]

[1] Subsection 121-5(1) of the PHI Act.

All of these requirements must be met for the treatment to be hospital treatment.

3. Hospital treatment also includes any other treatment, or treatment included in a class of treatments, specified in the Private Health Insurance (Health Insurance Business) Rules.[2]

4. Hospital treatment does not include treatment, or treatment included in a class of treatments, specified in the Private Health Insurance (Health Insurance Business) Rules for the purposes of subsection 121-5(4) of the PHI Act.

5. A supply of hospital treatment is GST-free except to the extent that subsection 38-20(2) of the GST Act applies.[3]

Meaning of 'treatment' intended to manage a disease, injury or condition

6. Without limiting the meaning of hospital treatment, 'treatment' includes a reference to any of, or any combination of, accommodation, nursing, medical, surgical, podiatric surgical, diagnostic, therapeutic, prosthetic, pharmacological, pathology or other services or goods intended to manage a disease, injury or condition.[4]

7. As neither paragraph 121-5(1)(a) or subsection 121-5(3) of the PHI Act refer to a specific person's intention, whether the treatment is intended to manage a disease, injury or condition is an objective test determined by considering the relevant facts and circumstances.

Meaning of 'accommodation'

8. 'Accommodation' is not defined in the PHI Act. As it does not have a special or technical meaning, it takes its ordinary meaning. *The Macquarie Dictionary*[5] relevantly defines 'accommodation' to mean:

> 1. the act of accommodating.

The term 'accommodate' is relevantly defined by *The Macquarie Dictionary*[6] to mean:

> 2. to provide with room and sometimes with food and entertainment.

9. In the context of hospital treatment, accommodation is the provision of a room in connection with hospital treatment and can include meals provided to the patient by the hospital. The provision of accommodation can include access to a television or telephone (including making telephone calls).[7] Where the fee for accommodation includes access to these items, the access to the items forms part of the GST-free supply of hospital treatment.

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[2] Subsection 121-5(2) of the PHI Act.
[3] See paragraph 25 of this Determination.
[4] Subsection 121-5(3) of the PHI Act.
[5] [Multimedia], version 5.0.0, 1/10/11.
[6] [Multimedia], version 5.0.0, 1/10/11.
[7] This view differs to that previously set out in Issue 3.c.2 of the Health Industry Partnership Issues Register which implied that the use of a telephone cannot fall within a supply of hospital treatment. Also see paragraphs 23 to 24 of this Determination.

10. However, where access to a television and telephone (including making telephone calls) is supplied to the patient for an additional fee, these items are supplied separately to the supply of hospital treatment. The supply of access to a television or telephone (including making telephone calls) is not GST-free under subsection 38-20(3) of the GST Act as the supply of access to these items is not a supply of goods.[8]

Meaning of 'provided to a person'

11. The requirement that the hospital treatment be provided to a person is only satisfied where the treatment is supplied to the patient.

12. A supply made under a multi-party arrangement where one entity supplies to a second entity the service of providing treatment to the individual patient is not a supply of hospital treatment as the recipient of the supply is not the individual patient.[9]

Meaning of 'by a person who is authorised by a hospital to provide treatment or under the management or control of such a person'

13. A hospital is a facility that is declared to be a public or private hospital under subsection 121-5(5) of the PHI Act.

14. The person providing the treatment must either be authorised by a hospital to provide the treatment or under the management and control of such a person.

Meaning of 'provided at a hospital; or is provided, or arranged, with the direct involvement of a hospital'

15. The requirement that the treatment be provided at a hospital or is provided, or arranged, with the direct involvement of a hospital allows the treatment to be provided either within a hospital or outside the physical boundary of a hospital where the treatment is provided, or arranged, with the direct involvement of a hospital.

Examples

Example 1

16. A doctor is employed by a hospital and authorised to provide treatment to patients. The doctor, as part of a course of treatment for a patient, instructs a nurse to provide certain components of that treatment. The components of the treatment provided by the nurse to the patient are considered to be under the management or control of the doctor, being a person who is authorised by the hospital to provide treatment. The treatment is provided to the patient at the hospital. Therefore, the components of the treatment provided by the nurse form part of the hospital treatment supplied to the patient.

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[8] This view is consistent with paragraph 5.16 of the Explanatory Memorandum to the *A New Tax System (Goods and Services) Tax Act 1999*.

[9] See paragraphs 155 to 156 of Goods and Services Tax Ruling GSTR 2006/9 Goods and services tax: supplies.

Example 2

17. Further to Example 1, the patient arranges for a physiotherapist to attend the hospital to provide them with additional treatment. This supply is independent of the supply by the hospital. Whilst the physiotherapist may rely on information from the treating doctor in order to provide the additional treatment, the physiotherapist is not under the management or control of the doctor, being the person who is authorised by the hospital to provide treatment. Therefore, the supply by the physiotherapist to the patient is not part of the supply of hospital treatment made to the patient. However, the supply of physiotherapy services may be GST-free to the patient under section 38-10 of the GST Act.

Example 3

18. In contrast to Example 2, the hospital contracts with a physiotherapist to attend the hospital and provide physiotherapy services to the patient. The supply made by the physiotherapist to the hospital is not a supply of hospital treatment as the treatment needs to be supplied to the patient in order to satisfy the definition of hospital treatment. The fact that the supply made to the hospital results in the patient being provided treatment (that is, the physiotherapy service) is not sufficient to characterise the supply made to the hospital as hospital treatment. However, the physiotherapy service forms part of the supply of hospital treatment that the hospital makes to the patient. This is because the service forms part of the treatment supplied to the patient at the hospital and the hospital authorised the physiotherapist to provide the treatment.

Example 4

19. *A patient has hospital treatment for a medical condition requiring a stay in hospital. Later, the patient is transferred to their own home under 'a hospital in the home' program to continue their treatment. The patient is still an inpatient of the hospital and remains under the care of the treating doctor in the hospital. The treatment provided to the patient in their own home is hospital treatment as the treatment is provided, or arranged, with the direct involvement of a hospital. This is so even though it is provided outside the physical boundary of the hospital.*

Date of effect

20. This Determination applies from 26 March 2009. This is because the definition of hospital treatment set out in section 195-1 of the GST Act was amended to refer to the PHI Act with effect from that date.

21. The issues considered in this Determination were considered in Issue 3.a, Issue 3.c.1, and Issue 3.c.2 of the Health Industry Partnership Issues Register.[10] For tax periods before 1 July 2010, where an entity relied on the views expressed in Issues 3.a, 3.c.1 or Issue 3.c.2 of the Health Industry Partnership Issues Register and to the extent that those views conflict with the views expressed in this Determination, the entity is protected so that any underpaid net amount ceases to be payable or any amount overpaid by the Commissioner is taken to have been payable.[11]

22. This Determination does 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).

Issue 3.c.2 of the Health Industry Partnership Issues Register

23. Issue 3.c.2 of the Health Industry Partnership Issues Register implied that access to a telephone (including making telephone calls) cannot fall within a supply of hospital treatment. However, as referred to at paragraphs 9 and 10 of this Determination, the provision of accommodation can include access to a telephone (including making telephone calls) where not supplied for an additional fee.

24. To the extent that an entity treated access to a telephone (including making telephone calls) as a taxable supply where an additional fee was not charged, they may be entitled to a refund providing that they are within time to claim the refund[12] and not precluded by other restrictions on refunds.[13]

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[10] Issues 3.a, 3.c.1 and 3.c.2 of the Health Industry Partnership Issues Register ceased to be public rulings from 1 July 2010. Before that date, they were public indirect tax rulings under former section 105-60 of Schedule 1 to the *Taxation Administration Act 1953* (TAA).
[11] This protection was provided under former section 105-60 of Schedule 1 to the TAA, which was repealed with effect from 1 July 2010.
[12] Under section 105-55 of Schedule 1 to the TAA refund claims must be within 4 years after the end of the relevant tax period or the entity notifies the Commissioner of their claim to a refund within that time period.
[13] Section 105-65 of Schedule 1 to the TAA provides for restriction on GST refunds in certain circumstances.

Appendix 1 – Explanation

This Appendix is provided as information to help you understand how the Commissioner's preliminary view has been reached. It does not form part of the proposed binding public ruling.

Legislative overview

25. A supply of 'hospital treatment' is GST-free under subsection 38-20(1) of the GST Act. However, subsection 38-20(2) provides that a supply of hospital treatment is not GST-free to the extent that it relates to a supply of a professional service that is not GST-free because of subsection 38-7(2) of the GST Act.[14]

26. 'Hospital treatment' is defined in section 195-1 of the GST Act as having the same meaning as in the PHI Act. Section 121-5 of the PHI Act defines 'hospital treatment' as:

> treatment (including the provision of goods and services) that:
>
> (a) is intended to manage a disease, injury or condition; and
>
> (b) is provided to a person:
>
> (i) by a person who is authorised by a hospital to provide the treatment; or
>
> (ii) under the management or control of such a person; and
>
> (c) either:
>
> (i) is provided at a *hospital; or
>
> (ii) is provided, or arranged, with the direct involvement of a hospital.

27. Subsections 121-5(2) and 121-5(4) of the PHI Act respectively provide that certain other treatments or classes of treatment specified in the Private Health Insurance (Health Insurance Business) Rules are included or excluded as hospital treatment.

28. The Private Health Insurance (Health Insurance Business) Rules are amended from time to time and direct reference should be made to them.

29. A supply of goods is GST-free under subsection 38-20(3) if it is a supply that is directly related to a supply of hospital treatment that is GST-free under subsection 38-20(1) and is supplied by, or on behalf of, the supplier of the hospital treatment.

Meaning of 'provided to a person'

30. The definition of hospital treatment requires that the treatment be provided to a person.

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[14] Subsection 38-7(2) of the GST Act provides that a supply of a medical service is not GST-free under subsection 38-7(1) if:

(a) it is a supply of a professional service rendered in prescribed circumstances within the meaning of regulation 14 of the Health Insurance Regulations made under the *Health Insurance Act 1973* (other than the prescribed circumstances set out in regulations 14(2)(ea), (f) and (g)); or

(b) it is rendered for cosmetic reasons and it is not a professional service for which a Medicare benefit is payable under Part II of the *Health Insurance Act 1973.*

For further information on the application of paragraph 38-7(2)(b) see Goods and Services Tax Industry Issues, Health Industry Partnership, 'Medical Services rendered for cosmetic reasons', on the Australian Taxation Office website: www.ato.gov.au.

31. The Commissioner's view is that the term 'provided to a person' in the context of the PHI Act is a reference to the treatment being supplied to a patient. In the context of the GST Act, the Commissioner considers that a supply of something can be made to one entity and be provided to a separate entity.[15] This view recognises the use of the words 'made' and 'provided' in the GST Act. In contrast, the PHI Act does not use terms that suggest the treatment provided to a person can arise from a supply of the treatment being made to a separate entity.

32. Accordingly, only supplies of treatment made to an individual patient can fall within the definition of hospital treatment.

33. A supply made under a multi-party arrangement where one entity supplies to a second entity the service of providing treatment to the individual patient is not a supply of hospital treatment as the recipient of the supply is not the individual patient.[16]

Meaning of 'by a person who is authorised by a hospital to provide treatment or under the management or control of such a person'

34. A hospital is a facility that is declared to be a public or private hospital under subsection 121-5(5) of the PHI Act.

35. The person providing the treatment must either be authorised by a hospital to provide the treatment or under the management and control of such a person. A person under the management or control of the authorised person will often be in an employment or contractual relationship with the hospital.

36. The GST treatment of other services supplied by health practitioners to patients, which are separate supplies to those supplied by the hospital, needs to be determined in accordance with any other applicable provisions in the GST Act.[17]

[15] See paragraphs 130 to 134 of GSTR 2006/9.
[16] See paragraphs 155 to 156 of GSTR 2006/9.
[17] For example see sections 38-7, 38-10, 38-45, 38-47 and 38-50 of the GST Act.

References

Previous draft:

GSTD 2011/D4

Related Rulings/Determinations:

GSTR 2006/9; TR 2006/10

Subject references:

- goods and services tax
- GST free
- hospital treatment

Legislative references:

- ANTS(GST)A 1999 38-7
- ANTS(GST)A 1999 38-7(1)
- ANTS(GST)A 1999 38-7(2)
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- ANTS(GST)A 1999 38-7(2)(b)
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- TAA 1953 Sch 1 105-55
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- Health Insurance Act 1973 Part II
- Health Insurance Regulations 1975 -14
- Health Insurance Regulations 1975 14(2)(ea)
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- Health Insurance Regulations 1975 14(2)(g)
- Private Health Insurance Act 2007
- Private Health Insurance Act 2007 121-5
- Private Health Insurance Act 2007 121-5(1)
- Private Health Insurance Act 2007 121-5(1)(a)
- Private Health Insurance Act 2007 121-5(2)
- Private Health Insurance Act 2007 121-5(3)
- Private Health Insurance Act 2007 121-5(4)
- Private Health Insurance Act 2007 121-5(5)

Other references:

- Explanatory Memorandum to the A New Tax System (Goods and Services) Tax Bill 1998
- Health Industry Partnership Issues Register Issues 3.a, 3.c.1, and 3.c.2
- Private Health Insurance (Health Insurance Business) Rules
- The Macquarie Dictionary, [Multimedia], version 5.0.0, 1/10/01

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