

GSTR 2006/10EC - Compendium

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Ruling Compendium – GSTR 2006/10

This is a compendium of responses to the issues raised by external parties to the draft Addendum to GSTR 2006/10 – Goods and services tax: insurance settlements and entitlement to input tax credits

This compendium of comments has been edited to maintain the anonymity of entities that commented on the draft ruling.

Summary of issues raised and responses

| Issue No. | Issue raised | Australian Taxation Office Response/Action taken |
|------------------|--|--|
| 1 | Comments on 'pre-existing framework or agreement' and distinguishing 'binding obligations'. | <p>No changes made. As the nature of tripartite arrangements may vary greatly, the Addendum does not provide a specific definition of a 'binding obligation' or a 'pre-existing framework or agreement'.</p> <p>Rather, the Addendum provides guidance on the factors that may indicate that a supply is made by the supplier to the insurer under tripartite arrangements. These factors should assist in the identification of a supply to the insurer, whether pursuant to a binding obligation or pre-existing framework or agreement that exists between the supplier and insurer.</p> <p>The Addendum to Goods and Services Tax Ruling GSTR 2006/9 at paragraphs 221C to 221E discusses the form and requirements of a pre-existing framework.</p> |
| 2 | Is it necessary that the supplier seeks authorisation from the insurer at the time the insured/injured worker seeks the services for the supply to be made and payment from the insurer, or could there be situations where the supplier does not seek an authorisation each and every time because there is some 'umbrella' agreement/authorisation in place. | <p>The Addendum confirms that pursuant to the framework or agreement between the supplier and insurer, there needs to be a mechanism in place that establishes both the insurer's obligation to pay the supplier and to authorise the payment before the supplier makes the supply to the insured or third party.</p> |

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| | | <p>Provided those mechanisms are in place such that the supplier knows in advance that the insured is obliged to pay some or all of the consideration for the supply to the insured or third party, it does not matter whether that mechanism provides for express authorisation from the insurer each and every time there is a supply or there is an umbrella agreement in place.</p> |
| 3 | <p>Can we suggest a comment in the Ruling that the contractual arrangements entered into between the supplier and the insurer would still need to have regard to any contractual or legislative limitations such as those imposed by the State or Territory Governments.</p> | <p>No change made. These contractual/legislative limitations are already built into the Ruling.</p> <p>Ultimately, the factors provide guidance in determining whether a supply is being made by the supplier to the insurer under a tripartite arrangement. The factors are not a set of criteria to be rigidly applied. In identifying to whom a supply is made, it is necessary to look at the whole arrangement.</p> |
| 4 | <p>We note that some insurers have raised with us the fact that the massage example whereby the insurer directs the injured worker to use a particular massage therapist is not always realistic but we acknowledged that this example is illustrative only and was included on the basis that it does not make sense to include a whole additional example to illustrate this point.</p> | <p>Noted. We agree that the example is illustrative only.</p> |
| 5 | <p>For completeness it would be helpful if the Ruling stated that Division 11 does not simply apply to all 'approved provider' arrangements and that other requirements will need to be met.</p> | <p>No change made. The factors provide guidance in determining whether a supply is being made by the supplier to the insurer under tripartite arrangements, including under 'approved provider' arrangements. The factors are not a set of criteria to be rigidly applied. In identifying to whom a supply is made, it is necessary to look at the whole arrangement.</p> |

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| 6 | Is it the intention of the Australian Taxation Office (ATO) to create a flowchart describing a 'pre-existing framework or agreement'? This would be very helpful for medical suppliers. I understand that this may be difficult because the factors identified are not all required to have a 'pre-existing framework or agreement'. | <p>No change made. The factors provide guidance in determining whether a supply is being made by the supplier to the insurer under a tripartite arrangement. We agree that it is difficult to create a flowchart describing a pre-existing framework or agreement and how to apply the factors to determine whether there is a supply made to the insurer. For that reason we have not included one.</p> <p>The Addendum to GSTR 2006/9 at paragraphs 221C to 221E discusses the form and requirements of a pre-existing framework.</p> |
| 7 | From a general insurance perspective, it would appear that most if not all arrangements with medical providers in respect of medical treatment are payment arrangements. To ensure that this is clear to medical providers, it would be worthwhile stating this clearly and providing any examples which the ATO believes is a taxable supply. | Although many current arrangements with medical providers in respect of medical treatment are considered to be payment arrangements, it may be that some of these arrangements, upon application of the factors in the Addendum, will result in a supply being made by the supplier to the insurer. The Addendum provides Example 16A as illustrative of a taxable supply made to the insurer under a pre-existing framework or agreement. |
| 8 | Comments regarding details of proposed legislative change. | The Ruling applies to the law as enacted at the time of issue. However a transitional arrangement is included in relation to certain health related supplies. |
| 9 | Request for a longer transitional period for health-related supplies. | Change made. The Ruling provides for a longer transitional period up to 30 June 2012. |

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| 10 | <p>Comments regarding details of proposed legislative change. The submission outlines a number of areas that could be made subject to the payment of GST as an unintended consequence of the addendum. These include:</p> <ul style="list-style-type: none">▪ State, Territory and federal workers' compensation schemes▪ State and Territory motor accident insurance schemes▪ Department of Veterans' Affairs health treatments▪ Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) payments such as the <i>Helping Children with Autism</i> and <i>Better Start for Children with a Disability</i> programs | <p>The Ruling applies to the law as enacted at the time of issue. However a transitional arrangement is included in relation to certain health related supplies.</p> |
| 11 | <p>Broadly agree with the proposed amendments and will not be making any recommendations to amend the draft Addendum.</p> | <p>Noted.</p> |