



Insurance Industry Partnership

Subrogation – will section 78-15 prevail over section 78-35

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Subrogation – will section 78-15 prevail over section 78-35

Issue

1. Most subrogation payments are between insurance companies. Instances will exist where the 'entity that is not insured under the policy' (section 78-35) (third party) is another insurance company and the provisions of section 78-15 will allow that insurer to claim an input tax credit for the claim payment. Will section 78-15 prevail over section 78-35 to allow an input tax credit to the third party insurance company?

ATO view

2. There will be occasions where the payment made to the first insurance company (the one exercising its rights of subrogation) by the second insurance company (the 'entity that is not insured under the policy') is made by the second insurance company in settlement of a claim under one of its policies. In this instance, section 78-10 and section 78-15 could operate in relation to that payment.

3. Sections 78-10 and 78-15 provide for a decreasing adjustment, not an input tax credit. Section 78-35 only operates to deny an input tax credit that would otherwise be available under Division 11. In this way, sections 78-10, 78-15 and 78-35 are not mutually exclusive.