# *GIR/insurance-industry-partnership-ch27 -*

Australian Government
Australian Taxation Office

# Insurance Industry Partnership – issues register

This issues register, originally published on our main website, provides guidance on issues identified during past consultation with industry participants.

Issues in this register that are a public ruling can now be found in the *Public Rulings* section of this Legal Database.

Issues in this register that have not been labelled as public rulings, constitute written guidance. We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information on these issues and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we must still apply the law correctly. If that means you owe us money, we must ask you to pay it but we will not charge you a penalty. Also, if you acted reasonably and in good faith we will not charge you interest. If correcting the mistake means we owe you money, we will pay it to you. We will also pay you any interest you are entitled to.

If you feel that the guidance in this issues register does not fully cover your circumstances, or you are unsure how it applies to you, you can seek further assistance from us.

## Insurance issues

For GST, Luxury Car Tax and Wine Equalisation Tax purposes, from 1 July 2015, where the term 'Australia' is used in this document, it is referring to the 'indirect tax zone' as defined in subsection 195-1 of the GST Act.

All section references are to *A New Tax System (Goods and Services Tax) Act 1999* unless otherwise stated.

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# 1 Operation of Division 78 and Division 11 in relation to the activities undertaken by insurers in the course of settling claims

### Issue

In settling claims, insurers may pay the policy holder directly, or they may pay the supplier of goods or services for the supply of goods or services to the policy holder or other beneficiary of the policy.

Division 78 clearly applies in relation to the provision of money or digital currency to the policy holder. At issue is whether the insurer is entitled to an input tax credit under Division 11 where the payment is to a supplier of goods or services but the goods or services are supplied to the policy holder or other beneficiary. The Insurance Council of Australia (ICA) view is that the insurer is entitled to an input tax credit in such circumstances.

ICA has pointed to the UK case of *Redrow* in support of this view.

### ATO view

Non-interpretative

- See – GSTR 2006/10 – Goods and services tax: insurance settlements and entitlement to input tax credits

# 2 Subrogation – what is meant by the term subrogation

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found here.

# 3 Subrogation

### Issue

Does section 78-40 only apply to payments made by insurers to which Division 78 has applied and not to payments to which Division 11 applies?

Non-interpretative – straight application of the law.

### ATO view

Section 78-40 only operates where there has been a decreasing adjustment under Division 78. As provided by the 'chapeau' to that section:

'Division 19 applies in relation to a *decreasing adjustment that an insurer has under this Division...'. This Division being Division 78.

# 4 Subrogation – imbalance between sections 78-35 and 78-40

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found here.

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

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found here.

# 6 Subrogation and third party payments

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found here.

# 7 Offshore insurance or reinsurance

### Issue

If the Singapore branch of an Australian company writes a policy in Singapore for a Singapore resident which includes incidental cover of property in Australia, is that part of the cover subject to GST in Australia?

For source of ATO view, refer to *paragraphs 34 to 36 of* GSTR2019/1 *Goods and services tax: supply of anything other than goods or real property connected with the indirect tax zone (Australia).*

### ATO view

The first thing to look at is whether the supply is a taxable supply under section 9-5.

Is the supply for consideration? Most likely yes.

Is the supply made in the course or furtherance of the entity's enterprise? Most likely yes.

Is the supplier registered for GST? Presuming that the branch is not a separate entity from the Australian company, most likely yes.

Is the supply connected with Australia? Presuming that the thing is not done in Australia, does the last action necessary to make the contract of insurance binding take place outside Australia? Most likely yes.

If all the above assumptions are correct in the particular factual situation, the supply would not be a taxable supply.

# 8 Net settlements

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found here.

# 9 Medical expenses

### Issue

Subdivision 38-B covers GST-free medical supplies. Basically medical expenses appear to be taxable rather than GST-free where the treatment is not appropriate for the 'recipient of the supply' [s38-10(1)(c)] Normally would expect that the patient was the recipient of the supply and any arrangements by which an insurer pays the claim (for example, CTP or workers compensation) would only be a payment arrangement and not a supply. Are there any circumstances where the supply of medical services that are otherwise GST-free are taxable to the insurer?

For source of ATO view, refer to GSTR 2006/10 - *Goods and services tax: insurance settlements and entitlement to input tax credits.*

### ATO view

New Section 38-60, which applies on or after 1 July 2012, ensures that certain supplies made to insurers in settling insurance claims under both private health insurance policies and taxable insurance policies are GST-free to the extent that the underlying supply to the insured (policy holder or third party) is GST-free under Subdivision 38 B.

Section 38-60 similarly provides that supplies made to a statutory compensation scheme operator or compulsory third party (CTP) scheme operator are GST-free to the extent that the underlying supply of health related goods or services to an individual is GST-free under Subdivision 38 B.

Also, certain supplies made by health care providers to Commonwealth, State or Territory government entities are GST-free to the extent that the underlying supply of goods or services to an individual is GST-free under Subdivision 38 B.

However, a supply is not GST-free (to any extent) under Section 38-60 if the supplier and the recipient have agreed that the supply, or supplies of a kind that include that supply, not be treated as GST-free supplies.

See also:

- GSTR 2006/10 – Goods and services tax: insurance settlements and entitlement to input tax credits

# 10 Calculation of the GST on the unearned premium at 30 June 2000

### Issue

ICA submits that there are two methods. An actual calculation where you calculate the post 30 June risk premium and charge 10% GST on that amount. The other method being a straight line method where the risk premium is apportioned equally over the pre and post GST period and GST is charged on the post GST component. The GST payable will vary slightly depending on the method chosen.

For source of ATO view, refer to GSTB 2000/4 - *How you calculate and pay GST on a progressive or periodic supply that spans 1 July 2000.*

### ATO view

There are two methods the ATO views as acceptable.

### Method 1

GST on supplies of insurance that span 1 July to which section 12 of the *GST Transition Act* applies is calculated using the following formula:

**GST = Consideration (excluding GST & stamp duty) × number of days on or after 1 July 2000 divided by total days in the period × 10%**

### Method 2

If you have entered into an agreement to make a supply that spans 1 July 2000 to which section 12 of the *GST Transition Act* applies, and did not take GST into account when determining the price, you calculate the amount of the consideration which relates to the period on or after 1 July 2000 (consideration for the taxable supply) as:

***Price (excluding stamp duty) × number of days on or after 1 July 2000 × 11 divided by [(10 × total days in the period) + days on or after 1 July 2000]***

GST equals one-eleventh of this amount.

# 11 Section 78-50

### Issue

The last time for receipt of the notification of the insured's entitlement to input tax credits on the premium is when the 'claim was first made'. This is not defined. This percentage is required to process decreasing adjustment calculations on Division 78 claims payments and subrogations. Would we be correct in presuming that the date for supplying the taxable percentage would be immediately before a claim payment or subrogation occurs?

Non-interpretative - straight application of the law.

### ATO view

When the claim is first made depends on the facts in each case. For example, if a claim has to be made by the claimant submitting a claims form, the claim is not made until that form has been filled out and submitted to the insurer.

If, however, a claim is accepted without a claims form, for example a telephone claim for a window repair where the window repair is made without the claimant ever submitting a claims form, the claim is made when the telephone claim is made. As another example, a claimant may phone a claim in, but no action is taken until and unless a claims form is submitted, the claim is not made until the claims form is submitted.

At a practical level, if the decreasing adjustment is correctly calculated, this is not an issue.

# 12 Section 78-50

### Issue

Section 78-50 includes the expression 'since the last payment of a premium' relating to the date of advising of the taxable percentage. What is added by these words? Is the relevant taxable percentage based on the latest policy or the policy at the time of the claims event?

Non-interpretative - straight application of the law.

### ATO view

It is the time the first claim is made under the policy in question that is relevant.

# 13 Travel insurance

### Issue

Is incidental local travel forming part of an overseas trip treated as overseas travel for GST purposes? (For example, a trip from Brisbane to Sydney en route to overseas location.) Thus the travel is all GST free.

For source of ATO view, refer to GSTR 2000/33 – *Goods and services tax: international travel insurance.*

### ATO view

Item 2 of section 38-355 provides that the transport of passengers on the domestic legs of international flights is GST-free if the transport is part of a wider arrangement, itinerary or contract for transport by air involving international travel and at the time that arrangement etc was entered into the air transport in Australia formed part of the same ticket or was cross reference to such a ticket issued at that time.

That is, if the trip from Brisbane to Sydney is to connect with an international flight out of Sydney as part of the ticket for the international flight, that transport will be GST-free. If it is on a separate ticket (and not cross-referenced) it will not be GST-free.

This issue is also dealt with in GSTR 2000/33. Paragraphs 18 to 20 of that ruling provide:

> **Transport of passengers to and from place of departure**
>
> 18. Insuring transport under item 6 of section 38-355 applies to the transport of passengers from and to their place of departure, and during the period that the insured is travelling overseas. Generally, there is only one insurance policy that covers the insured for both the domestic transport and while overseas.
>
> 19. The travel from and to the place of departure is usually a very small part of international transport. A recent sample of over 500 claims by value of claim under standard policies of industry associations shows that only 0.17% of claims arose from incidents occurring between the traveller's place of departure and the airport, and from the airport to the traveller's place of departure.
>
> 20. This examination of claims history indicates that the value to be attributed to this domestic component of the international travel policy is less than 0.5% of the total value of the transport. Provided the claims history for a particular product demonstrates that this domestic component is less than about 0.5%, there will be no need to apportion between the taxable domestic component and the GST-free international component. That portion of the cover can be included under item 6 of section 38-355 and can be treated as being GST-free.

# 14 Co-insurance

### Issue

Is it correct to treat coinsurance as an agency arrangement with the lead insurer retaining the documentation for the input tax credits but advising the fellow co-insurers of their share of the input tax credits and GST liability?

Non-interpretative – other references

See also:

- GSTR 2000/37 – Goods and services tax: agency relationships and the application of the law.
- GSTR 2004/2 – Goods and services tax: What is a joint venture for GST purposes?

### ATO view

Whether coinsurance arrangements are treated as agency is a question of fact in each case. See also the separate examples on the GST treatment of coinsurance available on the ATO web site.

# 15 Excesses

### Issue

If an excess is paid to an insurer before the claims settlement is made, is it still included in the calculation of the settlement amount under section 78-15 once a claims settlement is made?

Non-interpretative - straight application of the law.

### ATO view

Yes. The method statement in section 78-15 is not limited to excesses paid after or at the same time as the claims settlement.

# 16 Excesses – several payments over time

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| The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found here. |

# 17 Excesses – making an acquisition

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| The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found here. |

# 18 Excesses and 78-70

### Issue

Where an insured has an excess and the insurer provides them settlement funds for the amount above the excess and the insured pays the funds plus the amount it was not insured for (that is the excess) to a third party in settlement of a liability, what amounts do section 78-70 apply to?

Non-interpretative – straight application of the law.

### ATO view

The amount exclusive of the excess.

Section 78-70 applies where 'the payment is covered by a settlement of a claim' (paragraph 78-170(1)(b)) or where 'the supply is covered by a settlement of a claim' (paragraph 78-170(2)(b)). Only the amount paid by the insurer to the insured is covered by the settlement of a claim.

# 19 Layered policies

### Issue

Layered policies are those where an insured takes out cover in separate layers, for example, zero to $1 million in one layer, $1 million to $5 million in another layer, and $5 million and over in a last layer. Each layer is a separate policy. Are they separate supplies for GST purposes?

Non-interpretative – straight application of the law.

### ATO view

Yes

# 20 Layered policies where some of the underwriters are offshore entities

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|---|
| The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found here. |

# 21 Attribution

### Issue

Does GSTR 2000/29 which provides that entities do not have to account for GST/Input tax credits (ITC) on supplies/acquisitions made before the entity knows they are made mean constructive knowledge or actual knowledge? Insurers are informed of supplies of policies made through agents/brokers by the agent/broker sometime after the supply is made.

The insurer may find out when the policy documentation is submitted by the agent/broker to them. The policy may not be processed onto the insurer's systems for some time - either due to processing delays such as caused by the large backlogs that build up after 30 June each year from the large number of renewals that occur at that date.

Delays of several days between documentation arriving and being processed at other times of the year are also normal. The insurer has constructive knowledge at the time the documentation arrives, but does not have actual knowledge until it is processed into its systems.

In some situations the insurer may even have knowledge earlier, such as where the insurer has some input into setting up the policy - there are occasions when the documentation is provided to the insurer by the agent/broker and the insurer makes some alteration to the policy before it is accepted and processed.

Is the insurer required to account for the GST when it has constructive knowledge of the supply or when the supply of the policy is processed into the insurer's systems?

- For source of ATO view, refer to paragraphs 87, 88 and 124 to 143 of GSTR 2000/29 – *Goods and services tax: attributing GST payable, input tax credits and adjustments and particular attribution rules made under section 29-25.*

### ATO view

As long as there is not an unreasonable delay - such as a delay beyond what are normal working practices – the insurer is taken to have knowledge of the supply when the supply is processed into its systems.

For example, if the normal delay for an insurer during the peak period after 30 June is two weeks, but the supply of the policy is not processed into the insurer's systems until 6 weeks after the completed documentation arrives at the insurer it would be considered to be an unreasonable delay.

## 22 Lost tax invoices

### Issue

If a tax invoice or a recipient created tax invoice has previously been issued but lost by the recipient, is it possible to issue a replacement? Does it have to be noted as a replacement?

### ATO view

If a tax invoice (including a recipient created tax invoice) is lost, a new copy can be issued as long as it is clearly identifiable as a copy.

## 23 Recipient created tax invoices

### Issue

Can recipient created tax invoices be used in the insurance industry where the recipient of the supply is under the $20 million turnover test in the RCTI ruling?

Non-interpretative - straight application of the law.

### ATO view

Yes, as long as all the other conditions in the RCTI ruling are met. See the Commissioner's determination issued to the ICA on behalf of the industry: RCTI 2017/3 - Ceding Insurers or Reinsurers.

See also:

- RCTI 2015/14 - regarding general insurance agents
- RCTI 2016/27 - regarding general insurance sub-agents

## 24 Tax invoices and insurance schedules

### Issue

Where an insurer makes a taxable supply of insurance through a broker, they often provide the broker with a document called an 'insurance schedule'. So they do not need to keep track of requests for tax invoices, some insurers want the insurance schedule to always be a tax invoice.

In some cases, the broker will simply hand the insurance schedule to the insured, but in other cases, the broker will incorporate the information on the schedule into documentation they prepare and send to the insured. In the latter situation the broker will be issuing the tax invoice for the supply of insurance on behalf of the insurer as permitted by section 153-25.

In this scenario, it could be interpreted that two tax invoices have been issued for the one taxable supply of insurance.

For this reason some insurers wanted to issue the insurance schedule as a tax invoice but add a statement to the effect that the insurance schedule was not a tax invoice if the policy was arranged through a broker.

For source of ATO view, refer to:

- paragraph 72 of GSTR 2000/37 – Goods and services tax: agency relationships and the application of the law
    - GSTR 2013/1 – Goods and services tax: tax invoices

## ATO view

Section 153-25 provides that, for supplies of insurance by an insurer through an insurance broker acting on behalf of the recipient, Subdivision 153-A applies to the broker as if they were agent of the insurer. Therefore, the following discussion applies to brokers as well as agents.

Section 153-15 allows the recipient of a taxable supply to request a tax invoice from either the agent or the principal, and that request is complied with when either the agent or the principal gives the recipient the tax invoice. Subsection 153-15(2) provides that the agent and the principal must not both issue a tax invoice for the same taxable supply. Section 288-50 of Schedule 1 to the *Taxation Administration Act 1953* (TAA) deems an entity liable to a penalty if both it and its agent issue separate tax invoices relating to the same taxable supply.

It is the ATO's view that the penalty under section 288-50 of Schedule1 to the TAA arises when the principal and their agent both issue tax invoices for the same taxable supply, and not when the recipient receives a tax invoice from both the agent and the principal for the same taxable supply.

In the scenario suggested, the fact that there are in existence two tax invoices for the same taxable supply, one incorporated into the insurance schedule and the other in the broker document, is sufficient to give rise to the penalty.

It is the ATO's view that while section 153-15 allows a degree of choice (in that the recipient may request either the principal or the agent for a tax invoice, and their request is complied with when either the principal or the agent gives them one), there is bound up in that an obligation on the part of both the principal and the agent to ensure that they do not both issue tax invoices for the same taxable supply.

Considering section 288-50 of Schedule 1 to the TAA penalises the principal where two tax invoices are issued for the same taxable supply, it would be in their interest to ensure that the scenario does not arise. We would suggest that those insurance houses that supply contracts of insurance that are taxable supplies through brokers modify their policy and procedures to ensure that only one person issues the tax invoice.

# 25 Combined tax invoice and RCTI

### Issue

Where a tax invoice is for more than one supply, and for one of those supplies it is an RCTI, what should be the heading on the invoice? Recipient Created Tax Invoice, Tax Invoice or Recipient Created Tax Invoice/Tax Invoice.

Non-interpretative – other references

See also:

- GSTR 2013/1 – Goods and services tax: tax invoices
- GSTR 2000/10 – Goods and services tax: recipient created tax invoices

### ATO view

Provided it can be clearly ascertained from the document that it is intended to be a recipient created tax invoice and a tax invoice, it will satisfy the legislative requirements.

# 26 Non-notification

### Issue

Some workers' compensation authorities have decided that if they do not receive a notification of the extent to which there is an entitlement to input tax credits on the premium/levy/contribution, they will assume that the entitlement is 100%. Most employers will be entitled to 100% input tax credits (ITC).

The result of this assumption is that the insurer will not claim a decreasing adjustment on the claim. If the assumption is incorrect, such as the employer concerned was entitled to less than 100% input tax credits, the insurer would not have claimed a decreasing adjustment to which it was entitled. Is this acceptable to the ATO?

Non-interpretative

### ATO view

This is acceptable to the ATO provided the insurer:

- requests the input tax credit entitlement information from the entity (for example, as a question on the claim form)
- in the event the entity fails to provide that information, the insurer has made reasonable attempts to obtain information as to the entity's input tax credit entitlement.

Workers' compensation insurance covers an employer against liability for injury, death or disease suffered by an employee as a result of their employment. It is therefore reasonable to assume that given the nature of worker's compensation insurance, it is obtained for a creditable purpose. However, given the nature of other types of insurance, the same assumption could not be made by the insurer in respect of those other types of insurance.

# 27 Mutual defence funds

## Issue

Various professions, such as the medical and legal professions, have established indemnity funds. In many cases, the funds are not insurance at law. Division 78 does not apply to them. How does GST apply to the funds? How does GST apply to the fees paid by members of the funds into the funds? How does GST apply to compensation payments made by the funds?

Non-interpretative – straight application of the law.

## ATO view

Generally, Division 78 will not apply as such funds generally do not supply insurance policies. This does not mean that such funds cannot, or do not supply insurance policies, rather, it is generally the case that they do not. Therefore, the general rules will apply to the fees and to the compensation payments where a mutual defence fund does not supply insurance policies.

If the fund is registered, it could be expected that generally the fees would be subject to GST as the requirements of section 9-5 would be met.

Whether the compensation payment is subject to GST depends on whether the requirements of section 9-5 are met.

- Is the entity receiving the payment, such as a patient with a claim against a doctor, registered for GST?
- Is that entity making a supply in exchange for the payment? For example, making a supply of the surrender of any further rights to pursue action against the doctor by signing a release.
- If there is supply, is it connected with Australia?
- If there is a supply, is it in the course or furtherance of an enterprise? For example, if the action by the patient is in respect of personal injuries it could be expected that generally there would not be a supply in the course or furtherance of the enterprise as the rights being surrendered are personal. On the other hand, if the action were by a business in relation to negligence by its legal representative, it could be expected that any surrender of the right to pursue further action would be in the course or furtherance of the enterprise.

See also:

- GSTR 2001/4 – Goods and Services Tax: GST consequences of court orders and out-of-court settlements

Also note that as there may be a supply of an indemnity by the fund if it decides to provide compensation, item 7 of the table in sub regulation 40-5.09(3) of the *A New Tax System (Goods and Services Tax) Regulations 1999* may be applicable.

We are happy to address private ruling request on whether Division 78 would apply to a particular arrangement.

# 28 Division 78 and subdivision 153-B agreements

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found here.

# 29 Recoveries and adjustment events

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found here.

# 30 Partners and income protection insurance

### Issue

If a partner of a partnership acquires income protection insurance, is the partnership entitled to an input tax credit on the acquisition?

Non-interpretative – straight application of the law.

### ATO view

Section 184-5 of the GST Act – supplies etc. by partnerships and other unincorporated bodies – provides as follows.

> (1) For the avoidance of doubt, a supply, acquisition or importation made by or on behalf of a partner of a partnership in his or her capacity as a partner:
>
> (a) is taken to be a supply, acquisition or importation made by the partnership; and
>
> (b) is not taken to be a supply, acquisition or importation made by that partner or any other partner of the partnership.'

Whether or not a partnership is entitled to an input tax credit in respect of an income protection policy taken out by a partner in the partner's own name will depend on the policy. That is, is the income protection, although in the name of the partner, to protect the income of the partnership or that of the partner as an individual.

If it is the latter, then the partnership is not entitled to an input tax credit as the partner will not have acquired the insurance on behalf of the partnership. Also, the requirements under Division 11 must be met in order for the partnership to claim an input tax credit.

# 31 Acquisitions directly for the purpose of settling a claim

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found here.

# 32 Settling a claim and repairs

### Issue

Some insurers are paying ten-elevenths of the total repair costs to the repairer and instructing the registered and fully creditable insured/injured party to pay the other one-eleventh to repairer and then claim that amount from ATO as an input tax credit.

For source of ATO view, refer to paragraphs 65 to 68 of GSTR 2006/10 - *Goods and services tax: insurance settlements and entitlement to input tax credits*

### ATO view

Only if the insured/injured party pays the full repair costs will they be entitled to an input tax credit of one-eleventh of the total repair costs. The insurer has to be paying the repairer on behalf of the insured/injured party. The ten-elevenths coming from the insurer has to actually be the insured's/injured party's money or digital currency. Otherwise, the insured/injured party is only entitled to one-eleventh of the consideration they provide, ie, one-eleventh of one-eleventh of the total repair bill.

# 33 Refund of excesses

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found here.

# 34 Insurance excesses - safe harbour arrangements

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found here.

# Reinsurance issues

# 1 Financial reinsurance

### Issue

TR 96/2 states that the ATO treats financial reinsurance as a loan arrangement rather than reinsurance. By contrast, APRA recognises that it may be insurance. If it is insurance we would expect it was taxable whereas if it is not and therefore a financial supply, it will be input taxed. If taxable, the reinsurer pays the government GST and the insurer claims an equal input tax credit. If it is a financial supply there will be no GST paid or refunded. Clearly with the round robin it makes no difference for insured and reinsurers so long as we know the correct method to be used. Should it be treated as a financial supply?

Non-interpretative - straight application of the law.

### ATO view

Contracts of reinsurance are specifically excluded from being a financial supply (item 7 or regulation 40-13). It is therefore a question of fact as to whether it is a contract of reinsurance. Where it is a bona fide contract of reinsurance it will not be a financial supply.

Note that there is not a round robin as if it is a financial supply, the reinsurer making the supply is not entitled to input tax credits on acquisitions to the extent they relate to making the supply.

# Reporting of unearned premium by reinsurers on supplies of proportional treaty reinsurance on the BAS

### Issue

Section 10 of the Transition Act attributes it to the first tax period. Due to timing factors and complexities of calculation not all reinsurers will have received the information from the respective insurers within their first tax period. Are reinsurers able to report unearned premium on a later BAS?

Non-interpretative – straight application of the law.

### ATO view

Strictly applying the law, no. The reinsurer would be required to amend the BAS for the first tax period.

# Using the 8ths Method to calculate unearned premium as at 30 June 2000

### Issue

Section 12 of the *GST Transition Act* states that a supply for a period that spans 1 July 2000, is taken to be made continuously and uniformly throughout the period.

This requires a supplier to apportion the supply purely on the basis of the period of the supply. For example, if a supply is made for 12 months with 165 days before 1 July, 200/365ths of the supply would be subject to GST.

Some reinsurers have stated that they are unable to calculate accurately the unearned premium of each of their proportional treaties using the 365ths method and to do so would incur large compliance costs.

Under the proportional risk attaching treaties, the supply of reinsurance covers the policies supplied by the insurer in the twelve month period of the reinsurance cover. This means that a 12 month proportional risk attaching treaty reinsurance policy has a life of 2 years as an underlying policy supplied by the insurer of the last day covered by the treaty that also runs for twelve months will not end until twelve months after the treaty ends.

The reinsurer will not know how many policies are supplied by the insurer on any given day covered by the treaty.

For reinsurance supplied under a proportional risk attaching treaty many insurers have adopted the 8ths method, an industry accepted accounting method, to determine unearned premium.

The 8ths method assumes that all underlying policies attach half way though the quarter in which they actually attach and that their period of risk is 12 months. (There are 8 half quarters in each year).

Where the insurer has used the 8ths methods to calculate the unearned premium, the 365ths method would require the insurer to go back and check each underlying policy for

the attachment date and period of the policy. This information is not always readily available and the insurer would need to expend considerable resources to achieve this.

For example under a proportional reinsurance treaty the reinsurer agrees to reinsure 30% of all comprehensive motor vehicle insurance written by the insurer. This could entail thousands of underlying policies to be rechecked.

Non-interpretative – other references

See also:

- GSTR 2000/7 – Goods and services tax: transitional arrangements - supplies, including supplies of rights, made before 1 July 2000 and the extent to which such supplies are taken to be made on or after 1 July 2000
- GSTR 2000/19 – Goods and services tax: making adjustments under Division 19 for adjustment events

### ATO view

Where possible, the 365ths method should be used to calculated unearned premiums as at 30 June 2000.

Where this is not possible the 8ths method is acceptable to calculate unearned premium as at 30 June 2000, provided that both the insurer and reinsurer are registered for GST. The insurer will only be able to claim at most as an input tax credit the same amount that the reinsurer accounts for as GST.

## Additional premium and 'risk attaching' policies

### Issue

See example 3.2 - Risk attaching policies in the ATO reinsurance examples.

How is 'additional premium' for risk attaching policies that span 1 July 2000 to be treated for GST purposes? Is it apportioned over the period of the treaty or is it subject to full GST as it is paid after 1 July 2000?

The September Quarter has two underwriting quarters:

- one for the previous underwriting year
- one for the current underwriting year.

Reinsurers have stated that at the end of June they do not know what is the proper premium due to information coming in 6 months to 3 years after the policy.

For source of ATO view, refer to:

- GSTR 2000/7 GSTR 2000/19 – Goods and services tax: making adjustments under Division 19 for adjustment events

### ATO view

Calculate the GST on the premium as it is known. Any additional amount of premium leads to an adjustment event (for change in consideration) under Division 19 as the additional amounts are paid. For policies that span 1 July 2000 and have been apportioned under section 12 of the *GST Transition Act*, the additional premium needs to be apportioned in the same proportions as the original premium.

***Example***

*Both the Insurer and Reinsurer are registered for GST.*

*The Insurer places a 'risks attaching' property surplus treaty for the period 1 July 1999 to 30 June 2000 with the Reinsurer. The insurer receives a 20% commission from the Reinsurer paid quarterly.*

*The Insurer will calculate the unearned premium as at 30 June 2000 in accordance with section 12 of the Transition Act. In this example all the primary policies attaching to this Treaty are for 12 months duration. The method used to determine the unearned premium was the actual date of the attachment of the individual policies. The total Unearned Premium was calculated as $271,875.*

*The Insurer sends an RCTI to the Reinsurer as follows:*

- *Unearned premium as at 30 June 2000 $271,875.00*
- *GST on unearned premium (payment attached) $27,187.50*

*Additional premium of $45,000 was paid on 1 October 2000 and relates to the premium earned under the 'risk attaching' treaty for the period 1 July 1999 to 30 June 2001. Therefore 365/731 of the additional premium relates to the period 1 July 2000 to 30 June 2001. This portion of the additional premium is subject to GST as it relates to the supply of reinsurance made after 30 June 2000.*

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**Calculation**

Premium Adjustment 365/731 × $45,000 = $22,469.22 GST on Premium Adjustment = $2,246.92

The Insurer will issue a recipient created adjustment note as follows:

| | |
|---|---|
| Additional Premium | $45,000.00 |
| GST on Additional Premium | $2,246.92 |
| Net due to Reinsurer | $47,246.92 |

# GSTR 2013/1

## Issue

Does GSTR 2013/1 - tax invoices, apply to reinsurance brokers?

Non-interpretative – straight application of the law.

## ATO view

Yes – where it refers to insurance brokers, this includes reinsurance brokers.

1. Proportional reinsurance = A reinsurance under which the insurer and the reinsurer share the risk in agreed proportions which may be fixed or variable depending on the insurer's retention and the sum insured. The reinsurer shares proportionally the premiums earned and the claims incurred plus certain expenses incurred by the insurer.

Treaty reinsurance = A standing agreement between Insurers and Reinsurers for the cession or assumption of certain risks as defined in the contract. Treaty reinsurance may be divided into two broad classifications:

1. The participating type which provides for sharing of risks between the Insurer and the Reinsurer. (Proportional Reinsurance)

2. The excess of loss type which provides for indemnity by the Reinsurer only for loss, or losses, which exceed some specified predetermined amount. (Non-Proportional Reinsurance).