



Media Release

Government must remove GST from COVID products & services says GST expert Ken Fehily



Monday December 6, 2021. Speaking at The Tax Institute's 2021 National GST Conference in Sydney last Friday, GST specialist and principal of Fehily Advisory, **Ken Fehily** called on Government to immediately remove the current 10% GST on all COVID related tests, services, products and charges relating to the safety and health of the public.

"We are being encouraged to ensure our own wellbeing and that of those around us as we make our way through COVID. However, the out-of-pocket costs to achieve this is escalating rapidly as the result of GST on masks and other protective gear, home test kits, charges to cross state borders, hotel quarantine charges, etc.", said Fehily. "It's simply unfair."

In his main presentation, ***Medicine, Food & Beverages: The Crooked Line in the Sand***, Fehily said the GST legislation was written in the late 1990s partly to fix the outdated Sales Tax laws that applied since 1930. "Although many short-comings of the old Sales Tax system were addressed, the ongoing challenge is keeping the 21year old GST current to ensure it reflects modern day society attitudes and needs".

"Many of the classifications incorporated into the GST 21 years ago have become even more outdated, and are simply failing to keep up with new issues like epidemics, and growing focus on illness prevention".

GST has never been charged on doctor consultations, hospital services, prescription medications, etc. A further GST-free provision (section 38-45) also applies to cover supplies that are

- Referred to as 'Medical Aids and Appliances',
- But they are only GST-free if they are specifically designed for and used mainly by people who are already suffering from an illness or a disability

However, it doesn't apply to goods or services that help prevent people from getting ill or disabled. Hence, it supports a **sick-care** system rather than a **health-care** system.

Fehily, continued, "Since GST started in 2000, there have been massive global health challenges such as HIV, SARS and currently COVID. Fortunately, the science, health and government sectors have responded with major advances and developments in the recognition, diagnosis and treatment of these modern era illnesses".

"During this period, the financial benefits of prevention rather than treating medical conditions for the economy, society and health system were also acknowledged – which makes the application of GST on top of the cost of paying for the COVID related supplies and charges in the midst of the pandemic perplexing and self-defeating".

As Australia combats the pandemic, there seems to be considerable evidence that masks, visors, gloves, rapid antigen test kits for use at home or the office, quarantining, getting tested before crossing borders, etc are the some of the ways we currently have to combat the spread

of COVID. Not paying 10% more to cover GST for these crucial items will help keep more money in the pockets of Australians and encourage their use.

Fehily concluded his presentation, "Tax is supposed to be fair. The application of GST on COVID related goods, services and protocols is plainly and simply not fair... especially when we are compelled to do so under public orders. This measure requires the unanimous agreement of all Federal, State and Territory governments, and I'm hopeful that they will see the sense and fairness in this matter".

"The Federal Health Minister, **The Hon Greg Hunt MP**, can issue a 'Statutory Determination' (a power given to the Minister under section 38-47 of the GST law). It's a power available to the Minister, and it was indeed recently used to halt the collection of GST on feminine hygiene products from 1 January, 2019.

"I therefore ask the Minister to urgently seek the agreement of the Federal and all State and Territory governments to declare GST-free status for all charges, or for supplies of goods or services, (whether from the private sector or by any government) that are essential to comply with COVID related public health orders. This must include products supplied by supermarkets and chemists etc that mitigate or prevent or test people for COVID. This includes masks, rapid antigen tests for use by consumers, fees for COVID tests and charges for quarantining i.e. quarantine hotels".

"It's not fair, equitable or moral to force health and prevention costs up by 10%; nor for the States and Territories to have a GST revenue stream based on costs borne by the community in dealing with the COVID pandemic".

"I also expect that the GST revenue given up will be more than outweighed by the savings on hospital treatments, and lessening the costs of dealing with testing, vaccines and tracing as we endeavour to stay safe and healthy".

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About Ken Fehily

Ken Fehily is a GST expert with over 30 years of experience with resolving difficult, uncertain and complex indirect tax issues.

After 20 years as a senior partner at both PwC and Andersen, Ken founded independent consultancy Fehily Advisory in 2010 to dedicate himself to achieving prompt and definitive outcomes for clients and advisors facing GST issues or disputes with the ATO. Drawing on his deep technical knowledge, commercial experience and strong persuasion skills, Ken identifies and realises unconventional solutions to intractable problems.

He advises, represents and negotiates on behalf of business owners, investors, CEOs and CFOs across a wide range of matters, including real property, tax audits and tax audit insurance, cross-border transactions, deals and structuring, procedural mistakes, ATO refunds and financier obligations. He also works together with clients' incumbent advisors and other professionals.

Ken was one of the architects of the GST, having assisted the Federal Treasurer's Committee in the writing of the GST laws, and as a member of the ATO's Public Rulings Panel for eight years. He continues to consult with the ATO and Federal Treasury on current and emerging GST issues, ATO administrative practices and legislative changes, and he serves as an external member of the ATO's GST Stewardship Group.

He has extensive knowledge about a broad range of non-GST issues, is legally and financially literate and intuitive and has connections across both the private and government sectors. Through advising and serving on a number of Boards, he has developed a strong understanding of Board governance, having dealt and negotiated with and between private sector and government stakeholders from commercial and stakeholder perspectives.